

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CASE NO: 2:11-CV-00608-JES-DNF

**OCCUPY FORT MYERS, CINDY  
BANYAI, STEPHANIE DARST,  
CHRISTOPHER FAULKNER, F. FRANK  
GUBASTA, ZACHARY KUHN, HILARY  
MAINS, MATT MCDOWELL, MICHELLE  
MEYER, LUIS OSPINA, RYAN POGUE,  
FRANK PRATT, MARLENE ROBINSON,  
and JUSTIN VALO,**

**Plaintiffs,**

v.

**CITY OF FORT MYERS,**

**Defendant.**

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**FIRST AMENDED COMPLAINT**

**(With Injunctive Relief Sought)**

The **PLAINTIFFS** hereby commence this civil action, seeking declaratory relief, injunctive relief, and compensatory damages, for ongoing and threatened violation of the First Amendment and Fourteenth Amendment rights of individuals, and those of an unincorporated association, seeking to engage in peaceful expressive conduct within the City of Fort Myers, Florida.

**JURISDICTION AND VENUE**

1. This action seeks declaratory relief, injunctive relief and compensatory damages pursuant to 42 U.S.C. §1983, for ongoing and threatened injury to the First Amendment rights of individuals and an unincorporated association engaged in lawful expressive activity within the City of Fort Myers,

Florida. This Court accordingly has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 as claims arising under the U.S. Constitution, and pursuant to 28 U.S.C. § 1343 (a), as a civil action to redress the deprivation of civil rights and privileges secured by the U.S. Constitution.

2. Venue is proper in the Middle District of Florida - Fort Myers Division, under 28 U.S.C. §1391(b) (1), insofar as defendant City of Fort Myers is located in Lee County, Florida, and is thereby wholly located within the above-referenced judicial district.

### INTRODUCTION

3. The set of Plaintiffs is comprised of thirteen (13) persons who are active in Southwest Florida in bringing awareness of social and economic justice issues through demonstrations, marches, and rallies, and related expressive speech and conduct, and one (1) unincorporated association whose members are concerned about current political, social and economic issues, including those arising locally, nationally and globally. In the instant civil action, the Plaintiffs challenge several provisions of the City of Fort Myers' Municipal Code ("**Fort Myers Code**" or "**Code**"). The City of Fort Myers (hereinafter also "Fort Myers" or "defendant City") employs a permit scheme, for expressive activity in traditional public fora, that is violative of the First and Fourteenth Amendments as an unlawful prior restraint, because it is content-based, overbroad, lacks sufficient procedural safeguards, and it suffers from additional infirmities. The permit scheme lacks sufficient standards in multiple instances, for example: to guide the decision of whether and under what conditions a permit will issue; to ensure that public officials must decide whether to issue or deny a permit in sufficient time to actually stage the event; fails to make exceptions for small-group political events or for spontaneous speech; or to delineate with clarity what conditions may be imposed on expressive activities. The absence of adequate standards in key areas means that the ordinance vests public officials with unbridled discretion and invites content-based decisions based on the nature of the speaker. These are forbidden grounds on which to base a permit scheme that requires a license to engage in protected speech; the permit scheme violates Plaintiffs' First Amendment rights by

impermissibly limiting their rights to speech, association, and assembly. Furthermore, the Fort Myers allows City officials to accommodate “athletic sporting events, or cultural or civic events” after public park closing hours, but allows no provision for accommodation of those who are participating in First Amendment-protected activity. Thus, the permit scheme in general, and the Parks ordinance in particular, are content-based on their face and illustrate the governmental policy of preference for non-political speech. For these reasons, defendant City of Fort Myers must be enjoined from prohibiting the lawful exercise of First Amendment-protected activity. Further, the Plaintiffs seek a declaration that the City’s “Special Events Permitting Scheme,” “Park Operating Policy,” and “Parade and Processions Ordinance” are facially invalid as violative of protected expressive conduct, and seeks damages for the wrongful abrogation of protected free speech, association and assembly.

## PARTIES

### Plaintiffs

4. Plaintiff **OCCUPY FORT MYERS** (“alternately “OFM”) is an unincorporated association of individuals, mostly from Lee County, Florida and surrounding areas, who are concerned about social injustice in our country and who have gathered spontaneously to generate awareness of the corrupting influence of massive amounts of money in the nation’s political process. [Valo Decl. [D.E. 1-1], at ¶ 3]. A core purpose of OFM is to bring awareness to the concerns about the U.S. political process and economic policy through symbolic, around-the-clock, peaceful protests referred to as “occupations.” [Valo Decl. [D.E. 1-1], at ¶ 3]. OFM held their first rally and march on October 15, and began occupying Centennial Park in Fort Myers that evening. [Valo Decl. [D.E. 1-1] at ¶ 5].

5. Plaintiff **CINDY BANYAI** is a resident of Lee County, Florida. Plaintiff Banyai received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011. [Citation No. 1B25781]. Plaintiff is asserting her personal

constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

6. Plaintiff **STEPHANIE DARST** is a resident of Lee County, Florida. Plaintiff Darst received two citations in the amount of \$135.00 each while involved in symbolic First Amendment-protected speech on the morning of October 22, 2011. [Citation No. 1B23023 and 1B23022]. Plaintiff is asserting her personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

7. Plaintiff **CHRISTOPHER FAULKNER** is a resident of Lee County, Florida [Declaration of Christopher Faulkner, dated October 23, 2011, hereinafter “Faulkner Decl. [D.E. 1-2],” at ¶2]. Plaintiff Faulkner received two citations in the amount of \$135.00 each while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011 [Faulkner Decl. [D.E. 1-2] at ¶ 6]. Plaintiff Faulkner has received multiple citations since October, 20, for a total of eight, each in the amount of \$135.00. Plaintiff Faulkner fears the ordinances and policies of the City of Fort Myers will inhibit the exercise of his free speech [Faulkner Decl. [D.E. 1-2] at ¶8].

8. Plaintiff **F. FRANK GUBASTA** is a resident of Lee County, Florida. Plaintiff Gubasta received two citations in the amount of \$135.00 each while involved in symbolic First Amendment-protected speech on the evening of October 21, 2011 and again on the morning of October 22, 2011. [Citation No. 1B26251, 1B18250]. Plaintiff is asserting his personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

9. Plaintiff **ZACHARY KUHN** is a resident of Lee County, Florida. Plaintiff Kuhn received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011. [Citation No. 1B24948]. Plaintiff is asserting his personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

10. Plaintiff **HILARY MAINS** is a resident of Lee County, Florida. Plaintiff Mains received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on

the evening of October 20, 2011. [Citation No. 1B25878]. Plaintiff is asserting his personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

11. Plaintiff **MATT MCDOWELL** is a resident of Collier County, Florida. [Declaration of Matt McDowell, dated October 24, 2011, hereinafter “McDowell Decl. [D.E. 1-3],” at ¶2]. Plaintiff McDowell received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech, including participating as a citizen journalist, on the morning of October 22, 2011 [McDowell Decl. [D.E. 1-3] at ¶ 6]. Plaintiff McDowell fears the ordinances and policies of the City of Fort Myers will inhibit the exercise of his free speech [McDowell Decl. [D.E. 1-3] at ¶8].

12. Plaintiff **MICHELLE N. MEYER** is a resident of Lee County, Florida. Plaintiff Meyer received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011. [Citation No. 1B24226]. Plaintiff is asserting her personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

13. Plaintiff **LUIS OSPINA** is a resident of Lee County, Florida [Declaration of Luis Ospina, dated October 23, 2011, hereinafter “Ospina Decl. [D.E. 1-4],” at ¶2]. Plaintiff Ospina received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011 [Ospina Decl. [D.E. 1-4] at ¶ 6]. Plaintiff Ospina fears the ordinances and policies of the City of Fort Myers will inhibit the exercise of his free speech [Ospina Decl. [D.E. 1-4] at ¶8].

14. Plaintiff **RYAN POGUE** is a resident of Lee County, Florida. Plaintiff Pogue received two citations in the amount of \$135.00 each while involved in symbolic First Amendment-protected speech on the evening of October 22, 2011. [Citation No. 1B23090, 1B23097]. Plaintiff is asserting his personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

15. Plaintiff **FRANK PRATT** is a resident of Lee County, Florida. Plaintiff Pratt received a citation in the amount of \$135.00 while involved in symbolic First Amendment-protected speech on the evening of October 20, 2011. [Citation No. 1B24949]. Plaintiff is asserting his personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

16. Plaintiff **MARLENE ROBINSON** is a resident of Lee County, Florida. Plaintiff Robinson received two citations in the amount of \$135.00 each while involved in symbolic First Amendment-protected speech on the evening of October 22, 2011. [Citation No. 1B25061, 1B25060]. Plaintiff is asserting her personal constitutional right to engage in free speech, assembly and association within the confines of the City of Fort Myers.

17. Plaintiff **JUSTIN VALO** is a resident of Lee County, Florida [Valo Decl. [D.E. 1-1], at ¶2]. Plaintiff Valo participates in ongoing demonstration activities, and assists in the organization of OFM's activities. [Valo Decl. [D.E. 1-1], at ¶3]. Plaintiff Valo asserts that unconstitutional ordinances being enforced by the City of Fort Myers have hindered and chilled his speech, the speech of all those who associate with OFM and all who may have wanted to associate with OFM in the future. [Valo Decl. [D.E. 1-1], at ¶16].

