IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROGER WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:16-cv-01316-RK
	)	
CITY OF GRANDVIEW, MISSOURI,	)	
	)	
Defendant.	)	

SUGGESTIONS IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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I. Background

Plaintiff Roger Walker is a 67-year-old amputee who has been diagnosed with chronic obstructive pulmonary disease (COPD) and congestive heart failure. ***See* Pl.'s Ex. 1 (Declaration of Roger Walker), ¶ 2**. Because of Walker's health conditions, he is confined to a motorized wheelchair. *Id*. ¶ 3. Walker panhandles in the City of Grandview, Missouri, and elsewhere, to secure donations of food, drink, and money. *Id*. ¶ 4. When he panhandles, he receives such donations. *Id*. ¶ 5.

On June 23, 2016, Walker panhandled beside a public street in Grandview. *Id*. ¶ 6. Sitting in his wheelchair, he held up a sign that read "any help would be a blessing thank you." *Id*. ¶ 6. Shortly after he had begun panhandling, Walker was approached by a Grandview police officer with the surname "Poynter." Officer Poynter told Walker it was illegal to panhandle in Grandview without a permit. *Id*. ¶ 7. Because Walker did not have a permit, Officer Poynter ordered Walker to leave and told him he would be arrested if he panhandled in Grandview again without a permit. *Id*. ¶ 8. Walker feared arrest or citation, so he stopped panhandling and left Grandview. *Id*. ¶ 9.

The following day, on June 24, 2016, Walker called the City Clerk's office at (816) 316-4800 to learn how to obtain a permit. *Id*. ¶ 10. The City Clerk's office asked Walker what he was trying to sell. When Walker stated that he wanted to panhandle, the City Clerk's office told him no permits were issued for panhandling and his application would not be accepted. *Id*. ¶ 11.

Because of his fear of citation or arrest and his inability to obtain a permit, Walker has since refrained from solicitation in Grandview. *Id.* ¶ 16. In fact, because Officer Poynter could cite or arrest him based on their earlier interaction, Walker has not returned to Grandview at all. If it were not for the Grandview ordinance, Walker would panhandle there. *Id.* ¶ 16.

II. Grandview City Code § 14-126

Grandview's solicitation permitting scheme is set forth in Grandview City Code § 14-126, which has been in effect since at least 2008. ***See* Pl.'s Ex. 2 (Ordinance).** It prohibits "[p]ersons or organizations desiring to solicit contributions, sell, collect money or collect items from persons in vehicles on city streets by standing in, or beside, city streets" from doing so without a permit from the city. *Id.* Section 14-126(a) defines "solicit" as:

> the act of standing on, in, in the median of, or in the right-of-way of any city street, or entering on the same, for the purpose of soliciting contributions or selling, offering for sale or advertising any product, property or service of any kind from persons in vehicles for himself or on behalf of any other person or organization.

Id. Because Walker was "solicit[ing] contributions . . . from persons in vehicles on city streets," Code § 14-126 applies to him, and the guidance he received from the City Clerk's office was incorrect.

In accordance with the requirements set forth in Code § 14-126(b), Grandview developed a form it calls Application for Licensed Street Solicitor Permit. ***See* Pl.'s Ex. 3 (Solicitor Application).** The form requires applicants to list a slew of personal information, including name, address, social security number, date of birth, race, sex, organization name, "coordinator," coordinator's social security number, a description of the products to be sold, the location(s) of solicitation, the number of solicitors at each location, a description of any criminal convictions. It also requires an applicant to furnish two types of identification and make a payment of either $50.00 for an annual permit or $5.00 for a three-day permit. *Id.*; *see also* Ex. 2, Code § 14-126(b)(1)(b), (d)(2)(b).

The form permits a city official to fill in the duration and expiration date of a permit. It also provides that the application "will be processed by the Grandview Police Department"

without providing any time limit for that processing or any information about the grounds for approval or denial except that it provides that "furnishing false or incomplete information . . . may be grounds for denial." Ex. 3.

