

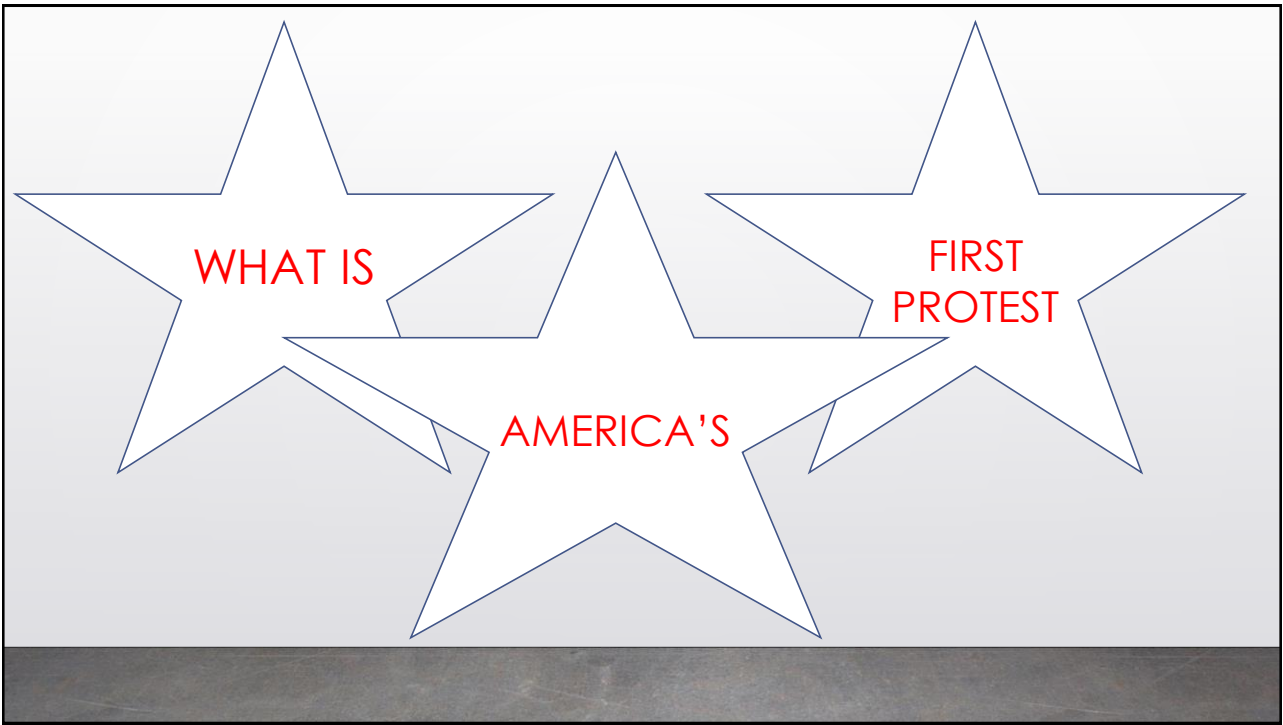


# MANAGING PROTESTS

*THE CONSTITUTIONAL BALANCE BETWEEN FREE SPEECH AND PUBLIC SAFETY*

MORGAIN M. SPRAGUE

KLC MANAGING COUNSEL FOR MEMBER LEGAL SERVICES



## It Started with A Revolution

- Boston Tea Party
  - America's first protest in December 1773
  - Protestor's rejected the shipment of tea from the East India Company
  - What were they protesting?
    - SUBSIDIES on a government-owned company.
    - Really they were protesting lack of representation in the British Parliament