### **Defendant**

18. Defendant **CITY OF FORT MYERS** is a body corporate and politic, with the capacity to sue and be sued. The City of Fort Myers is the legal entity responsible for the actions of its final policymaker for city policies, the Fort Myers City Council. As such, defendant City is responsible for the passage of City Code Sec. 118.3.5(E)(1) which authorizes the use of the Special Events Handbook for all events on public land, including the Occupy Fort Myers demonstration, Sec. 2-273, Sec. 58-154(6), Sec. 58-156(a), Sec. 58-157, and Chapter 86 by the City Council, and for the implementation of such city laws.

## **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

19. Plaintiffs seek to exercise their First Amendment rights to assemble and demonstrate in Centennial Park, and on other public property located in Fort Myers, Florida, to bring visibility to the insidious influence of money on the U.S. political process, and to inform members of the general public on political issues such as social justice and economic equality.

### **Interaction Between Event Organizers and City of Fort Myers Officials**

20. On or about October 11, 2011, Mark Hetrick, who volunteered his services as a member of the OFM Legal Working Team, called the Fort Myers Police Department (“FMPD”) to inquire about obtaining a permit for a planned OFM rally and march in downtown Fort Myers on Oct. 15, 2011. [Valo Decl. [D.E. 1-1], at ¶6].

21. FMPD indicated that OFM could rally and march downtown on Oct. 15th, provided that OFM submit to certain restrictions. Specifically, OFM could not: use a megaphone, march in the street, or include “vulgar language” on signs. [Valo Decl. [D.E. 1-1], at ¶6].

22. Mr. Hetrick further inquired about OFM’s intentions to symbolically “occupy” Centennial Park beginning on the evening of Oct. 15, 2011. An FMPD contact said that the police would not interfere with any overnight “occupation,” including allowing the erection of tents, as long as there was no alcohol brought into the park. The FMPD advised OFM to contact the City of Fort Myers Recreation Division to obtain a permit for the overnight occupation. [Valo Decl. [D.E. 1-1], at ¶6].

23. On October 15, 2011, OFM held a noon rally at Centennial Park, and then conducted an approximately one mile-long sidewalk procession from Centennial Park to the Bank of America branch on First Street, and then back to Centennial Park. Approximately 500 people showed up to support the Occupy Fort Myers movement. The march and rally remained peaceful and respectful. [Valo Decl. [D.E. 1-1], at ¶6].

24. OFM began “occupying” Centennial Park on the evening of October 15<sup>th</sup>. The General Assembly of OFM, comprised of the entire gathering of persons engaged in a group decision-making process, agreed that the “occupiers” would respect the City and park by making sure that the participants maintained quiet after park closing hours, and by thoroughly cleaning up after themselves. The occupiers had no confrontations with members of the public, the City or FMPD from Oct. 15<sup>th</sup> through Oct. 20<sup>th</sup>. [Valo Decl. [D.E. 1-1], at ¶9]. The “occupiers” did continue their political activity by engaging in awareness-building with an information booth for questions for the general public set up at the entranceway of the gathering, print and television media, by displaying political signs, and through the symbolic presence of tents. [Faulkner Decl. [D.E. 1-2], at ¶ 3; *see also* digital photographs of the OFM encampment area [D.E. 1-5]].

25. On October 18, 2011, OFM obtained a “Special Events” pamphlet from the City, enclosed within it was a permitting scheme and a permit application. The “Special Events” pamphlet states that “[t]he Special Events Advisory Board may have final approval of all events as detailed in City Ordinance #3019.” [See Special Events Pamphlet, [D.E. 30-1]]. OFM completed a permit application, and submitted it to the Recreation Division. OFM informed the Recreation Division, along with Officer Sanchez of the FMPD, through email communication that Occupy Fort Myers sought to cooperate with the City. [Valo Decl. [D.E. 1-1], at ¶10].

26. On October 19, 2011, at 10:19 a.m., Kelly MacDonald, Senior Program Coordinator in the Recreation Division informed OFM, through email, that, before the Special Event Committee could even review the permit application, OFM would need to obtain a \$1 million liability insurance policy and bring the Liability Insurance certificate to the Recreation Administrative Office. Ms. MacDonald informed OFM that the City was prepared to enforce Ordinance Sec. 58-153(3) if OFM did not comply with the liability insurance by 3:00 p.m. on the same day. [Valo Decl. [D.E. 1-1], at ¶10].

27. On October 19, 2011, Mark Hetrick contacted Ms. MacDonald by email and phone to let her know that OFM could not possibly comply with the 3:00 p.m. deadline to obtain an insurance policy. The City gave OFM the names of three insurance companies, and Ms. MacDonald agreed to allow



OFM an additional day to attempt to obtain insurance and thereby comply with City regulations. [Valo Decl. [D.E. 1-1], at ¶10].

28. On Oct. 19, 2011, OFM informed the City of Fort Myers Recreation Division and Police Department, through email, that the insurance companies designated by the City of Fort Myers would not provide the requested liability insurance policy to OFM. OFM informed Ms. MacDonald, Mr. Saeed Kazemi, the Public Works Director, and Officer Sanchez of the FMPD, through email, that OFM sought understanding and cooperation with the City, that the group would like to obtain a permit, but OFM could not satisfy the City's requirements. OFM asked that the City not attempt to dismantle the OFM presence in Centennial Park. [Valo Decl. [D.E. 1-1], at ¶11].

29. Even if an insurer would agree to insure OFM, OFM has absolutely no funds with which to pay for a liability insurance policy, and it was conveyed by City personnel that the City of Fort Myers would require OFM to apply for another permit and obtain a re-issuance or new insurance policy every ten days. [Valo Decl. [D.E. 1-1], at ¶14]. OFM sought to review the procedures for requesting a waiver of the liability insurance requirement or for appeal of the denial of a permit, but there were no provisions for either waiver or for appeal, located in either the City of Fort Myers ordinances or the Special Events pamphlet. [Valo Decl. [D.E. 1-1], at ¶12].

30. On October 20, 2011, members of OFM and their legal counsel spent most of the day attempting to negotiate, in good faith, with City employees in an attempt to obtain a permit for the ongoing symbolic demonstration. The City would not issue OFM a permit, nor would the City identify any procedure for requesting either a waiver or an appeal of the City's decision. [Valo Decl. [D.E. 1-1], at ¶15].

31. On the evening of October 20, at approximately 10:45 p.m., members of the FMPD showed up at Centennial Park, and issued citations of \$135 each to any individual who was planning on remaining in the park after 10:30 p.m. [Valo Decl. [D.E. 1-1], at ¶15; Faulkner Decl. [D.E. 1-2], at ¶6; Ospina Decl. [D.E. 1-4], at ¶6].

32. On the morning of October 22, 2011, FMPD law enforcement officers arrived at OFM encampment area at approximately 6:15 a.m. and demanded the OFM occupiers to leave the park and remove their tents. [McDowell Decl. [D.E. 1-3], at ¶6].

33. Humana, the insurance corporation, was sponsoring an Alzheimer's Awareness event in Centennial Park on Saturday, October 22. FMPD Captain Viola informed OFM occupiers that Humana rented "the entire park," and that he didn't wish for OFM members to leave the park completely until noon. When Capt. Viola was further questioned by OFM members, he informed OFM that the Humana representatives did not want the tents in the park during their event. The occupiers who were present each received a citation in the amount of \$135 for being in the park after closing hours, even though Humana representatives were also in the park before 6:00 a.m. The occupiers who were present each received a citation in the amount of \$135 for being in the park after closing hours, even though Humana representatives were also in the park before 6:00 a.m. [McDowell Decl. [D.E. 1-3], at ¶6].

34. On November 2, 2011, the City of Fort Myers agreed to extend a Special Events permit to Occupy Fort Myers for a period of 10 days, with an option to renew, if Occupy Fort Myers agreed to voluntarily vacate Centennial Park for the weekend's Taste of the Town event. [See Declaration of Christopher Faulkner, dated November 18, 2001, hereinafter "Faulkner Decl. 11/18," attached hereto as "Exhibit 1," at ¶ 4.]

35. On November 7, 2011, the City of Fort Myers issued Occupy Fort Myers a 10-day permit. [Faulkner Decl. 11/18, at ¶ 5; Exhibit B, attached to Faulkner Decl. 11/18]. The agreed upon permit provisions stated that the City could refuse or rescind the permit if the event was hazardous or if there was an emergency situation in the City of Fort Myers. The agreed upon permit provisions further stated that "[f]ailure to meet the requirements of this agreement may result in future rental (sic) requests being denied."

36. On November 15, 2011, this Court issued a preliminary injunction enjoining the City from enforcing certain provisions of their Parades and Processions Ordinance and their Park Regulations Ordinance. [D.E. 48].

37. On November 17, 2011, members of Occupy Fort Myers went to the City of Fort Myers Recreation Division to obtain a re-issuance of their permit. Kelly MacDonald, the City of Fort Myers Sr. Program Coordinator, told OFM that she was instructed to state that the permit request was denied.<sup>1</sup> She refused to disclose why the permit request was being denied, and was unable to inform OFM how to appeal the denial other than to say that OFM should “contact the Legal Department.”

38. On November 17, 2011, at approximately 11:00 p.m., law enforcement officers in the Fort Myers Police Department went to Centennial Park and demanded that all members of OFM leave the park immediately or face arrest. One member of OFM was arrested for trespass.