Under Code § 14-126(e), persons who solicit without a license "shall be punished by a fine not exceeding five hundred dollars ($500.00), or such imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment" and "[e]ach day there is any violation of this section shall constitute a separate offense." Ex. 2.

Walker brings challenges Grandview City Code § 14-126 under the Free Speech Clause of the First Amendment to the United States Constitution.

III. Argument

A. Standard for Preliminary Injunction

In considering whether to issue a preliminary injunction, this Court must consider: (1) the probability Walker will prevail on the merits of his First Amendment retaliation claim, (2) whether Walker faces a threat of irreparable harm absent the injunction, (3) the balance between the harm Walker faces and the injury that the injunction's issuance would inflict upon the City of Grandview, and (4) the public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc); *accord Amos v. Higgins*, 996 F. Supp. 2d 810, 812 (W.D. Mo. 2014). "When a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (internal quotation marks omitted). In other words, when a plaintiff is "likely to win on the merits of [his] First Amendment claim, a preliminary injunction is proper." *Id.* at 877.

B. Likelihood of Success on the Merits

In this case, a determination of likelihood of success considers whether Walker has a "fair chance of prevailing" on the merits of his claim. *See Planned Parenthood v. Rounds*, 530 F.3d 724, 730 (8th Cir. 2008) (en banc). This standard applies "where a preliminary injunction is sought to enjoin something other than [. . .] a state statute." *Id.* at 732–33. The "fair chance of prevailing" standard is less rigorous than the standard applied "where a preliminary injunction is sought to enjoin the implementation of a duly enacted state statute." *Id.* Because the injunction requested here does not involve a state statute, a fair chance of success on Walker's constitutional claim will satisfy this prong of the test.

Walker is likely to prevail on the merits of his First Amendment claim because Code § 14-126 is unconstitutional both on its face and as applied to him. The ordinance has three distinct constitutional infirmities.

a. The Ordinance Is an Indefinite, Discretionary Prior Restraint

First, the ordinance is a discretionary prior restraint[1] that provides for no time limit for license issuance nor stated grounds for denial, which are *per se* violations of the First Amendment under *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988) and *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990). In *Riley*, the Court struck down a North Carolina law that required, among other things, professional fundraisers be licensed with the state. *Id.* at 802. The Court explained that "[e]ven assuming" a state had an interest that justifies licensing of these solicitors, "such a regulation must provide that the licensor 'will, within a specified brief period, either issue a license or go to court.'" *Id.* (quoting *Freedman v. Maryland*, 380 U.S. 51, 59 (1965)). The law at issue in *Riley* violated

[1] Any law that compels silence while a would-be speaker waits for a government decision on whether he or she may speak "definitionally qualifies as a prior restraint." *Am. Target Adver., Inc. v. Giani*, 199 F.3d 1241, 1250 (10th Cir. 2000). Prior restraints are not *per se* unconstitutional but carry "a heavy presumption against [their] constitutional validity." *Se. Promotions, Ltd. V. Conrad*, 420 U.S. 546, 558 (1975).

this constitutional requirement by "permit[ting] a delay without limit" without "purport[ing] to require when a determination must be made." The Court rejected North Carolina's contention that the government's history of promptly issuing licenses was relevant, holding that because the challenged law "compel[ed] the speaker's silence" during that delay, it violated the First Amendment. *See also FW/PBS*, 493 U.S. at 226 ("a prior restraint that fails to place limits on the time within which the decision maker must issue the license is impermissible"); *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 764 (1988) ("even if the government may constitutionally impose content-neutral prohibitions on a particular manner of speech, it may not *condition* that speech on obtaining a license or permit from a government official in that official's boundless discretion"); *Blue Moon Enter., LLC v. City of Bates City*, 441 F.3d 561, 565–66 (8th Cir. 2006) (reversing district court, in preliminary injunction context, to allow facial challenge to city licensing scheme as prior restraint and commenting that scheme "must provide narrow, objective, and definite standards to guide the licensing authority, may only impose a restraint for a specified and reasonable period, and must provide for prompt judicial review") (internal citations omitted).

