

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MALLORY RUSCH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:21-cv-00029-JMB
)	
CITY OF ST. LOUIS, MISSOURI,)	
)	
Defendant.)	

CONSENT JUDGMENT

This matter comes before the Court on the parties’ joint motion for entry of consent judgment. The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

Plaintiff, Mallory Rusch, filed this action for declaratory and injunctive relief and nominal damages on January 8, 2021. ECF No. 1. She asserts that § 22.16.070, § 22.16.090, and § 22.40.030 of the St. Louis Code of Ordinances impermissibly infringe upon her free speech rights as set forth in the First Amendment to the United States Constitution and do so in a manner that fails to provide the due process required by the Fourteenth Amendment. Defendant is the City of St. Louis.

The parties have asked this Court to enter a consent judgment consistent with their agreement. Being fully advised in the premises, the Court grants the joint motion for entry of consent judgment, as follows:

In Count I, Plaintiff challenges § 22.16.070, which states that “[n]o person shall deliver any oration, address, speech, sermon or lecture [in a park] without the written consent of the Director of Park, Recreation and Forestry.” Under the holdings of *Niemotko v. State of*

Maryland, 340 U.S. 268 (1951) and *Staub v. City of Baxley*, 355 U.S. 313 (1958), § 22.16.070 infringes upon the First Amendment speech rights of Plaintiff and non-parties to this litigation. Judgment is entered in favor of Plaintiff on Count I. Defendant, its officers, agents, servants, employees, attorneys, and all persons acting in concert with them, or in connection with them, are enjoined from enforcing or threatening to enforce § 22.16.070. Moreover, Defendant is directed to take all necessary steps to ensure that § 22.16.070 is removed from law enforcement charge codes and that all police officers, park rangers, and others charged with enforcement of § 22.16.070 are made aware of this consent judgment within thirty days.

In Counts II and III, Plaintiff challenges § 22.16.090, which states that “[a]ll disorderly or indecent conduct, the use of threatening, obscene or profane language, and all games, acts or demeanor calculated or tending to mar or disturb the feelings or enjoyment of the visitors attending public parks, places or squares are prohibited therein.” Under the holdings of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) and *Survivors Network of Those Abused by Priests, Inc. v. Joyce*, 779 F.3d 785 (8th Cir. 2015), § 22.16.090 infringes upon the First Amendment speech rights of Plaintiff and non-parties to this litigation. Judgment is entered in favor of Plaintiff on Counts II and III. Defendant, its officers, agents, servants, employees, attorneys, and all persons acting in concert with them, or in connection with them, are enjoined from enforcing or threatening to enforce § 22.16.090. Moreover, Defendant is directed to take all necessary steps to ensure that § 22.16.090 is removed from law enforcement charge codes and that all police officers, park rangers, and others charged with enforcement of § 22.16.090 are made aware of this consent judgment within thirty days.

In Count IV, Plaintiff challenges § 22.40.030, which requires a permit for certain political assemblies, meetings, or gatherings. The parties agree that the correct interpretation of

§ 22.40.030 is that the requirement of a permit for political assemblies, meeting, or gatherings applies only in the circumstances in which a permit is required for other assemblies, meetings, or gatherings, as set forth in § 22.40.010. The parties having stipulated to the proper construction of § 22.40.030, it is not necessary under the circumstances of this case to address the constitutionality of the assembly permit scheme or provide prospective relief regarding § 22.40.030.

Plaintiff is entitled to an award of nominal damages. *See Uzuegbunam v. Preczewski*, No. 19-968, 2021 WL 850106, at *7 (U.S. Mar. 8, 2021). With agreement of the parties, judgment is entered in favor of Plaintiff in the amount of \$1.00.

Defendant is directed to provide a copy of this consent judgment to each municipal judge and prosecutor within thirty days.

With the parties' express agreement, the Court finds that this consent judgment is intended to apply for the benefit of all members of the public, who are third-party beneficiaries of the prospective relief provided herein, and that this consent judgment redresses any claim for such prospective relief by any such beneficiary.

Plaintiff is the prevailing party for purposes of 42 U.S.C. § 1988 and is awarded attorneys' fees and costs in the aggregate sum of \$9,000.00.

It is so ordered, and judgment shall be entered accordingly.

Dated this 8th day of April, 2021.

/s/ **John M. Bodenhausen**
JOHN M. BODENHAUSEN
UNITED STATES MAGISTRATE JUDGE