TEA

NO REP

TAXES

## What's the Problem?

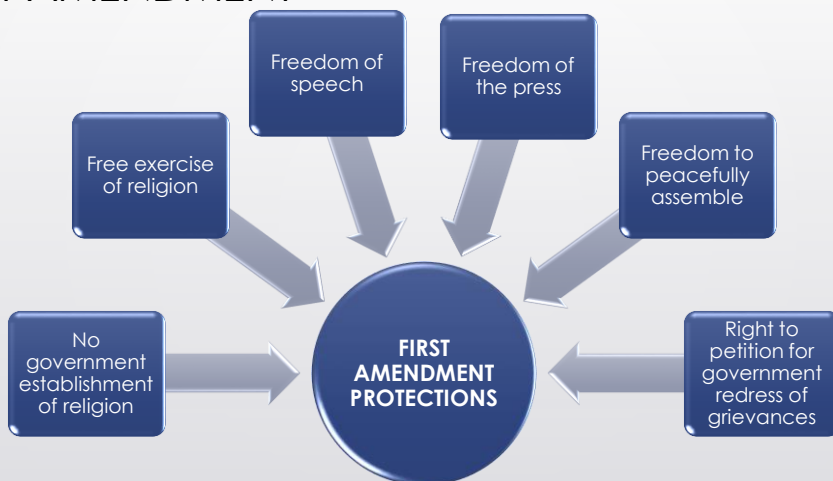
- Protests are designed to DISRUPT ORDER to make a point, state an objection or state disapproval.
- Government's job is to protect all citizens rights through a rule of law.
- Protests can pit varying citizens' interests against one another.
- Where are these interests????

## THE BILL OF RIGHTS

All we  
have time  
for today!

- I. **Freedom of speech**, press, religion, petition & assembly
- II. Right to keep and bear arms
- III. Quartering of soldiers
- IV. Prohibition against unreasonable search and seizure
- V. Protection against self-incrimination
- VI. Right to fair and speedy trial
- VII. Right to trial by jury
- VIII. Protection against cruel and unusual punishment
- IX. Constitutional rights not exhaustive
- X. Reservation of powers to states and people

## FIRST AMENDMENT





## What about MY Rights???????

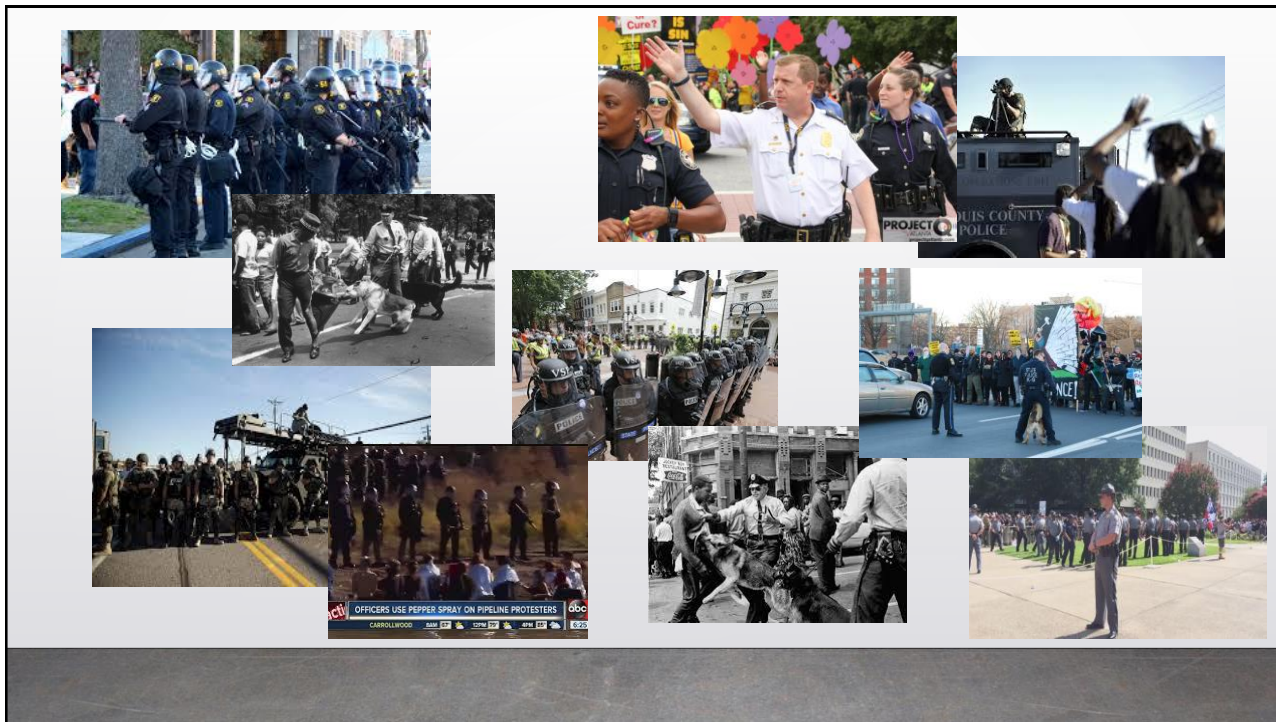
Government must also balance the impact on its citizens