Licensing schemes similar to Grandview's are routinely struck down as indefinite prior restraints. *See Chesapeake B & M, Inc. v. Harford Cty.*, 58 F.3d 1005, 1011–12 (4th Cir. 1995) (holding that county's adult bookstore licensing scheme was facially invalid because it "pose[d] the risk that protected expression will be suppressed for an indefinite time before an administrative decision" and reversing district court finding that invalidity could be cured by county promise of prompt decisionmaking); *United States v. Frandsen*, 212 F.3d 1231, 1240 (11th Cir. 2000) (striking down federal regulation requiring permits for national park protests and vacating conviction of protester convicted thereunder because regulation stated only that

issuance should occur "without unreasonable delay"); *Public Citizen, Inc. v. Pinellas Cty.*, 321 F. Supp. 2d 1275, 1294–95 (M.D. Fla. 2004) (holding that even though county solicitation ordinance gave 30-day limit for permit issuance, the fact that it did not automatically issue permit if no decision had been made in 30 days violated First Amendment); *Nichols v. Village of Pelham Manor*, 974 F. Supp. 243, 252 (S.D.N.Y. 1997) (striking down licensing ordinance as indefinite prior restraint under *Riley*).[2] Like in these cases, neither the Grandview ordinance nor the city's solicitor application make clear how long the city has to approve or reject applications, nor on what grounds. While the would-be solicitor waits, he must be silent. Furthermore, if an applicant's form is ignored or rejected, there is no opportunity for third-party review through a judicial or adjudicatory forum. These are *per se* violations of First Amendment limits on prior restraints. *See, e.g., FW/PBS*, 493 U.S. at 229 (holding that Dallas ordinance "fail[ed] to provide an avenue for prompt judicial review so as to minimize suppression of the speech in the event of a license denial" and "the failure to provide [this] essential safeguard[ ] renders the ordinance's licensing requirement unconstitutional").

b. Facially Content-Based Ordinance

Under the Grandview ordinance, a person may—without applying for a permit—lawfully stand on a city street holding a sign praising a political candidate. That same person, however,

[2] *See also Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1269–72 (11th Cir. 2005); *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220, 224 (6th Cir. 1995); *N.J. Envir. Fed. V. Wayne Twp.*, 310 F. Supp. 2d 681, 698–99 (D.N.J. 2004); *Ohio Citizen Action v. City of Mentor-On-The-Lake*, 272 F. Supp. 2d 671, 680–82 (N.D. Ohio 2003); *Mardi Gras of San Luis Obispo v. City of San Luis Obispo*, 189 F. Supp. 2d 1018, 1026–1029 (C.D. Calif. 2002); *Ky. Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672, 694–99 (W.D. Ky. 2002); *Crue v. Aiken*, 204 F. Supp. 2d 1130, 1145 n.3 (C.D. Ill. 2002); *Déjà vu of Ky., Inc. v. Lexington-Fayette*, 194 F. Supp. 2d 606, 613–618 (E.D. Ky. 2002); *Special Souvenirs, Inc. v. Town of Wayne*, 56 F. Supp. 2d 1062, 1085–1091 (E.D. Wis. 1999); *MacDonald v. Safir*, 26 F. Supp. 2d 664, 676–77 (S.D.N.Y. 1998); *Gospel Missions of Am. v. Bennett*, 951 F. Supp. 1429, 1453–1455 (C.D. Calf. 1997).

must have a permit to stand on a city street holding a sign praising a product, property, or service. Under the recent Supreme Court decisions in *McCullen v. Coakley*, 134 S. Ct. 2518 (2014) and *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), this facial classification of communicative acts as criminal or not, based on what they say, makes the ordinance content based.

