



**NYCLU**  
NEW YORK CIVIL LIBERTIES UNION

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November 7, 2011

Mayor Thomas S. Richards  
City of Rochester  
City Hall, Room 307A  
30 Church Street  
Rochester, NY 14614

Chief James Sheppard  
Rochester Police Department  
Public Safety Building  
185 Exchange Boulevard  
Rochester, NY 14614

**Re: Occupy Rochester**

Dear Mayor Richards and Chief Sheppard:

On behalf of the New York Civil Liberties Union, we write concerning the City of Rochester's continued enforcement of unconstitutional ordinances governing the use of City parks and the ongoing arrests of peaceful protestors at the Occupy Rochester demonstration in Washington Square Park. As far as we know, Rochester remains the only city in New York State that has arrested peaceful protestors in connection with Occupy Wall Street demonstrations for mere presence in a public park. Yet the arrests of the Occupy Rochester protestors rest on an unconstitutional ordinance. We, therefore, urge you to stop making such arrests and respect the First Amendment rights of the protestors.

Although the Occupy Rochester protestors have remained peaceful and there have been no threats to public safety, over 50 people have been arrested and charged with trespassing and violating the Rochester ordinance setting park hours in the last two weeks. These arrests appear to be unconstitutional, as the ordinance setting park hours gives the Commissioner of Recreation and Youth Services unbridled discretion to determine whether the park should remain open or after the usual closing time. Municipal Code § 79-2(C).<sup>1</sup> Courts have routinely held that such ordinances are unconstitutional. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 153 (1969). Indeed, just in recent weeks, federal courts have issued temporary restraining orders

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<sup>1</sup> Municipal Code § 79-2(C) provides as follows: "Unless otherwise authorized by the Commissioner and notice is given by the posting of signs at the parks, the parks shall be closed from 11:00 p.m. until 5:00 a.m. during the summer season, and from 10:00 p.m. until 7:00 a.m. during the winter season; and no persons except authorized employees or persons with written permission from the Commissioner shall enter or remain in said parks while closed."

barring the enforcement of similar ordinances in Nashville and Cincinnati in connection with Occupy Wall Street demonstrations. Enforcement of this ordinance should be abandoned immediately.<sup>2</sup>

In addition, we are very concerned about recent reports that Rochester Police Department officers have demanded that protestors at Washington Square Park “keep the signs to a minimal.” [sic] We assume that this demand was made in reference to the City’s ordinance that requires any person who seeks to display any sign or banner in a public park to obtain a permit beforehand. See Municipal Code § 79-19(A)(2). There is little doubt that this ordinance is unconstitutional as well, as it is substantially overbroad and significantly burdens speech in a public forum. This ordinance should also not be enforced.

Overall, the aggressive stance that the City has taken in response to the Occupy Rochester demonstrators reflects a patent disregard for the important First Amendment interests at stake. In stark contrast, public officials in Albany, Buffalo, Syracuse and New York City have protected the right to peaceful protest by Occupy Wall Street demonstrators and we see no reason why Rochester should be different. We therefore urge you to exercise your authority in a manner that accommodates peaceful expression and abandon enforcement of unconstitutional ordinances that infringe on First Amendment rights.

We are hopeful that we can engage in a productive dialogue that will make litigation to protect the rights of peaceful protestors unnecessary. Thank you for your attention to this matter.

Sincerely,

Donna Lieberman  
Executive Director

KaeLyn Rich  
Director, Genesee Valley Chapter

Alexis Karteron  
Senior Staff Attorney

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<sup>2</sup> While City officials may be tempted to claim that the Supreme Court of the United States has sanctioned such practices in reliance on *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984), such a claim misreads Supreme Court precedent. In *Clark*, the Supreme Court upheld the U.S. Park Service’s blanket ban on camping on the National Mall and in Washington D.C.’s Lafayette Park. This precedent does not, however, give Rochester license to arrest protestors at Washington Square Park because the City of Rochester has no such blanket ban on the use of parks. Instead, camping is permitted in City parks with permission from the Commissioner of Recreation and Youth Services. Municipal Code § 79-11. And, in any event, the protestors have been arrested for violating the ordinance that requires closure of the parks from 11:00 pm until 5:00 am unless otherwise authorized by the Commissioner of Recreation and Youth Services.