39. As a direct and proximate cause of the unconstitutional City ordinances, Plaintiffs have suffered damages, which include violation of their civil rights, limitation of their core political message to those who may be interested in participating in OFM events but whose speech has been chilled, and economic damages, in the nature of the value of the lost publicity, the value of volunteer staff time to adjust events and notify persons as to governmental harassment, the cost of transportation and related costs to attempt to comply with City demands, costs of litigation, and related expenses.

### **City of Fort Myers Policies**<sup>2</sup>

#### ***The Special Events Permitting Scheme***

40. The Temporary Land Uses Code, Sec. 118.3.5(E)(1), entitled “Temporary Uses and Structures,” comprises a portion of the City’s standardless and ad hoc permitting scheme, as follows:

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<sup>1</sup> In Ms. MacDonald’s affidavit, filed with the Court on November 4, 2011 [D.E. 36-1], at ¶ 4, Ms. MacDonald stated under oath that “never in my tenure has an application been denied.”

<sup>2</sup> Copies of the Challenged City Code sections are attached hereto as Exhibit 2.

The term ‘special events’ shall mean an event held on public land . . . Any person or entity requesting to conduct a special event on public land . . . shall follow provisions in the city’s special events handbook.

41. The Special Events Handbook<sup>3</sup> create a content-based permitting scheme vesting unbridled discretion in City Officials, as follows:

The City of Fort Myers recognizes that special events play a significant role in the life of a community. Special events enhance a community by providing recreation, cultural and educational opportunities; they foster a sense of belonging and collective identity among residents; they provide economic support for both the not-for-profit and business communities; and they provide opportunities for the development of tourism. . . Special events present a unique opportunity to invigorate community spirit and contribute substantial economic and social benefits. . . The Special Event Advisory Board may have final approval of all events as detailed in City Ordinance # 3019<sup>4</sup>. . . Upon receipt of your application, copies are reviewed by affected city departments to assess site availability, quality and goal of the event, compliance with city ordinances, permits required, security deposit required and an estimated cost of all city fees that will be incurred.

42. The Special Events Advisory Board Ordinance 3019, Codified as Sec. 2-273, entitled “Powers and Duties,” is a sweeping set of provisions vesting specific powers within the Special Advisory Board, as follows:

The special events advisory board shall:

(1) Act in an advisory capacity to the city council in matters relating to special events proposed by event managers, which are (a) Open to the public; (b) held within the city limits in spaces that are overseen by the city; (c) Expected to attract more than 1,000 people; **and** (d) Requesting the city council approve a waiver or a reduction of fees or a cash sponsorship.

. . .

(3) Recommend to the city council special events that should receive city sponsorship by a reduction or waiver in the fees charged for the use of public property and/or the cost of services to be provided by the city, based on a weighted scale of merit;

(4) Recommend regulations for the conduct of special events that will increase interest therein to the citizens, residents and visitors of the city generally . . . .

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<sup>3</sup> See D.E. 30-1.

<sup>4</sup> For the codification information of Ordinance No. 3019, see ¶ 42, *infra*.

43. All provisions of the special events permitting scheme are silent as to the standards for approval or denial of a permit, the standard for the imposition of any fees, or the process to appeal the denial of a permit or appeal any permit provision.

***Park Operating Policies***

44. Sec. 58-154(6)<sup>5</sup>, entitled “Prohibited Behavior,” imposes impermissibly vague restrictions on symbolic speech and expressive activity, as follows:

No unauthorized person in the park shall do any of the following: . . . Loitering and boisterousness. Sleep or protractedly lounge on the seats, benches, or other areas, or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace.

45 . Sec. 58-156(a)<sup>6</sup>, entitled “Park Operating Policy,” is a content-based restriction on symbolic speech and expressive activity, as follows:

*Hours.* . . Normal park hours are 6:00 a.m. to 10:30 p.m. unless posted otherwise by the recreation manager. Such hours **shall** be deemed extended by the recreation manager as necessary to accommodate athletic sport events, or cultural or civic activities.

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<sup>5</sup> Enacted in City Code of 1963, Sec. 24-28(5); City Code of 1991, Sec. 12-217.

<sup>6</sup> Enacted in City Code of 1963, Sec. 24-28(7); City Code of 1991, Sec. 12-219.

46. Sec. 118.3.6(C) defines “Civic Use Categories.” The extensive list of civic use categories,<sup>7</sup> which goes on for pages, does not include political rallies or demonstrations. The Park and Open spaces category does not include political expression as a principal use or as an accessory use.

47. Sec. 58-157<sup>8</sup>, entitled “Violations; Penalties” states, as follows:

A violation of this division will subject the violator to a find of not less than \$25.00 and not more than \$250.00. Such violators may be issued appropriate citations by city policy officers.

48. There is no authority for arrest in the penalties section of the Park Regulations Code.

### ***Parades and Processions Policy***

49. Chapter 86, entitled “Parades and Processions,” is a content-based law that has three subsections that outline a permitting scheme without specific factors or guidelines and vests unbridled discretion in the Chief of Police, as follows:

86-153 (a) No parade or procession upon any street of the city, and no open-air public meeting upon any public property shall be permitted unless a special permit

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<sup>7</sup> **1. Community service.** Uses of a public, nonprofit, or charitable nature providing ongoing public safety, educational, training, or counseling to the general public on a regular basis, without a residential component.

**2. Day care.** Uses providing care, protection, and supervision of children or adults on a regular basis away from their primary residence. Care is typically provided to a given individual for fewer than 18 hours each day, although the facility may be open 24 hours each day.

**3. Educational facility.** Public and private (including charter or religious) schools at the primary, elementary, middle, junior high, or high school level that provide basic academic education. Also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree usually in a campus setting.

**4. Medical facility.** Uses providing medical or surgical care to patients. Some uses may offer overnight care.

**5. Park and open space.** Uses focusing on natural areas consisting mostly of vegetation, passive or active outdoor recreation areas, or community gardens, and having few structures.

**6. Passenger terminal.** Public or commercial facilities for the takeoff and landing of airplanes and helicopters, and terminals for taxi, rail or bus service.

**7. Place of worship.** Places of assembly that provide meeting areas for religious practice.

**8. Social service.** Uses that primarily provide treatment of those with psychiatric, alcohol, or drug problems, and transient housing related to social service programs.

**9. Utilities.** Public or private infrastructure serving a limited area with no on-site personnel (Minor Utility) or the general community and possibly having on-site personnel (Major Utility).

<sup>8</sup> Enacted in City Code of 1963, Sec. 24-28(8); City Code of 1991, Sec. 12-213.

shall first be obtained. Any person desiring a permit under this section shall make written application to the chief of police or some duly authorized member of the police department. Permits issued under this section shall be printed or written, duly signed by the chief of police or some duly authorized member of the police department after approval, and shall specify the day, hour, place and purpose of such parade, procession or open-air public meeting. (b) The fee for such permit shall be \$5.00 if the activity permitted requires no extra policing or will cause no extra cost or expense to the city. If such activity will require additional policing or supervision, or otherwise incur additional cost and expense to the city, there shall be charged such fee as will defray such additional cost to be determined by the chief of police.

86-154 “If the chief of police knows or has reasonable grounds to believe that to permit any parade, procession or open-air meeting under this article may or will result in violence, fighting, disturbance of the peace, or injuries to persons or damage to property, he may refuse to approve issuance of a permit hereunder by endorsing on the application or indicating in writing to the city clerk his reason for his refusal and such permit shall not be issued.

#### **Application of City Code to OFM Events**

50. The City of Fort Myers required OFM to obtain a “special events” permit as required in City Code Sec. 118.3.5(E)(1) for their expressive conduct of “occupying” Fort Myers, even though OFM’s demonstration does not fall within the definitional parameters of a “special event.”

Because the City has no provision in their ordinance scheme for First Amendment activity, the City arbitrarily subjected OFM to the standardless and content-based permitting requirements identified in the Special Events Handbook. Furthermore, since OFM was subjected to special events provisions, which are reviewed by the Special Events Advisory Board, City Code Sec. 2-273 allows the Board complete control, without defined appellate procedures, as to whether or not to entertain the waiver of any provisions.

51. The City of Fort Myers has issued citations to members of OFM, and has begun arresting members of OFM, for violations of City Code 58-156(a). This section of the City Code is clearly content-based viewpoint discrimination as it shows a policy of preference for non-political speech. The Recreation Manager also has unbridled discretion to extend park hours for sporting, cultural or

civic events, but not for First Amendment-protected activity. OFM is subject to the provisions of Sec. 58-154(6). This code is impermissibly vague since OFM would not be aware of what constitutes “boisterousness” or “behavior tending to the breach of the peace” or “protracted lounging.” Further, at a political rally in Centennial Park on Saturday, November 19, 2011, a speaker cautioned an activist not to utilize “f-- k” or other 4-letter words that might be deemed insulting or indecent. Citizens are engaging in “self-censorship” to avoid violating Fort Myers vague and unconstitutionally overbroad “Park Speech Code.”

52. The FMPD allowed OFM to rally and march on a sidewalk, pursuant to City Code 86-153, provided OFM agree to certain ad hoc restrictions. These restrictions reflect city policies vesting unbridled discretion in the Fort Myers Police Department and comprise an impermissible and ethereal permitting scheme. Because any “open air meeting” is subject to the provisions of this code, OFM members are divested of First Amendment rights and an important liberty interest.

