

COUNTER PROPOSAL DRAFT - 12/19/11

[OCCUPY TUCSON LEGAL TEAM LETTERHEAD]

Mr. Rankin,

The Occupy Tucson legal team has had an opportunity to review the City's plea offer with some, but not all, of the Occupy Tucson defendants. # The majority of them have rejected the plea upon our advice, and have asked us to present a counter-offer.

Before we get to details, however, we'd like to say a few words about the unique situation facing both the City and the Occupy Tucson movement. Our clients are not the typical "vagrants" the underlying ordinance was intended to address. They have intentionally violated the applicable ordinance(s) in an earnest and righteous exercise of their First Amendment rights. They are extremely principled and dedicated to the ideals of the Occupy movement, as evidenced by the many who have volunteered night after night to receive a citation (some of whom have even go so far as to drive to the park at "ticket time" each night to receive a citation before returning home). With few exceptions, our clients have chosen to stand together as a group in solidarity and as members of a political association.

Our clients represent a true cross section of Americans – homeowners and the homeless (either recently due to foreclosure or chronic), employed and unemployed, highly educated and less so: doctors, short order cooks, grandmothers from Green Valley, students from the UA, Democrats, Republicans - you get the point. Few of them knew each other prior to the first day of the Occupation on October 15th, yet found themselves inextricably drawn to the Occupy Wall Street movement which seemed a beacon of hope for the 99% of Americans affected by an economic crisis brought on by corporate greed and government corruption that had trickled down over the last several years to affect all but the wealthy 1%.

The people of Occupy Tucson found it necessary to make a courageous statement by occupying government land vis a vis camping statement in public parks in a pure expression of free speech. It was imperative to them to exercise their constitutional rights 24 hours a day. Because there is no provision within the City code to allow its residents to do so, the City chose to penalize its citizens by imposing criminal citations carrying maximum penalties of \$1,000 and six months in jail. While certainly justified by the laws on the books, the City failed and made a dishonorable choice.

We would like to propose what we believe is a win-win situation. For the purpose of clarity, however, be advised that the Occupy Tucson legal team does not represent every single person who identifies as an Occupy Tucson member. We have no control over splinter groups or rogue individuals who adamantly disregard our legal advice. This is the nature of the beast, and must be taken into account as a reality by which we are all limited to a certain degree. We can, however, provide a roster of those people who are either on board with being represented as part of a group or are interested in accepting the

existing plea in whole or in part. We will do our best to insure that the majority of people with citations will accept a plea, and will withdraw from the cases of those people not on the roster because they are not acting in a manner consistent with their best interest.

Our counter proposal is as follows.

1. Our clients will agree to:

A. Decampment of Viente de Agosto# park by a date certain if the following conditions can be met. Decampment is meant to include removal of all semi-permanent structures including tents, camping equipment, tables, chairs, IT equipment, remaining kitchen items (the kitchen was voluntarily removed two weeks ago).

B. Our clients will agree not to “re-occupy” Viente de Agosto park, Armory Park or the main library grounds for a period of one (1) year.

C. We shall suspend the federal civil rights lawsuit currently pending in U. S. District Court, Occupy Tucson v. City of Tucson, cause number 4:11-CV-00699-TUC-CJK, for a period of one (1) year at which time it shall be dismissed with prejudice.

D. We shall dismiss the special action in Pima County Superior Court, Occupy Tucson v. Riojas and State of Arizona, cause number C20118136.

5. In exchange, the City shall:

A. Dismiss all citations issued from October 15 to the present for violation of any park after-hours ordinances including violations of Tucson City Code Sec. 21-3(7)(3), as well as “interfering with judicial order” violations resulting from said park-after-hours restrictions.

B. Will provide suitable office space in the downtown area for the purpose of Occupy Tucson headquarters, to be used for meetings, public interface including education, workshops and information, and offices. The space shall be for the period of one (1) year, free of charge, at street level, not less than 1,000 square feet, and shall include utilities, internet access and telephone.

C. Lastly, the City shall agree to coordinate efforts with Occupy Tucson to relocate each of the homeless-identified/SMI/substance abuse affected who currently camp at the park into appropriate social services. For purposes of logistics, i.e., a timely decampment coordinated with moving into a new headquarters, we would accept a commitment from the City to work with OT to reach this goal.

In conclusion, we realize that this is not a standard plea offer, but neither is this a standard criminal prosecution. We are certain that despite the additions/changes from your original plea that it is in the best interest of both the City and Occupy Tucson to come to a mutual resolution of this situation. Our clients are not the only ones with a lot

at stake if the prosecution continues. While you stated on Arizona Illustrated television show that the 700 citations were not a burden to your office or the Court, we think your statements were primarily for public consumption. We are both aware it will take considerable resources from both the prosecution and defense to merely review the deluge of disclosure that will be involved in a trial of thee charges. In addition, we cannot even estimate the expense in time and money of the number of police interviews that must be done before trial; suffice it to say that we would insist on interviewing all three officers the City felt obliged to put on each cited person ($700 \times 3 = 2,100$ hours of police interviews). And lastly, we assume that even in groupings of defendants the actual trials in this case will be a logistical and resource nightmare; even so, many of our clients have indicated they would insist on individual trials. I am positive that the price of a one year lease on some modest store front office or commercial property would be far less costly to the City than having to produce police officers for interviews and trial testimony.

Of course there is also the added incentive of resolving this situation without the rancor, expense and additional litigation that will result from law enforcement action to end the Occupy Tucson camp. The City has been very reasonable and accommodating up to this point and we would certainly be willing to let the public know about how Tucson would be one of the few cities with an Occupy camp to resolve the situation in a principled and peaceful manner.

We are ready to move immediately. We await your response.