October 16, 2011, 2:45 a.m.

Irvine Police Department
c/o Designated Point of Contact \_\_\_\_\_\_\_\_
SENT BY E-MAIL TO “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

**Regarding the events of the evening of October 15, 2011 and your document retention policy**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

I was disappointed to learn, upon returning to the Irvine Civic Center at approximately 11:30 p.m. on October 15, 2011, of the events that followed my departure from the area earlier that evening. Occupy Irvine protesters, ­in part at my own urging, following my conversation with you today, abandoned their encampment in front of City Hall and carted their equipment away by 10:00 p.m. Afterwards, they were told that they could not sleep on the sidewalk after all, even if they took up less than 1/3 of its width, leaving ample room for others to pass, and were evidently told that they had to keep moving, despite your informing me earlier today (upon my direct questioning on the point) that there was no such municipal requirement. They were also told that they had been the subject of a noise complaint from some unknown source and had to hush their speech, including not singing as a means of staying awake.

As you know, I have recently spent much good faith effort trying to defuse possible conflicts between the police and protesters. While you did not entirely foreclose the possibility that those intending to occupy the Civic Center site could be rousted from sidewalks, you did indicate that it was a “gray area.” Given the strained interpretation presented to me of Irvine Municipal Code Section 4-14-105, reading

**Sec. 4-14-105. - Obstructing sidewalks and highways.**

It is unlawful for any person to loiter, stand or sit in or upon any public highway, alley, sidewalk or crosswalk so as to in any manner hinder or obstruct the free passage therein or thereon of persons or vehicles passing or attempting to pass along the same, or so as to in any manner accost or molest persons passing along the same. (Emphasis supplied.)

as prohibiting sleeping parallel to the boundaries of the sidewalk even if people can easily get around them and their free passage is not obstructed, I must presume that the Irvine Police Department (I.P.D.), including you, believed that this was not a “gray area” at all, and enticed me to represent it as such to the assembled activists simply to offer them an apparent alternative that, once accepted, was quickly made unavailable to them. This harms the credibility of the Police Department in future discussions.

As I indicated to you earlier, Irvine’s attempts to make it difficult for people to exercise their freedom of speech by such harassing steps as impeding their ability to sleep despite the lack of presence of any overnight travelers whose progress along the sidewalk right-of-way they might conceivably block, simply makes it an attractive target for those who actively seek confrontations with the police. This will inevitably happen on its own accord, as it has elsewhere in the county over the past month, without the prompting or request of anyone involved in Occupy Irvine itself. When the Irvine Police Department tries to get protesters not only to leave a deserted nominal “park” overnight, but also a sidewalk upon which they are not blocking anyone’s free passage, in a patent attempt to make them stand up for an unexpected additional eight hours while they are denied the ability to sleep, this naturally attracts people who despise such police tactics and want to confront police over them. This consequence was avoidable. I and the other Occupy Irvine protesters did what we could to avoid making Irvine a target of such intensified protest. You and the Irvine Police Department did not.

I write in part to request that you clarify your policy on retention of electronic and paper documents with respect to this protest. \_\_\_\_\_\_\_\_\_ confirmed to me earlier this evening that calls involving the I.P.D. are routinely recorded and retained. **I ask that all records of communications, electronic and otherwise, be retained by I.P.D. given the realistic prospect of legal action against the department.**

I am particularly interested in ensuring that the recording of the extended conversation this evening between myself and \_\_\_\_\_\_\_\_\_\_ be retained. In that conversation, \_\_\_\_\_\_\_\_\_\_ explained to me that a person could not lie down on the sidewalk because this would prevent obstruct free passage of others along that portion of the sidewalk. He likened a sidewalk to a public highway, in which a car’s obstructing one lane of traffic would not be permitted even if traffic could pass to the side. As \_\_\_\_\_\_\_\_ was, to my knowledge, the officer in charge during the portion of the evening when protesters were told not to lie down and sleep, this analogy is apparently the basis for the I.P.D.’s denying the Occupy Irvine protesters the ability to sleep overnight. For reasons that I expect will be obvious in the light of day, I am interested both in a court examining this novel interpretation of the meaning of IMC Sec. 4-14-105 and in the City Council deciding whether this is the sort of reasoning that it really wants the city to defend. The alternative explanation, that the I.P.D. wants the protesters out of the area completely from 10 p.m. to 6 a.m. so that there is no continuing “occupation” and is willing to harass protesters trying to vindicate their rights in order to achieve this aim, is far more compelling.

I regret that the show of good faith in the part of Occupy Irvine protesters on Saturday evening was met with bad faith (and specious reasoning to justify harassment) by the Irvine Police Department. I will continue trying to foster cooperation between protesters and police, while I can. I regret that the I.P.D.’s actions today have made my doing so more difficult and my likelihood of success more remote.

I am redacting the copy of this letter that I am providing to Occupy Irvine protesters so as to remove your name and that of the [other member of the I.P.D.] to whom I refer.

Sincerely,

 /s/

Gregory A. Diamond, Esq.