### **CAUSES OF ACTION**

53. As to each cause of action delineated below in Counts One through Six, the plaintiffs advance their federal constitutional claims against the City of Fort Myers in the City’s capacity as a state actor, through the operation of the Fourteenth Amendment.

#### **COUNT ONE**

***Monell Claim - Official Policy to Suppress Protected Speech and Assembly***  
**(42 U.S.C. § 1983 - Violation of First Amendment - Viewpoint Discrimination)**  
**City of Fort Myers’ Permitting Scheme (Fort Myers City Code, Sec. 2-273, and the Special**  
**Events Handbook as ratified by Sec. 118.3.5(E)(1)**  
**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

54. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.



55. At all times relevant hereto, the City Council of defendant City of Fort Myers (“Council”) was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

56. The Council enacted Ordinance No. 3422 §6 on January 14, 2008, codified as Code Sec. 118.3.5(E)(1). This Ordinance ratifies the use of the “Special Events Handbook” as City policy for the application of all permits on public land within the City of Fort Myers. The Special Events Handbook is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing unbridled discretion in City officials to approve or deny permits, or to create permit provisions and set fees and requirements without identifiable standards. Neither the Special Events section of the Code, Sec. 118.3.5(E)(1), nor the Special Events Handbook have any provision to appeal decisions made by City officials in their permitting decisions.

57. The Council enacted Ordinance No. 3019, on September 17, 2001, codified as Code Sec. 2-271 to Sec. 2-273 referenced as the “Special Events Advisory Board” Ordinance, precluding OFM’s demonstration event without first obtaining a permit, to be reviewed and recommended by the Special Advisory Board members, defined in Sec. 2-271 and 2-272.

58. The Special Events Permitting Scheme is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing unbridled discretion in the Board to provide for the exemption of permit requirements for favored speech, including commercial speech.

59. As part of a content-based regulatory scheme, the Special Event Handbook is subject to strict scrutiny, mandating that the defendant City establish that its regulatory scheme is: (1) **narrowly-tailored**; and (2) serving a **compelling state interest**. The broad prohibitions against politically-centered speech and conduct, the application of the permit schemes to small groups such as OFM, the preference for commercial speech, the failure to provide for spontaneous speech events, the

failure to have fee exemptions for indigent applicants, the lack of an appeals process, and other factors preclude a finding that the ordinance scheme is narrowly-tailored. The content-based permitting scheme does not serve any compelling state interest.

60. The use of the Special Events Permitting Scheme by Defendant has chilled the First Amendment-protected activities of the plaintiffs; has caused and will continue to cause the citation of members of the plaintiffs, and has and will continue to cause the arrest of members of OFM, as well as others similarly situated, who wish to exercise their rights of free speech, assembly and association.

61. The adoption by the Fort Myers City Council of the Special Events Permitting Scheme as City policy, and the present and future implementation of this permitting scheme, constitute the proximate causation of the deprivation of the First Amendment rights of the Plaintiffs and similarly-situated persons for the ongoing events in Centennial Park, and other imminently-scheduled events elsewhere within the City of Fort Myers. The Plaintiffs seek redress for these violations of the First Amendment through the operation of 42 U.S.C. § 1983.

## **COUNT TWO**

***Monell Claim - Official Policy to Suppress Protected Speech and Assembly***  
**(42 U.S.C. § 1983 - Violation of First Amendment - Viewpoint Discrimination)**  
**Fort Myers City Code, Sec. 58-156(a) - Park Operating Policy**  
**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

62. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.

63. At all times relevant hereto, the City Council of defendant City of Fort Myers ("Council") was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

64. The Council enacted Ordinance 1991, §12-219, now codified as City Code Sec. 58-156(a), referenced as the “Park Operations Policy”, precluding OFM’s demonstration event after park closing hours, defined as 10:30 p.m. to 6:00 a.m. This ordinance is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing the Recreation Manager to make accommodations by extending park hours for sporting, cultural or civil events.

65. As a content-based prohibition, Code 58-156(a) is subject to strict scrutiny, mandating that the defendant City establish that it be (1) **narrowly-tailored**, and (2) serving a **compelling state interest**. The broad prohibitions against politically-centered speech and conduct, while allowing for the accommodation for preferred non-political speech, preclude a finding that the ordinance scheme is narrowly-tailored. The content-based ordinance cannot be said to serve any compelling state interest.

66. The use of Code 58-156(a) by Defendant has chilled the First Amendment-protected activities of the plaintiffs, has and may continue to cause the citation of plaintiffs and other persons similarly situated who wish to exercise their rights of free speech, assembly and association.

### **COUNT THREE**

***Monell Claim - Official Policy to Suppress Protected Speech and Assembly***  
**(42 U.S.C. § 1983 - Violation of First Amendment - Overbreadth)**  
**Fort Myers City Permitting Scheme (Fort Myers City Code, Sec. 2-273, and the Special**  
**Events Handbook as ratified by Sec. 118.3.5(E)(1)**  
**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

67. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.

68. At all times relevant hereto, the City Council of defendant City of Fort Myers (“Council”) was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other

policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

69. The Council enacted Ordinance No. 3422 §6, on January 14, 2008, now codified as Code Sec. 118.3.5(E)(1). This Ordinance ratifies the use of the “Special Events Handbook” as City policy for the application of all permits on public land within the City of Fort Myers. The Special Events Handbook is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing unbridled discretion in City officials to approve or deny permits, or to create permit provisions and set fees and requirements without identifiable standards. Neither the Special Events section of the Code, Sec. 118.3.5(E)(1), nor the Special Events Handbook have any provision to appeal decisions made by City officials in their permitting decisions.

70. The Council enacted Ordinance No. 3019, codified as Code Sec. 2-271 to Sec. 2-273 referenced as the “Special Events Advisory Board” Ordinance, precluding OFM’s demonstration event without first obtaining a permit, to be reviewed and recommended by the Special Advisory Board members defined in Sec. 2-271 and 2-272.

71. The Special Events Permitting Scheme is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing unbridled discretion in the Board to provide exemption of permit requirements for favored speech, including commercial speech.

72. As part of a content-based regulatory scheme, the Special Events Permitting Scheme is subject to strict scrutiny, mandating that the defendant City establish that its regulatory scheme is (1) **narrowly-tailored**, and (2) serving a **compelling state interest**. The overly-broad prohibitions against politically-centered speech and conduct, the application of the permit schemes to small groups such as OFM, the provision that allows for recommendation of a waiver or reduction of permitting fees, or even a City cash sponsorship, for preferred commercial speech, the failure to provide for spontaneous speech events, the failure to have fee exemptions for indigent applicants,

the lack of an appeals process, and other factors preclude a finding that the ordinance scheme is narrowly-tailored. The content-based permitting scheme does not serve any compelling state interest.

73. The adoption by the Fort Myers City Council of the Permitting Scheme, and the present and future implementation of it by Defendant, constitute the proximate causation of the deprivation of the First Amendment rights of the Plaintiffs and other demonstrators for the ongoing events in Centennial Park, and in other public parks, streets or sidewalks in the City. The Plaintiffs seek redress for these violations of the First Amendment through the operation of 42 U.S.C. § 1983.

#### **COUNT FOUR**

***Monell Claim - Official Policy to Suppress Protected Speech and Assembly***  
**(42 U.S.C. § 1983 - Violation of First Amendment - Overbreadth)**  
**Fort Myers City Code, 86-153 - Parades and Processions/Fees**  
**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

74. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.

75. At all times relevant hereto, the City Council of defendant City of Fort Myers (“Council”) was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

76. The Council enacted Ordinance 1991, §§17-117–17-118, now codified as Sec. 86-153(a) and (b), referenced as the “Parades and Processions” Ordinance, precluding OFM’s rallies and marches without first seeking issuance a permit, to be reviewed and by the Chief of Police of the FMPD, or his designee. This overly-broad ordinance is unconstitutional on its face as an impermissible prior restraint, containing terms which provide for targeted regulation of core political speech while allowing unbridled discretion in the Chief of Police to show preference of non-political speech. Code Sec. 86-153(a) allows the Police Chief to grant or deny a permit at his whim, with no

guidelines, no time restrictions for approval or denial, and no appellate process. Code Sec. 86-153(b) allows the Police Chief to make staffing requirements without guidelines, and to impose additional costs and fees without guidelines or restrictions.

77. As part of a content-based regulatory scheme, Code 86-153 is subject to strict scrutiny, mandating that the defendant City establish that its regulatory scheme is (1) **narrowly-tailored**, and (2) serving a **compelling state interest**. The unbridled discretion vested in the Chief of Police, or a designee, without guidelines for issuing a permit, time limitations on review, guidelines for the imposition of restrictions or requirements, the failure to provide for spontaneous speech, and other factors preclude a finding that the ordinance scheme is narrowly-tailored. The content-based ordinance cannot be said to serve any compelling state interest.

78. The adoption by the Fort Myers City Council of this Code, and the present and future implementation of this code section by Defendant, constitute the proximate causation of the deprivation of the First Amendment rights of the Plaintiffs and other demonstrators for the ongoing events in Centennial Park, and in other public parks, streets or sidewalks in the City. The Plaintiffs seek redress for these violations of the First Amendment through the operation of 42 U.S.C. § 1983.