Reed involved a municipal sign code that regulated signs differently based on the kind of message they conveyed (such as "ideological," "political," or "temporary directional"). 135 S. Ct. at 2224–25. The city had argued that the sign code was not a content-based restriction because it did not discriminate against certain viewpoints. *Id.* at 2229. But *Reed* rejected this argument, holding that a restriction is content based simply if it draws distinctions "based on the message a speaker conveys." *Id.* at 2227.

Some "facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech *by its function or purpose*." *Id.* (emphasis added). All content-based restrictions, whether "obvious" or "subtle," are subject to strict scrutiny. *Id.* Even if a challenged regulation's justifications are content neutral, the regulation still must satisfy strict scrutiny if it facially discriminates based on content. *Id.* at 2227–28. This means that "even laws that might seem 'entirely reasonable' will sometimes be 'struck down because of their content-based nature.'" *Id.* at 2231 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O'Connor, J., concurring)).

Because the Grandview ordinance is content based and applies to traditional public fora, it is subject to strict scrutiny. *See, e.g.*, *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939); *McCullen*, 134 S. Ct. at 2529; *Carey v. Brown*, 447 U.S. 455 (1980). Strict scrutiny

requires that the city show its content-based licensing scheme furthers some compelling interest. *See Reed*, 135 S. Ct. at 2231–32.

The Grandview ordinance, like other ordinances that draw distinctions based on whether a person is soliciting or not, is without sufficient justification to withstand that exacting standard of review.[3] *See Thayer v. City of Worcester*, 135 S. Ct. 2887 (2015), *vacating and remanding Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014); *Norton v. City of Springfield*, No.13-3581, 2015 WL 4714073, at *1–*3 (7th Cir. Aug. 7, 2015) (reversing its own prior approval of Springfield's anti-panhandling ordinance in light of *Reed* and granting petition for rehearing).[4]

c. Burdensome Payment and ID Requirements Not Narrowly Tailored

[3] Although the ordinance includes no rationale, it is difficult to imagine what the city could put forth to show it has a compelling interest in the content discrimination inherent in the ordinance. For example, the Eighth Circuit has never held that traffic safety or aesthetics are compelling government interests. *See Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728, 737-38, (8th Cir. 2011) (indicating that "a municipality's asserted interests in traffic safety and aesthetics, while significant, have never been held to be compelling" (quoting *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995)); *accord Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1262 (11th Cir. 2005); *see also Wagner v. City of Garfield Heights*, 577 Fed. Appx. 488, 498 n.9 (6th Cir. 2014), *judgment vacated by* 135 S. Ct. 2888 (2015) (remanding for reconsideration in light of *Reed*).

[4] *See also Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015) (vacating and remanding where city had not shown ordinance prohibiting panhandling in street only was narrowly tailored); *Browne v. City of Grand Junction*, 2015 WL 5728755, at *11-*13 (D. Colo. Sept. 30, 2015) (striking down ordinance that outlawed panhandling in specific locations and at specific times as overinclusive); *McLaughlin v. Lowell*, 2015 WL 6453144, at *7 (D. Mass. Oct. 23, 2015) (striking down ordinance that banned vocal panhandling in city's downtown area as violative of First Amendment); *Clatterbuck v. City of Charlottesville*, 2015 WL 727944, at *13 (W.D. Va. Feb. 19, 2015) (striking down ordinance that banned panhandling on two streets and within 50 feet of those streets); *Working Am., Inc. v. City of Bloomington*, 2015 WL 6756089, at *8 (D. Minn. Nov. 4, 2015) (striking down content-based ordinance regulating door-to-door solicitation); *Centro De La Comunidad Hispana De Locust Balley v. Town of Oyster Bay*, 2015 WL 5178147, at *20 (E.D.N.Y. Sept. 3, 2015) (striking down ordinance that banned roadside solicitation of employment); *FF Cosmetics FL Inc. v. City of Miami Beach*, 2015 WL 5145548, at *7 (S.D. Fla. Aug. 31, 2015) (preliminarily enjoining enforcement of ordinance that banned solicitation within or near public right-of-way in certain parts of city's historic district as unconstitutional "blanket ban"); *accord Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 632 (S.D. W.Va. 2013) (preliminarily enjoining enforcement of ordinance that banned solicitation of money or contributions for any purpose).

