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Mayor

Jeffery S. Leonard
City Administrator

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Finance Director

David H. Williams
Law Director

James Hardiman
Legal Director - ACLU
4506 Chester Avenue
Cleveland, 44103

September 26, 2013

In Re: Occupy Defiance-Sidewalk Chalk

Dear Mr. Hardiman:

I'll keep my response to your September 25 letter brief as far too much effort has been expended on this non-issue already.

First, kindly drop the superior tone. I understand the 1st Amendment as well as you do and I am quite confident that I've personally relied on its protections to express politically controversial views despite greater intimidation than any member of Occupy Defiance has ever experienced.

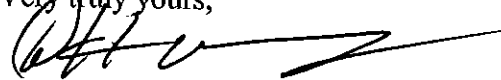
Second, Occupy Defiance's repeated telling of this story omits the most significant fact: no one was arrested, threatened with arrest or cited for a violation of the law. What your clients may have neglected to tell you is that on the day following the 2012 incident, the officers involved consulted my office. They had not issued any citations or removed the writings placed on the walks prior to their arrival precisely because they were uncertain about both the meaning of the Ordinances and the applicable Constitutional standards. The Police Prosecutor declined to prosecute anyone for the conduct attributed to Occupy Defiance and no charges were ever filed. More importantly, the police supervisor's unfortunate comment suggesting that the "political nature" of the speech might be relevant to whether or not an Ordinance violation was being committed was corrected. The advice given to those officers was repeated in a departmental training session and in the subsequently written memo. Contrary to your assertions, the memo makes it quite clear that political speech is entitled to the highest level of Constitutional protection and that the content of a message is irrelevant to enforcement of the Ordinances. Cops are not Constitutional lawyers. Occupy Defiance's periodic insistence that undue attention be called to one supervisor's uncertain and promptly corrected misunderstanding of the First Amendment is wearing thin.

Third, your letter is predicated on the false premise that my interpretation of the Ordinances imposes restrictions on the use of public land for assembly and speech based on the content of the speaker's message. That is not what it says. Great pains were taken to make it clear that the content of the message is irrelevant to enforcement of Ordinances.

Occupy Defiance is welcome to use the public rights-of-way to express any political views it deems worthy of the public's attention. It may assemble on public lands and voice its views or convey them in writing as it deems best. If it chooses to express itself in writing, it must supply its own sign-making materials. It may not appropriate the pavement as its blackboard or commandeer utility poles, street signs, benches and other public or public utility infrastructure within the right-of-way for use as sign posts on which to hang its posters. If the organization wants to print signs and carry them on the walks as pickets customarily do, it is perfectly free to do so. It is also free to post them on private grounds adjacent to the right-of-way with the property owners' permission.

I stand on the previously expressed opinion that these are Constitutionally valid, content neutral regulations and am confident that Courts will uphold them as such.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Williams', with a long horizontal flourish extending to the right.

DAVID H. WILLIAMS