#### **COUNT FIVE**

***Monell Claim - Official Policy to Suppress Protected Speech and Liberties***  
**(42 USC § 1983 – Violation of Fourteenth Amendment - Vagueness)**  
**Fort Myers City Code, Sec. Sec. 58-154(6) - Parks/Prohibited Behavior**  
**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

79. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.

80. At all times relevant hereto, the City Council of defendant City of Fort Myers (“Council”) was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

81. The Council enacted Ordinance 1991, §§12-216–12-217, now codified as City Code 58-154(6), referenced as the “Park Regulations” Ordinance, subjecting OFM to a regulatory scheme that is impermissibly vague, is unconstitutional on its face. First, this ordinance fails to provide the kind of notice that enables ordinary citizens to understand what precise conduct it prohibits; second, it authorizes arbitrary and discriminatory enforcement through its lack of precision. The lack of definition of words and phrases, including “loud, boisterous . . . insulting or indecent language” will cause Plaintiffs and others to censor constitutionally-protected speech and expressive conduct.

82. The use of this code section by Defendant has chilled the First Amendment-protected activities of the plaintiffs, has and will continue to cause self-censorship on the part of the plaintiffs, and others similarly situated who wish to exercise their rights of free speech, assembly and association.

**COUNT SIX**

***Monell Claim - Official Policy to Suppress Protected Speech and Assembly*  
(42 USC § 1983 – Violation of Fourteenth Amendment - Liberty Interest)**

**Fort Myers City Code, Sec. 58-154(6) - Park Regulations and Sec. 86-153(a) and (b) - Parades and Processions**

**By ALL PLAINTIFFS Against CITY OF FORT MYERS**

83. Plaintiffs reallege and incorporate each jurisdictional and factual allegation of Paragraphs 1-53, as if set forth at length herein.

84. At all times relevant hereto, the City Council of defendant City of Fort Myers (“Council”) was the final policymaker for the City of Fort Myers, for the purpose of adopting ordinances and other policies regulating constitutionally-protected speech, expressive conduct, and assembly within the boundaries of the City.

85. The Council enacted Ordinance 1991, §§12-216–12-217, now codified as City Code 58-154(6), referenced as the Prohibited Behavior section of the “Park Regulations” Ordinance, subjecting OFM to a regulatory scheme that prohibits “protracted lounging” in City parks is unconstitutional on its face, as a prohibition that has a substantial impact on conduct protected by

the Due Process Clause of the Fourteenth Amendment, as members of OFM have a significant liberty interest in lounging on public benches and public places, according to their inclination.

86. The Council enacted Ordinance 1991, §§17-117 to 17-118, now codified as Sec. 86-153(a) and (b), referenced as the permit section of the “Parades and Processions” Ordinance, subjecting OFM to a regulatory scheme that is unconstitutional on its face, as a prohibition that has a substantial impact on conduct protected by the Due Process Clause of the Fourteenth Amendment, as members of OFM have a significant liberty interest in “meeting” with others in “open air” within City limits.

87. The use of these code sections by Defendant has chilled the First Amendment-protected activities of the plaintiffs, and others similarly situated who wish to exercise their rights of free speech, assembly and association.

#### **PRAYER FOR RELIEF - ALL COUNTS**

WHEREFORE, Plaintiffs seek judgment against defendant City of Fort Myers for the following relief:

1. A preliminary and permanent injunction, enjoining defendant City of Fort Myers, its officers, employees and agents, from enforcing the Fort Myers City Code Sections challenged in this First Amended Complaint;
2. A declaration that defendant City of Fort Myers’ challenged Code Sections violate Plaintiffs’ rights to free speech, assembly and association, under the First Amendment, and/or liberty interests protected by the Fourteenth Amendment;
3. Compensatory Damages;
4. Costs of Suit pursuant to 42 U.S.C. § 1920 and 42 U.S.C. § 1988;
5. Attorneys’ Fees pursuant to 42 U.S.C. § 1988;



6. Such other relief as this Court deems just and proper.

DATED: November 21, 2011

s/Jennifer Lucas Keesler

Jennifer Lucas Keesler

FBN 67374

1136 NE Pine Island Rd., Suite 77

Cape Coral, FL 33991

Tel: (239) 240-5057

[Jennifer@keeslerlaw.com](mailto:Jennifer@keeslerlaw.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of November, 2011, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Jennifer Lucas Keesler  
Jennifer Lucas Keesler

**SERVICE LIST**

Grant Alley  
galley@cityftmyers.gov  
Mark Moriarty  
mmoriarty@cityftmyers.gov  
Fort Myers City Attorney's Office  
2200 Second Street  
Fort Myers, FL 33901  
Tel: (239) 321-7052  
***via CM/ECF Electronic Delivery***

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CASE NO: 2:11-CV-00608-JAS

**OCCUPY FORT MYERS, CINDY BANYAI,  
CHRISTOPHER FAULKNER, MARK  
HETRICK, STEPHEN KECK, ZACHARY  
KUHN, HILARY MAINS, JOSHUA MERRILL,  
MICHELLE N. MEYER, LUIS OSPINA,  
FRANK PRATT, WILBUR RICH, COURTNEY  
SAUER, and JUSTIN VALO,**

**Plaintiffs,**

v.

**CITY OF FORT MYERS,**

**Defendant.**

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**DECLARATION OF CHRISTOPHER FAULKNER**

CHRISTOPHER FAULKNER, being of full age, hereby declares the following under penalty of perjury:

1. I have personal knowledge of the facts set forth in this declaration.
2. I am a resident of Lehigh Acres, Lee County, Florida.
3. I have been actively participating in Occupy Fort Myers for more than a month. My participation includes organizing, attending marches, gatherings, rallies, general assemblies, and other Occupy events.
4. On November 2, 2011, the City stated in correspondence that a Special Events permit would be issued for "a period of 10 days with an option to renew the Permit every 10 days" if Occupy Fort Myers voluntarily vacated Centennial Park for the Taste of the Town event scheduled that weekend. *See attached Exhibit A.*

5. Occupy Fort Myers voluntarily vacated Centennial Park on the evening of November 2, and on November 7, 2011, the City of Fort Myers issued a temporary 10-day permit for Occupy Fort Myers to hold a protest in Centennial Park, beginning November 7 and ending November 17, 2011. *See attached Exhibit B.* The provisions of the permit state “[t]he management of the City, as well as the Director of Public Works reserve the right to refuse use or continued of any facility when deemed hazardous or if needed for emergencies . . . .” The provisions of the permit further state “[f]ailure to meet the requirements of this agreement may result in future rental requests being denied.”

6. Occupy Fort Myers attempted to reapply for a permit late in the week of November 7<sup>th</sup>. City officials informed us that we should just show up on the morning of November 17<sup>th</sup> to pick up a new permit.

7. On November 17, 2011, I went to the Recreation Division of the City of Fort Myers and was greeted by Kelly MacDonald, Sr. Program Coordinator, and Richard Molt [sp?] who was attending at the behest of Saeed Kazemi, Public Works Director. Ms. MacDonald told me that she was instructed that Occupy Fort Myers’ permit would not be renewed, and, as a result, no tents would be allowed in the park and no one would be allowed in the park between the hours of 10:30 p.m. and 6:00 a.m. When we asked how to appeal the decision, we were referred to the City’s Legal Department. When we asked for the reasons why our permit would not be reissued, we were referred to the Legal Department. The City would not give us written notification of why the reissuance of the permit was denied. *See attached Exhibit C.*

8. To the best of my knowledge, the Occupy Fort Myers demonstration was not hazardous. To the best of my knowledge, there were no emergencies within the City of Fort Myers that required the discontinuation of our permit. To the best of my knowledge, Occupy

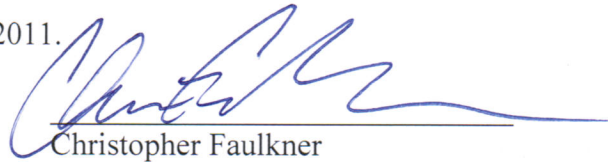
Fort Myers complied with all of the requirements of the permit.

9. Despite Occupy Fort Myers' satisfying all of the ad hoc requirements placed upon us by the City of Fort Myers, the City of Fort Myers, has completely denied Occupy Fort Myers the right to protest peacefully in Centennial Park without standards, justification or an opportunity to appeal.

10. Around 11:00 p.m. on the evening of November 17, 2011, law enforcement officers from the City of Fort Myers came to Centennial Park and demanded that the demonstration be removed and the demonstrators vacate the park or they would begin placing demonstrators under arrest. Indeed, to the best of my knowledge, one arrest occurred.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16 day of November, 2011.



Christopher Faulkner

## **EXHIBIT A**



# ***City of Fort Myers***

*Public Works Department  
Administration*

2 November 2011

To Whom It May Concern;

As a follow up to the meeting held with the City of Fort Myers and *Occupy Fort Myers* Representatives the City of the Fort Myers has made the following recommendation;

“Providing the *Occupy Fort Myers* members comply with the City of Fort Myers’ request to vacate Centennial Park at the Park’s closing time of 10:30 pm on Wednesday, November 2, 2011 the City of Fort Myers agrees to issue a Special Event Permit to the *Occupy Fort Myers* on Monday, November 7, 2011 for a period of 10 days with an option to renew the Permit every 10 days. In exchange, *Occupy Fort Myers* agrees to vacate the Park a minimum of 24 hours prior to other previously scheduled Special Events in Centennial Park as well as respecting the rights of other private citizens who have been issued a Pavilion Reservation Permit.”