Third, to obtain an annual permit under Section 14-126, a person must pay $50 and supply two forms of identification. Neither is narrowly tailored to any compelling interest the city has, and both are overly burdensome for individual would-be solicitors.

i. Licensing fee operates as a tax on speech

It is well established that a city may not constitutionally impose a tax on the exercise of a constitutional right. *See Cox v. New Hampshire*, 312 U.S. 569, 577 (1941). Although it can charge a fee "to meet the expense incident to the administration of the [licensing scheme] and to the maintenance of the public order in the matter licensed," the city bears the burden of showing that the fee charged is necessary to defray the cost of administering the licensing scheme. Of course, when the licensing scheme itself cannot withstand strict scrutiny, the fee must also fail.

But even considered alone, a fee will violate the First Amendment if it is not narrowly tailored to recoup the costs of administration. In *Kentucky Restaurant Concepts*, a district court struck down various fees for adult establishments and entertainers. 209 F. Supp. 2d at 692–93. The city provided a "detailed breakdown by the City's licensing department of expected resource allocation" with a projection of the annual cost of licensing, as well as time expenditures for the city's "vice squad." *Id*. Nonetheless, the court held that the evidence fell "far short of the necessary detailed evidentiary showing that the licensing fees were carefully tailored to the cost of maintaining the regulatory scheme" and struck down, among others, a $100 annual fee for adult entertainers. *Id.* at 693; *see also Gospel Missions of Am. v. Bennett*, 951 F. Supp. 1429, 1447 (C.D. Calif. 1997) (invalidating $55 fee for professional fundraisers and holding ordinance section containing fee "unconstitutional on its face"). Likewise, here, an

annual fee of $50 from each person who engages in roadside solicitation in Grandview is not narrowly tailored to the administration of the licensing scheme set forth in Section 14-126.

ii. Fee and identification requirements are too burdensome

The $50 fee and identification requirements also fail, on their face, for another reason. Many people, including Walker, cannot afford to prepay $50 and do not have two forms of photo identification.[5] Because these restrictions censor a significant amount of constitutionally protected expressive activity without advancing a sufficiently strong governmental interest, they are overly broad and burdensome.

"Freedom of speech . . . [is] available to all, not merely to those who can pay their own way." *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943). Walker is soliciting money and food precisely because he does not have enough. Requiring him to make an upfront payment of $50 and to supply two forms of identification is as effective as barring him outright from exercising his right to free speech. *See id.* at 113 ("The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.").

In *Murdoch*, a Pennsylvania city sought to impose weekly licensing fees on solicitors, including the plaintiff peddlers of religious tracks. The Supreme Court struck down the fees over objection from the government. The Court held that it was irrelevant that "proof [was] lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities." *Id.* at 114. This was because "*[o]n their face*" the fees were "a restriction of the free exercise of those freedoms which are protected by the First Amendment." *Id.* (emphasis added); *see also United States v. Stevens*, 559 U.S. 460 (2010) (in

[5] It is not clear from the face of the form what types of identification are accepted, but Walker does not have two of the listed types. Ex. 1, ¶ 13–15; Ex. 3.

the First Amendment context, Court "would not uphold an unconstitutional statute merely because the Government promised to use it responsibly").