People's lives are significantly disrupted by protests

Disorderly protests can turn into riots and result in destruction of property

Inflamed passions on all sides of the issues jeopardize public safety

Government's response can help or hurt



# What Are We Trying to Accomplish?

Protect free speech

Protect the life, liberty and property of citizens

Promote public discussion

Promote Unity



## NO RESOLUTION

- Government cannot solve everyone's social problems
- Impossible to pacify everyone
- Some whiners just need to shut it
- Sticking a flower in a gun barrel never stopped anything
- Protesting is a proven way to effect government change
- Everyone has the right to be heard no matter what
- Restrictions on speech are barbaric
- If you're silent, you're the problem

## Kentucky has a History in Small Towns

- Harlan Bloody Harlan 1930s and 1970s
- Coal companies sold below market value and cut miners' wages
- Miners organized with a union and the mines shut down company towns evicting miners from their homes. Miners went on strike.
- National Guard called in but broke picket lines and did not protect the miners.
- 1970s were different. KSP called in to keep roads open keep the peace.
- Conflict and violence ensued for months.



# WILL NOT STOP

Anaheim, CA  
protestors damage  
property and throw  
bottles and rocks at  
police after an  
officer grabs a boy  
and fires his gun.

Feb. 21

May Olympia, WA  
and Portland, OR  
violence erupts at  
May Day festivals as  
anarchists destroy  
property and clash  
with police.

May

Charlottesville, VA  
white supremacist  
march turns violent  
resulting Heather  
Heyer's murder by  
a man driving a car  
into a crowd.

Aug. 12

St. Louis, MO rioters  
engage in four  
nights of violence in  
response to  
acquittal of a white  
policeman tried for  
shooting a black  
motorist.

Sep. 15

WHAT  
CAN THE  
GOVERNMENT  
DO?

IMPOSE  
REASONABLE  
RESTRICTIONS  
ON WHERE  
SPEECH  
OCCURS

ENCOURAGE  
OPEN  
DISCUSSION

PROVIDE  
SAFE,  
EFFECTIVE  
VENUES FOR  
DEBATE

PROTECT  
PRIVATE  
PROPERTY  
FROM HARM

PROTECT THE  
PUBLIC FROM  
HARM



## Can Government Regulate the Speech?

1

Is it protected speech?

2

If so, who is the speaker?

3

If private, in what type of forum/venue is the speech taking place?

## Step One: Classify the SPEECH

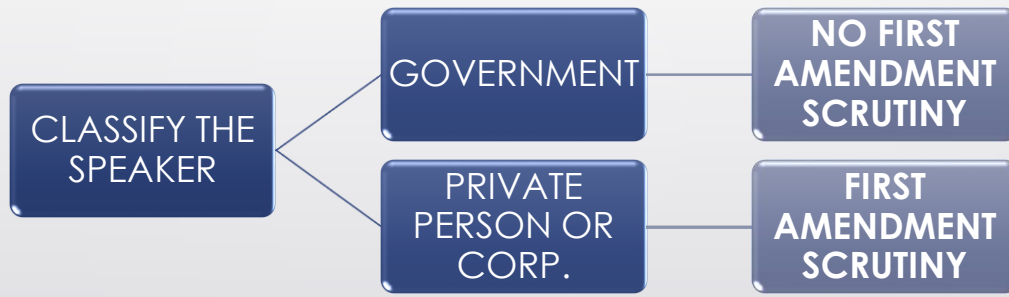
### Protected

- Political
- Commercial (with some limits)
- Funeral picketing (Westboro Baptist)
- Organizations
- Law enforcement
- Wealthy
- Religion
- Education

### Not protected

- Yelling "fire" in a crowded theater
- Crimes
  - Libel & slander
  - Releasing classified information
  - Threats
  - Perjury
  - Blackmail
  - Child Pornography
- Fighting words
- Lies