\_\_\_\_\_  
City Representative

\_\_\_\_\_  
Occupy Fort Myers Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## **EXHIBIT B**

**CITY OF FORT MYERS RECREATION DEPARTMENT  
FACILITY USAGE AGREEMENT**

Name: Matthew McDowell Date: 11.2.11

Name: Organization/Team: Occupy Fort Myers

Mailing Address: 5741 English Oaks Lane Naples, Florida 34119

Telephone Number(s)  
(C) 777.5480 (H) N/A (E) \_\_\_\_\_

Facility/park Name: Centennial Park

Area(s) to be Utilized: West End

Date(s) of Usage: November 7 – 16, 2011(Inclusive)

	Start time	Ending time	
Hours of usage: (including set-up & clean-up)	P.M.	P.M.	Total hours

Description of Usage: Freedom to Assemble – Occupy Fort Myers

### CONDITIONS OF USAGE AGREEMENT

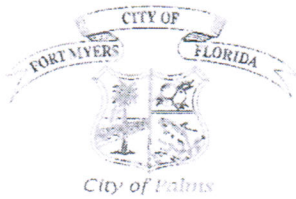
1. Recreation Department employees are prohibited from being paid or tipped for providing additional services, equipment, or supplies. Such an action on the part of the renter may void this agreement.
2. **\$1,000,000.00 Liability Insurance Certificate** showing the City of Fort Myers Additional Insured for the date and location of your event is required. .
3. Any costs incurred during the duration of your event will be billed to the contract holder. Fee may include but are not limited to; security, sanitation, and maintenance. Costs will be billed to you by the City of Fort Myers Finance Department. You will receive written notification prior to the fees being assessed.
  - In order to provide a clean and functional facility for future events, we ask that you do the following place all trash, and leftover food etc... into the trash receptacles provided at the facility..
  - ***I understand the requirements. Initials*** \_\_\_\_\_.
4. It is Florida Law that, without a tax-exempt number, you must be charged 6% sales tax.
5. The rules and regulations of the City of Fort Myers and the facility that you are renting govern the activities that are approved in or on the premises of any City property. The management of the City, as well as the Director of Public Works reserve the right to refuse use or continued use of any facility when deemed hazardous or if needed for emergencies with the City of Fort Myers for reason of act of nature (hurricanes etc...)
6. Either party to the contract may terminate the contract with or without cause, upon not less than (10) days notice.
7. There will be no use, sale or possession of drugs, firearms or other harmful substances on the premises.
8. Failure to meet the requirements of this agreement may result in future rental requests being denied.
9. In the case of events that have already been booked prior to the issue of this agreement the contract holder agrees to vacate the facility a minimum of 24 hours prior to the commencement of the reserved event. In addition the contract holder also agrees to honor the pavilion reservation cards for private citizens utilizing the pavilion area.
10. YOUR SIGNATURE ON THE CONTRACT INDICATES THAT YOU HAVE READ AND UNDERSTAND ALL THE TERMS OF THE CONTRACT.

Authorized Agent/Individual \_\_\_\_\_ Date \_\_\_\_\_

Authorized Facility Staff \_\_\_\_\_ Date \_\_\_\_\_

P. W. Director Designee \_\_\_\_\_ Date \_\_\_\_\_

## **EXHIBIT C**



City Manager's Office  
PH: 321-7022 Fax: 344-5909

## Memo

To: Honorable Mayor and City Council

From: William P. Mitchell, City Manager

Date: November 17, 2011

Re: Occupy Movement Protest Update

Copies: Marvin Collins, Assistant City Manager; Saeed Kazemi, P.E., Public Works Director; Chief Douglas Baker

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Please be informed that on November 16, 2011, the City Attorney informed me that the Federal court provided an opinion and order, from the Honorable Judge Steele, in the case brought against the City by the Occupy Group. The City Attorney reports that the Federal court upheld the right of the City to enforce the operating hours of public parks and to prohibit groups from setting up tents or camping overnight in City parks.

On November 7, 2011, the City issued the Occupy Group a 10-day special event permit to allow the extension of park hours and tent camping in Centennial Park. The permit will expire on November 17, 2011. Staff met with representatives from the Occupy Group today at 10:00 am to discuss the extension of the special event permit. Staff informed them that the City will not extend the permit and require that the Occupy Group observe all park rules and hours of operation.

If you have any questions, please let me know.

*Marvin E. Collins III*  
ON BEHALF OF  

---

William P. Mitchell

WPM: MC

## DIVISION 9. - SPECIAL EVENTS ADVISORY BOARD

Sec. 2-271. - Purpose; creation; membership; terms; vacancies; qualifications; nonvoting meeting attendees.

Sec. 2-272. - Oath; officers; records; meetings; quorum; attendance; minutes; compensation.

Sec. 2-273. - Powers and duties.

Secs. 2-274—2-290. - Reserved.

Sec. 2-271. - Purpose; creation; membership; terms; vacancies; qualifications; nonvoting meeting attendees.

(a)

Pursuant to Charter section 83, there is hereby created a board of seven members and two alternate members to serve in the absence of a member to be known as the Special Events Advisory Board. The members of such board shall be appointed in the manner and for the duties hereinafter provided. Each council member shall nominate one member and the mayor shall nominate one member and the two alternate members. Each nominee shall be presented to the city council for consideration of appointment. After consideration of each nominee, the city council will make such appointments to the board as it deems appropriate. Nominees that are not appointed by the city council shall be replaced with a new nomination from the person holding the position of the elected official who made the original nomination. The city council will make the final decision on all appointments. The appointment of all members shall be by the city council. The members serve at the pleasure of the city council. Except for ex officio members, no member shall hold any other public office or position for the city.

(b)

The members of the board shall serve for a term of three years. Any member may be reappointed from term to term upon nomination by the person holding the position of the elected official making the original nomination and appointment by the city council as provided in subsection (a) of this section.

(c)

Appointments to fill vacancies shall be for the remainder of the unexpired term and made in the manner as the original appointment as provided in subsection (a) of this section.

(d)

The board shall consist of members with experience or interest in the following fields of expertise: public relations, community relations, marketing, special event coordination, special

event promotion, tourism, fundraising, sponsorship, economic development, educational or sports education, community development, or the entertainment or media industries. The members of this board shall be residents, own property or operate a business within the city limits.

(e)

A representative from the police department, recreation division, fire department, public works department and parks division shall attend each meeting of the special events advisory board to provide their expertise and suggestions to the board members and shall be nonvoting attendees.

(Code 1991, § 2-130.51; Ord. No. 3019, § 1, 9-17-2001; Ord. No. 3439, § 17, 1-22-2008)

Sec. 2-272. - Oath; officers; records; meetings; quorum; attendance; minutes; compensation.

(a)

After nomination and appointment, the members of the special events advisory board shall be sworn in by the city clerk to perform the duties of the office. The board shall meet and select a chair and vice-chair from among its members. The term of the chair and vice-chair will be for one year, at which time the chair and the vice-chair must be elected or reelected by the members. The chair and vice-chair may serve for two consecutive years, at which time a new chair and vice-chair must be elected.

(b)

The special events advisory board shall prescribe rules for its meetings and shall keep records of its motions, resolutions, transactions, findings and recommendations, which records shall be filed with the city clerk and be public records.

(c)

The public relations liason shall be responsible for presenting proposals to the board and keeping the minutes of the board meetings, recording the names of the members appointed, all members attending and all members absent, and the vote of each of the members upon decisions, resolutions, and recommendations, and the minutes shall be public records and shall be filed with the city clerk.

(d)

All meetings shall be held at the call of the chair and at other such times as may be determined by a majority of the board. Notice of the date, time, place and agenda for all meetings, both regular and special, shall be provided to the city clerk's office in a timely manner to be included in the notice of public meetings to comply with the Sunshine Law. All meetings shall be open to the public. At least one meeting will be held each month.

(e)

A quorum of the board shall consist of a majority of the appointed members, but no less than four members, and an affirmative vote of the majority of the quorum present shall be necessary to pass any motion.

(f)

If any member fails, without cause, to attend at least 75 percent of all meetings held during any calendar year from the date of appointment by the city council, the member's seat shall be declared vacant by the chair and such vacancy shall be reported in writing to the city clerk. Such a vacancy shall be filled as provided in this division.

(g)

All members shall serve without compensation.

(Code 1991, § 2-130.52; Ord. No. 3019, § 1, 9-17-2001)

Sec. 2-273. - Powers and duties.

The special events advisory board shall:

(1)

Act in an advisory capacity to the city council in matters relating to special events proposed by event managers, which are:

a.

Open to the public;

b.

Held within the city limits in spaces which are overseen by the city;

c.

Expected to attract more than 1,000 people; and

d.

Requesting the city council approve a waiver or a reduction of fees or a cash sponsorship;

(2)



Endeavor to facilitate quality cultural and artistic events that enhance the quality of life for the citizens of the city, and provide exposure and positive social and economic impacts for the city, by either recommending or withholding recommendation of funding to the city council for a special event that meets the four criteria described in subsection (1) of this section, based on a competitive process;

(3)

Recommend to the city council special events that should receive city sponsorship by a reduction or waiver in the fees charged for the use of public property and/or the cost of services to be provided by the city, based on a weighted scale of merit;

(4)

Recommend regulations for the conduct of special events that will increase interest therein to the citizens, residents and visitors of the city generally, insofar as the same are not in conflict with the city Code and state statutes;

(5)

Have such other advisory duties granted by the city council consistent with successful special events held within the city.

(Code 1991, § 2-130.53; Ord. No. 3019, § 1, 9-17-2001; Ord. No. 3439, § 18, 1-22-2008)

Secs. 2-274—2-290. - Reserved.

118.3.5. - Temporary Uses and Structures.

A.

Applicability. Certain uses and structures are temporary in character. They vary in type and degree, as well as length of time involved. Such uses and structures may have little impact on surrounding and nearby properties or they may present questions involving potential incompatibility of the temporary use or structure with existing uses. Unless otherwise specified elsewhere in this Land Development Code, the following regulations shall govern temporary uses and structures.

B.

Permit required. No temporary use or structure shall be established or maintained unless a permit for the compliance of such use with the provisions of this Land Development Code shall have first been issued in accordance with the provisions set forth below.

C.

Fee required. Any person or entity requesting to conduct temporary use on private land shall complete a temporary use application and pay applicable fees. Private events held by a resident of a single-family residence on property with a RS-District are exempt from these provisions, including use of tents.

D.

General requirements.

1.

All temporary uses shall meet the appropriate requirements of the building code, electrical code, fire (life safety) code and plumbing code.

2.

All temporary uses are prohibited unless applications for all required permits have been submitted and fees paid five business days in advance of the first day of the event, and the permit is issued in compliance with all code requirements. Applications for carnivals must be applied for and fees paid at least 30 days in advance of the first day of the event.

3.

A copy of the completed application shall be provided to the city councilperson representing the ward where the event is to be held.

4.

The community development director and police chief shall review and grant approval of temporary use application.

5.

Exceptions to the advanced five-day or 30-day requirement due to unforeseen time constraints may be granted by the community development director with concurrence of the police chief and shall be subject to double fees.

6.

Governmental entities are exempt from the requirements of this section.

7.

Temporary uses are allowed in specified districts, provided required parking for the primary use is not blocked off for such activities and written, notarized consent from the property owner is provided to the city.

8.

Approval of a temporary use may be withheld by the city due to an apparent or past record of adverse impacts to the surrounding neighborhood. An appeal of the decision by the city is to the board of adjustments and subject to the provisions of section 98.3.7

9.

Temporary uses are temporary in nature and valid for only the dates as specified on the permit.

E.

Permitted temporary uses. The following temporary uses are allowed in the frequency stated below.

1.

Special events. The term "special events" shall mean an event held on public land or held in or at a public facility or a combination of both public land and public facility. Any person or entity requesting to conduct a special event on public land, not totally within a facility, shall follow provisions in the city's special events handbook. Special events totally contained within a public facility are exempt from the city's special events handbook and are subject to the facilities event fee structure.

2.

Fundraising, entertainment events. Events such as fundraising, entertainment, carnivals, arts and crafts festivals, fireworks, Christmas tree or pumpkin sales are allowed at a specific location for 90 days per calendar year in the CG, CI, IL, IH, district, urban core, urban center, and urban general districts. This does not include businesses selling goods customarily sold at a business location. Such activities may be permitted in other districts than those listed above for a period not to exceed 60 days per calendar year and shall be limited in hours of operation to 8:00 a.m. to 10:00 p.m. All carnivals must have written approval of the councilmember in whose ward the event is to be located and must obtain a temporary occupational license.

3.

Off-site sales. Outdoor sales of goods by a business at a place other than the normal place of business, which owns or operates an ongoing licensed business with a fixed facility in the county may be permitted on property within the CG, CI, IL, and IH districts for a period of time not to exceed 30 days per calendar year.

4.

On-site sales. Outdoor sales of goods by licensed businesses at their permanent location are permitted for a period of three days with a minimum of 30 days between sales.

5.

Food vending carts.

a.

Food vending carts use in conjunction with a permitted temporary use. Food vending carts approved by the county health department and the fire marshal may be permitted in conjunction with a permitted temporary use and must obtain a temporary occupational license.

b.

Food vending carts not used in conjunction with a permitted temporary uses. All food vending carts must be approved by the county health department. Approval by the county health department must be submitted to the development services manager, as well as compliance with the following conditions, prior to issuance of an occupational license:

1)

Applicability. Food vending carts are a permitted use in the CI, IL, and IH districts. Food vending carts may be located within the downtown redevelopment area on property designated as urban core, urban center, urban general, and district if they are operated and located at an existing

restaurant business that has an current outside cafe license and, provided, they can meet the location criteria for safe ingress and egress.

2)

Notarized letter. The applicant shall provide a notarized letter from the property owner giving permission for the use of the property.

3)

Code compliance.

a)

All food vending carts, vans and trailers shall be built in compliance with all applicable codes and shall be located in an area which does not detract in any way from visibility at intersections, block or cause blockage of any driveway, fire lane or fire hydrant, or cause any parking problem affiliated with any usage or patronage of the food vending cart, van or trailer.

b)

The fire marshal shall inspect a temporary food vending cart, van or trailer prior to issuance of the occupational license. The temporary food vending cart, van or trailer shall be maintained in working order and shall not create an adverse view or vista.

4)

Site plan required.

a)

A site plan shall be submitted showing the layout of the area, including the location of food vending carts, vans, trailers, parking spaces, aisle ways for pedestrians and any seating area. All carts, vans or trailers shall be located on either an asphalt or concrete surface. The dimensions for setbacks shall be determined by the development services manager depending on the district where the vending cart, van or trailer is to be located.

b)

All temporary food vending carts, vans or trailers shall be located in areas which do not detract in any way from visibility at intersections, block or cause obstruction to any driveway, fire lane, or fire hydrant, or cause any parking problem affiliated with any usage or patronage of the food vending cart.

5)

General requirements.

a)

Support equipment and accessories shall not be placed around a temporary food vending cart, van or trailer during operation and shall not extend more than three feet from the edge in any direction.

b)

No temporary food vending cart, van or trailer shall be placed within public rights-of-way, except within the downtown redevelopment area.

c)

Temporary food vending carts, vans or trailers shall be removed each evening.

d)

Food vending carts, vans or trailers are temporary in nature, vesting no permanent rights, and the license to operate may be revoked for any reason by the development services manager upon 30 days notice or without notice if the cart poses a health safety or welfare violation. The license may be revoked for a violation of any provision of this section or other applicable regulations.

e)

Responsibility for sanitary facilities for employees rests with the occupational license holder.

6)

Movement of facility. If a food vending cart, van or trailer is moved from either its designated place of business or its designated place of storage, the operator must notify the fire marshal in writing. In addition, a satisfactory inspection is required for the new location, including payment of any required fees for an inspection at the newly designated place of business and for an inspection at the newly designated place of storage.

7)

Transfer of permit. Permits will be issued for individual carts, vans or trailers at specified locations and will be nontransferable. Change in ownership of a cart, van or trailer, or location shall require the owner to apply for a new permit. Permits and licenses are issued to individual temporary food vending carts, vans or trailers for specific locations and are not transferable.

8)

Number. There shall be no more than one temporary food vending cart, van or trailer located within 150 feet of another temporary food vending cart, van or trailer. No individual temporary food vending cart, van or trailer shall exceed 400 square feet in size.

9)

Signage. Advertising signs may be permitted upon the temporary food vending cart, van or trailer and not on the sidewalk or street area.

10)

Alcohol. No alcoholic beverages are to be sold or consumed from temporary food vending carts, vans or trailers.

c.

All other vending carts. All other vending carts, vans, trucks, trailers, wagons and the like, used for, but not limited to, the sale of flowers, souvenirs or paintings, and which are not part of a permitted special event or temporary outdoor activity are prohibited, except if granted by the city council.

6.

On-site temporary signage. On-site temporary signage, including use of banners, shall be allowed for the duration of the temporary use and shall not require a permit. The location of the signage shall comply with the requirements set forth in subsection 126-91(c) and shall not create a nuisance or hazard to public safety.

7.

Trailers, semi-trailers, boat trailers, and RVs. It shall be unlawful to use any trailer, semi-trailer, boat trailer or recreational vehicle (RV) for the purpose of an office or business headquarters, or for the conduct of any business activity in the city, except as specified below.

a.

A temporary permit may be issued by the development services manager for a period not to exceed six months or upon approval of the city council for periods exceeding six months to permit a trailer, or mobile office unit to be used to allow business continuation during a major renovation program of an existing building or when a building loss is caused by fire or an act of nature, provided that the unit meets all necessary state and City Code pertaining to tie-downs, electrical and plumbing. All temporary permits issued will be valid from the date of the renovation permit issuance until seven calendar days after issuance of the certificate of occupancy or any termination date set by the development services manager or city council.

b.

A trailer, semi-trailer or container may be used for loading or unloading purposes for a period not to exceed two days in a residential district or seven calendar days in any other non-industrial district. A trailer, semi-trailer or container may be parked or placed in an industrial district for loading, unloading and storage purposes.

c.