## Protected Speech: Step Two



## GOVERNMENT SPEECH ACCORDING TO THE SUPREMES

Government can speak for itself

May say what it wishes and choose which views it wants to express

May use private financing to convey its message

May favor or disfavor policies and viewpoints

Step Three: The Forum

Least Amount of Government Regulation

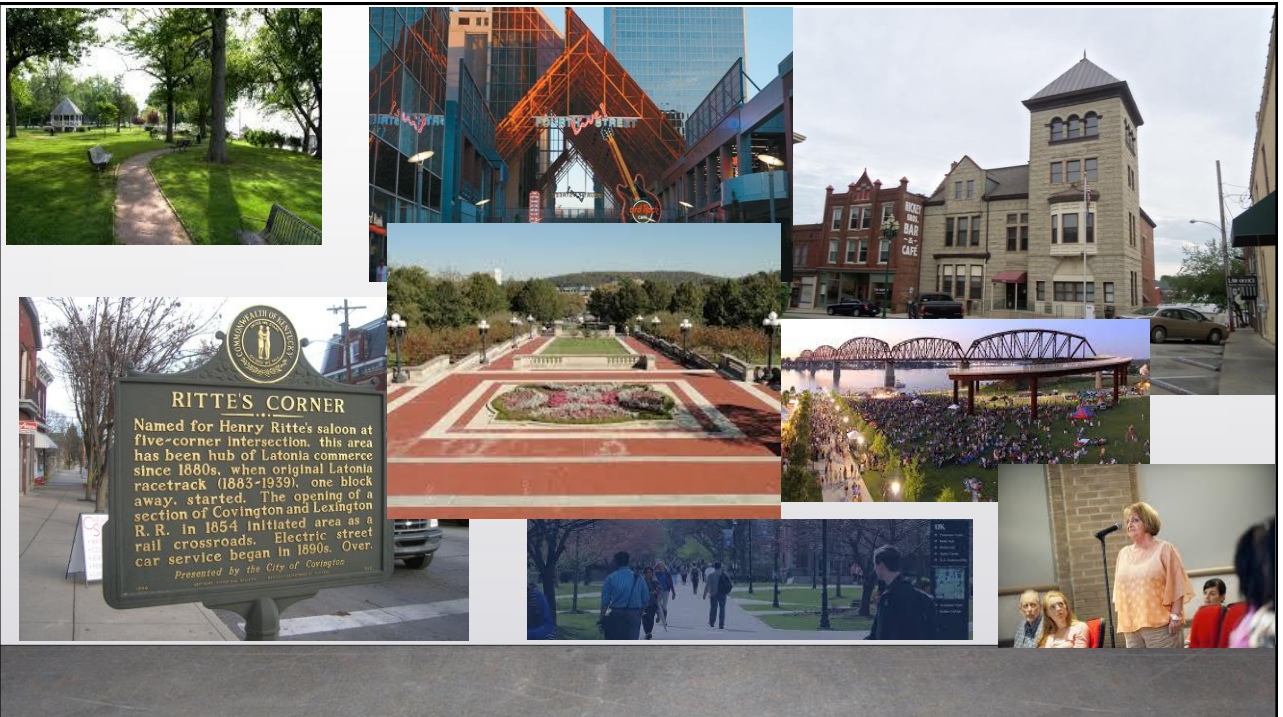
Traditional  
Public  
Forum

Some Regulation

Limited  
Public  
Forum

Most Regulation

Non-Public  
Forum



## TRADITIONAL PUBLIC FORUM

### Description

- Public property that is historically held in trust for the public use
- Traditionally used for public assembly, citizen communication, discussing public questions

### Permissible Regulation

- Subject to strict scrutiny
- Reasonable time, place, manner restrictions.
- No VIEWPOINT restrictions.



## LIMITED PUBLIC FORUM

### Description

- Public property that is not traditionally public but that the government opens up for public communication/idea expression
- Not open to all but certain groups/topics can be discussed

### Permissible Regulation

- Restrictions on topics/groups must be reasonable in light of the purpose served by the forum
- Reasonable time, place and manner restrictions are allowed
- No VIEWPOINT restrictions