In CG, CI, IL, and IH districts the following shall apply:

1)

A fully enclosed trailer, semi-trailer or cargo container approved by the development services manager may be used for storage purposes for a period of time not to exceed 120 days in any 12-month period. A permit shall be obtained from the community development department in order to utilize the trailers or containers. Along with the building permit, the applicant shall also provide five copies of a site plan showing the proposed location and size of the trailers and containers. A representative from the community development, planning and public works departments shall review and approve the plan before a permit is issued.

2)

If the plan is approved, there will be a \$500.00 fee charged each month per trailer or container for up to four months.

3)

After the first 12-month period, an applicant may reapply for a permit for another four months maximum. There is a maximum two-year period established for the temporary use of trailers and containers. No more permits will be issued after that date.

d.

A boat trailer or recreational vehicle may be parked or stored in the side or rear yard of the owner's residence or place of business, provided that it shall not be used for sleeping purposes or any purpose which violates the provisions of this section or any other applicable provision of the City Code.

F.

Temporary buildings or structures, and mobile offices.

1.



Temporary buildings or structures, or mobile offices required for a construction project of any kind shall be permitted in every district, provided that such buildings or structures shall be removed from the site immediately upon completion of the project.

2.

Accessory structures such as manufactured homes or offices shall be permitted in conjunction with a temporary use the duration of the temporary use for office purposes. Use of accessory structures for living purposes is prohibited. Any such office use shall require toilet facilities, with a signed maintenance contract.

G.

Model homes. Model homes may be permitted in any district and are subject to the following requirements.

1.

One sign per model home. The sign shall not exceed 12 square feet, and shall be used for temporary identification/sales purposes.

2.

Time limit on approval shall be five years maximum or the completion of lot sales in the subdivision, whichever comes first. A one-time extension of approval (up to three additional years) may be granted by the board of adjustments.

3.

Parking areas must be able to accommodate four cars. Parking areas may be provided at a central sales facility parking lot, or in driveways. Parking may be reduced to two spaces per model when there is more than one model, models are centrally located, and sidewalks connect the models. The reduction to two spaces must be reviewed and approved through the administrative review process.

4.

Security bond required shall be \$3,500.00.

5.

Limited hours of operation shall be from 8:00 a.m. to 6:00 p.m., seven days a week.

6.

Outside lighting is prohibited between the hours of 10:00 p.m. and 7:00 a.m.

7.

For security lighting, two lights shall be permitted, one in the front and one in the rear of the building.

8.

Model homes shall be used exclusively for display purposes and lot sales within the subdivision only. No construction offices or other business offices are permitted.

(Ord. No. 3422, § 6, 1-14-2008)

ARTICLE IV. - PARADES AND PROCESSIONS [86]

Sec. 86-152. - Purpose and intent.

Sec. 86-153. - Permit required; fees.

Sec. 86-154. - Permit denial.

Secs. 86-155—86-181. - Reserved.

Sec. 86-152. - Purpose and intent.

It is not the purpose or the intent of this article to curtail, deny or abridge any of the civil liberties accorded by the state or the United States Constitution, but only to give city officials notice, in advance, of such activities in order to afford proper policing, if needed, and to ensure the safety and convenience of the general public in the use of public thoroughfares to prevent violence and disturbance of the peace, and to guard against fraud or illegal activities and otherwise safeguard the public welfare in the interest of all.

(Code 1963, § 32-2; Code 1991, § 17-116)

Sec. 86-153. - Permit required; fees.

(a)

No parade or procession upon any street of the city, and no open-air public meeting upon any public property shall be permitted unless a special permit shall first be obtained. Any person desiring a permit under this section shall make written application to the chief of police or some duly authorized member of the police department. Permits issued under this section shall be printed or written, duly signed by the chief of police or some duly authorized member of the police department after approval, and shall specify the day, hour, place and purpose of such parade, procession or open-air public meeting.

(b)

The fee for such permit shall be \$5.00 if the activity permitted requires no extra policing or will cause no extra cost or expense to the city. If such activity will require additional policing or supervision, or otherwise incur additional cost and expense to the city, there shall be charged such fee as will defray such additional cost to be determined by the chief of police.

(Code 1963, § 32-1; Code 1991, § 17-117)

Sec. 86-154. - Permit denial.

If the chief of police knows or has reasonable grounds to believe that to permit any parade,

procession or open-air meeting under this article may or will result in violence, fighting, disturbance of the peace, or injuries to persons or damage to property, he may refuse to approve issuance of a permit hereunder by endorsing on the application or indicating in writing to the city clerk his reason for his refusal and such permit shall not be issued.

(Code 1963, § 32-2; Code 1991, § 17-118)

Secs. 86-155—86-181. - Reserved.

FOOTNOTE(S):

(86) Cross reference— Streets, sidewalks and other public places, ch. 78. (Back)

(86) State Law reference— Authority to regulate parades, processions, etc., F.S. § 316.008(1)(c). (Back)

Sec. 58-154. - Prohibited behavior.

No unauthorized person in a park shall do any of the following:

(1)

Intoxicating beverages.

a.

Possess or drink alcoholic beverages at any time in the park, except:

1.

At public events or public celebrations, including, but not limited to, festivals, food fairs, Riverfest, Taste of the Town and public holiday activities which have been properly permitted by the recreation manager;

2.

At certain specifically designated recreation centers where meals or lunches are served under concession privileges, where the sale of alcoholic beverages by such concessionaire is permitted by the city; or

3.

Where alcohol is consumed at an approved city event.

b.

Enter or be under the influence of intoxicating liquor or illegal drugs.

(2)

Domestic animals. Permit the entry of a dog or other domestic animal into areas other than automobile parking concourses and walks immediately adjacent thereto, and in such other areas as may be clearly marked by "domestic animals permitted" signs. Nothing herein shall be construed as permitting the running of dogs at large.

(3)

Alms or contributions. Solicit, beg or panhandle for alms or contributions for any purpose, whether public or private, except when done for permitted events, or when done by bona fide and properly licensed public charities with city permission.

(4)

Fires. Build or attempt to build a fire, except in such areas for cookouts, barbecues, and other fires permitted by regulations as may be designated by the recreation manager. No person shall drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco paper or other inflammable material within any park area or on any highway, road, or street abutting or contiguous thereto, except in proper receptacles.

(5)

Closed areas. Enter an area posted as "closed to the public," nor shall any person use or abet the use of any area in violation of posted notices.

(6)

Loitering and boisterousness. Sleep or protractedly lounge on the seats, benches, or other areas, or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace.

(Code 1963, § 24-28(5); Code 1991, § 12-217)

Sec. 58-155. - Merchandising.

No person in a park shall expose or offer for sale any article or thing, nor station or place any stand, cart, or vehicle for the transportation, sale or display of any such article or thing, except such restrictions shall not apply to any properly licensed concessionaire or when done with the consent of the city as part of an approved public event or public activity.

(Code 1963, § 24-28(6); Code 1991, § 12-218)

Sec. 58-156. - Park operating policy.

(a)

Hours. Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours shall be posted for public information. Normal park hours are 6:00 a.m. to 10:30 p.m. unless posted otherwise by the recreation manager. Such hours shall be deemed extended by the recreation manager as necessary to accommodate athletic sports events, or cultural or civic activities.

(b)

Closed areas. Any section or part of any park may be declared closed to the public by the recreation manager at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses, as the recreation

manager shall find reasonably necessary.

(Code 1963, § 24-28(7); Code 1991, § 12-219)

Sec. 58-157. - Violations; penalties.

A violation of this division will subject the violator to a fine of not less than \$25.00 and not more than \$250.00. Such violators may be issued appropriate citations by city police officers.

(Code 1963, § 24-28(8); Code 1991, § 12-213)

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CASE NO: 2:11-CV-00608-JES

**OCCUPY FORT MYERS, CINDY  
BANYAI, STEPHANIE DARST,  
CHRISTOPHER FAULKNER, F. FRANK  
GUBASTA, ZACHARY KUHN, HILARY  
MAINS, MATT MCDOWELL, MICHELLE  
MEYER, LUIS OSPINA, RYAN POGUE,  
FRANK PRATT, MARLENE ROBINSON,  
and JUSTIN VALO,**

**Plaintiffs,**

v.

**CITY OF FORT MYERS,**

**Defendant.**

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**DECLARATION OF JENNIFER LUCAS KEESLER**

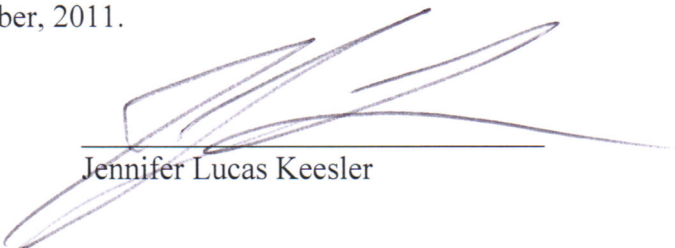
Jennifer Lucas Keesler, being of full age, hereby declares the following under penalty of perjury:

1. I have personal knowledge of the facts set forth in this declaration.
2. I am a member of the Florida Bar in good standing since 2009, and am admitted to practice before the U.S. District Courts for the Southern and Middle Districts of Florida.
3. I affirm that the municipal code sections cited in the First Amended Complaint, and attached thereto as "Exhibit 2," are true copies of the Code of Ordinances, City of Fort Myers, Florida, which were downloaded from <http://www.municode.com>.



Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21 day of November, 2011.



\_\_\_\_\_  
Jennifer Lucas Keesler