## NON-PUBLIC FORUM

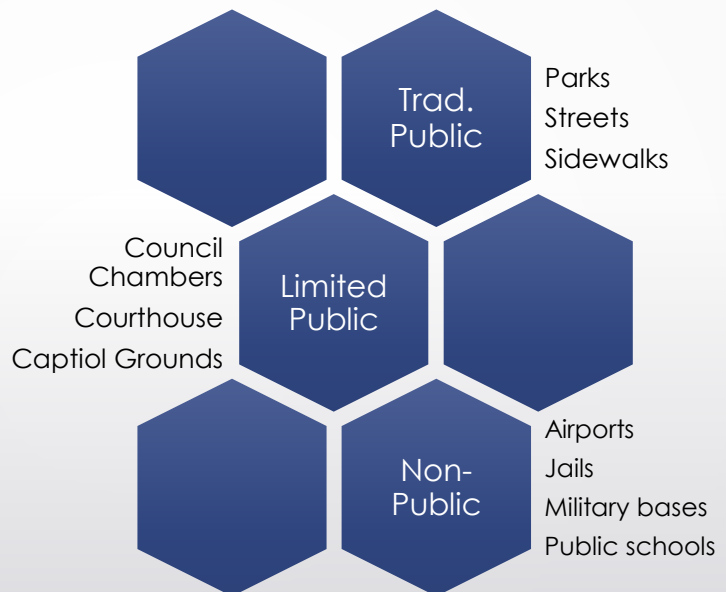
### Description

- Public property that is not a traditional or limited public forum
- Government intent as to whether the forum is open for public speech is the key.
- What is the government's stated purpose?

### Permissible Regulation

- Reasonable restrictions on speech
- Viewpoint neutral
- Time/Place/Manner
- Limit expression not consistent with the purpose of the forum

Translate  
Please

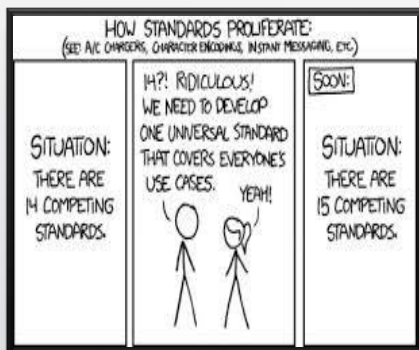


## Regulations and Permits

- Permits are a prior restraint on speech about which there is a presumption against validity.
- Cities can develop regulations and permits for large crowds, marches, rallies, protests, etc.
- Must contain "narrow, objective, and definite standards to guide the licensing authority."
- Size matters....



## WE HAVE VERY HIGH STANDARDS!



- Objective standards for the permit authority protects the city from allegations of censorship.
- The more discretion an official has, the easier it is to interject bias into the process.
- Any element of the process that allows an official to act arbitrarily will be considered unconstitutional.
- Even with clear objective standards, if an official acts arbitrarily, they will be scrutinized under federal and state law.
- Section 2 of the Kentucky Constitution prohibits arbitrary action by a government official.



## Not so fast...

### Protests and Rallies in Response to Current Events

- The Supreme Court has been clear that there are instances in which permits cannot be required.
- Protests in response to current events is an exception.
- St. Louis in response to dismissal of charges against officer.

### Not Obstructing Public Movement

- Protests that do not block sidewalks, public staircases, driveways, etc.
- Examples are abortion clinic protests, city hall, union protests



## Time, Place, Manner

- Remember, the nature of the place and the normal use of the place dictates what is reasonable. But must be:
  - Content neutral
  - Narrowly tailored
  - Serve a significant government interest
  - Leave open adequate alternatives for expression



## Content-Neutral

- Does the regulation on its face distinguish speech based upon its message?
- Does the regulation hamper the impact of the speaker's expressive conduct?
- Was the legislature's intent to suppress the content of speech or is it a secondary effect?
- Courts will look at whether the government referenced the content of the speech or the objecting speaker.
- If the regulation is justified without considering the content of the speech or the speaker then it is content neutral.



## OVERBREADTH

- Regulation cannot give a government official too much discretion.
- Ordinance must be narrowly tailored to achieve the Government's interest.
- Fees must be applied uniformly.



Civil Rights group conducts an annual music festival and rally at a city park. The city park has an outdoor stage and rustic seating. They always obtain the proper permits and supply their own sound equipment and sound tech.

After a few years, neighbors around the park complain that the noise is too loud and disruptive at night. City officials ask the group to maintain a certain volume level and the group is not cooperative. Eventually, the city police cut the power to all sound systems during an event. The crowd then becomes hostile.

Before the next event city officials meet with the group to discuss the volume issue. The officials explain that the permits are contingent upon the volume. During the event, officials ask several times for them to reduce the volume. When the requests are ignored, the power is cut and the crowd again becomes hostile and disruptive.

After consideration, the city adopts a more strict policy requiring the use of city equipment and a city technician for events at the park. The civil rights group objected. The regulation does not effect any other group or event held at the park.

Did the city violate the group's first amendment rights?

Fees\$\$\$\$\$\$\$\$

- 01 It is clear that a city can charge flat fee.
- 02 Confusion about what fees will be permissible.
- 03 Justification for fees must be based solely on objective governmental purposes.
- 04 Recouping costs associated with cleanup, etc. But determining what fees are required cannot include consideration of the content of speech.



## Content Based

- A regulation that is content based can still be upheld if it is simply subject to a higher standard. Strict Scrutiny.
- This means that it must be narrowly tailored to serve a compelling state interest.
- Motive of the Legislative body is irrelevant.
- Cities cannot have a policy that factors in the type of speech in any manner, even to protect the speaker.
- Remember Civil Rights Actions and protected classes. This includes political beliefs, religion, etc.



City establishes a permit process for parades, rallies, protests, and general public events. To determine how much the fee should be, the administrator is required to examine who is speaking as well as their topic. Based upon how controversial the topic is, the administrator is directed to set a fee that will offset the city's cost.

Is this permit process Constitutional?

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## Signs, Silent Protests and Leaflets

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Cannot prohibit, tamper with, or confiscate signs that contain speech protected by the first amendment.

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Silent protestors may stand and inconvenience the public but unless they are actively obstructing a public thorough fare, they can stand in silence.

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Leaflets quickly turn into litter. However, no ordinance can prohibit those containing protected speech EVEN though cleaning them up costs money.



Evangelical Christian group engages in a small march denouncing all Arabic people as devil jihadists, even carrying a severed pig's head on a spike because it would keep Muslim's at bay. They do so at an annual festival celebrating Arab culture. Wearing t-shirts promoting the Christian faith and shouting negative stereotype slurs at those attending the festival. Children and peaceful attendees were present.

When they preached that those present followed a false prophet who is a pedophile, some in the crowd began throwing bottles at them. They continued moving through the crowd who followed assaulting them with thrown objects.

Police escorted the group out of the festival under the threat of being cited or arrested stating that they were a danger to public safety. Is this a violation?



## Narrowly Tailored

### Nope

- Crime Victim's Compensation law captured revenue as "profits of crime" from any subject providing an author's thoughts or recollections about the crime and included such a broad definition of persons convicted of a crime to include persons who were never accused or convicted of a crime.

### Yup

- Florida can restrict speech to protect the integrity of the judiciary by prohibiting judicial candidates from personally soliciting campaign funds.
- Ordinance prohibiting picketing around a residence or dwelling of an individual but NOT banning all picketing in residential areas was narrowly tailored to protect citizens' privacy.



## Significant Government Interest

- Case by case basis but must not burden speech more than necessary:
  - Two parades cannot march on the same street simultaneously
  - Demonstration or parade on a large street during rush hour may be an intolerable burden on the essential flow of traffic.
  - Overamplified loudspeakers can be turned down.
  - Floating buffer zone with all health care facilities prohibiting protestors from knowingly approaching within eight feet of a person who is within 100 feet of a health care facility entrance without the person's consent.



## Alternatives for expression

### Yes

- Regulation restricting solicitation and distribution at fairgrounds to those exhibiting.
- Regulation prohibiting the posting of signs on public property.

### NO

- Blanket prohibition on live entertainment.
- Ban on all residential signs even when distributing leaflets and advertisements remain available because signs at home are unique, cheap and convenient.



## Protests, Marches and Rallies

- Work with a city attorney or contract attorney to decide whether the city should establish a permit for protests, marches and rallies.
- Draft and adopt ordinances for any permits.
- Make sure your Law Enforcement Officers are training in crowd control tactics or request assistance from agencies that are.
- The same use of force justifications apply to crowd control situations for LEOs.
- Remember, when protests, marches or rallies turn violent, the speech is no longer protected.



## Bowling Green as a Template

- Clear definitions
- Objective standards for permits
- Notice for any rejection and an appeal process
- Contents of application
- Revocation process and reasons for revocation
- Duties of permittee
- Required bonds, insurance, hold harmless, etc.
- Clearly stated requirements for Clean-Up



## Ordinance can be Found...

- [http://library.amlegal.com/nxt/gateway.dll/Kentucky/bgky/chapterxxiitraficandmotorvehicles?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:bowlinggreen\\_ky\\$anc=JD\\_22-5](http://library.amlegal.com/nxt/gateway.dll/Kentucky/bgky/chapterxxiitraficandmotorvehicles?f=templates$fn=default.htm$3.0$vid=amlegal:bowlinggreen_ky$anc=JD_22-5)