The cost to obtain two forms of identification also cannot be ignored. The Supreme Court of Missouri invalidated a state law requiring state citizens to show either a Missouri driver license or passport to vote, holding that requiring would-be voters just *one* of these documents was too expensive to impinge on a right recognized as fundamental by our state constitution. *Weinschenk v. State*, 203 S.W.3d 201, 212–13 (Mo. 2006) (en banc). The *Weinschenk* court concluded that the $15 payment required to obtain a birth certificate—needed to obtain a complaint license or passport—was "not a *de minimis* cost" and instead was "a fee that . . . voters who lack an approved photo ID are required to pay in order to exercise their right to free suffrage." *Id.* at 213. Those "least equipped to bear the costs" of obtaining a compliant ID would have been the most affected. *Id.* at 214 ("For Missourians who live beneath the poverty line, the $15 they must pay in order to obtain their birth certificates and vote is $15 that they must subtract from their meager ability to feed, shelter, and clothe their families."). This is precisely the situation here: Walker must pay to speak.

Because "[t]he exercise of fundamental rights cannot be conditioned upon financial expense," the identification and fee provisions of Section 14-126 are themselves unconstitutional and should be preliminarily enjoined. *Id.* (also citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) and *Griffin v. Illinois*, 351 U.S. 12, 16–19 (1956)).

C. Remaining *Dataphase* Factors

Walker's likelihood of success on the merits of his First Amendment retaliation claim is enough to grant the preliminary injunction. *Swanson*, 692 F.3d 864 at 877. Nevertheless, Walker also satisfies the remaining *Dataphase* factors. *See Dataphase Sys.*, 640 F.2d at 114.

Walker has established the second factor, "irreparable harm," in that he has already been injured by being chilled from expressive conduct when he left Grandview and refrained from soliciting there since he was threatened with arrest. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Absent an injunction, Walker will continue to keep away from Grandview and to fear arrest or citation from his earlier solicitation there. Because Walker has established that he is likely to succeed on the merits, he has also established irreparable harm as the result of the deprivation of his First Amendment rights. *See*, *Marcus v. Iowa Pub. Television*, 97 F.3d 1137, 1140-41 (8th Cir. 1996).

As to the third factor, Walker's injury outweighs any potential harm to Grandview because "[t]he balance of equities . . . generally favors the constitutionally-protected freedom of expression." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678 (8th Cir. 2012). Grandview no doubt prefers Walker be silent and refrain from panhandling in the city, but any discomfort or annoyance resulting from Walker's requests for donations is not the type of "harm" that could outweigh his freedom of expression.

Walker also satisfies the fourth factor because "it is always in the public interest to protect constitutional rights." *Phelps-Roper*, 545 F.3d at 689. The public interest is served by preventing the enforcement of a permitting scheme that is likely indefinite, content based, and overly burdensome. The public interest supports an injunction necessary to prevent a government entity from violating the Constitution. *See Doe v. S. Iron R-1 Sch. Dist.*, 453 F. Supp. 2d 1093, 1103 (E.D. Mo. 2006), *aff'd*, 498 F.3d 878 (8th Cir. 2007).

Respectfully submitted,

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Certificate of Service

I certify that I mailed a copy of the foregoing by First Class Mail on December 30, 2016, to:

City of Grandview, Missouri
c/o Becky Schimmel, City Clerk
1200 Main Street
Grandview, MO 64030

/s/ Anthony E. Rothert

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROGER WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
CITY OF GRANDVIEW, MISSOURI,	)	
	)	
Defendant.	)	

DECLARATION OF ROGER WALKER

1. I am the plaintiff in the above-entitled action. I am over the age of 18. I offer this declaration in support of my motion for a preliminary injunction. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am a 67-year-old amputee who has been diagnosed with chronic obstructive pulmonary disease (COPD) and congestive heart failure.

3. Because of my health conditions, I am confined to a motorized wheelchair.

4. I panhandle (or solicit donations) in the City of Grandview, Missouri, and elsewhere, to secure donations of food, drink, and money.

5. When I panhandle, I receive such donations.

6. On June 23, 2016, I panhandled beside a public street in Grandview. I sat in my wheelchair holding up a signed that read "any help would be a blessing thank you."

7. Shortly after I had begun panhandling, I was approached by a Grandview police officer with the surname "Poynter." Officer Poynter told me it was illegal to panhandle in Grandview without a permit.

EXHIBIT 1

8. Officer Poynter ordered me to leave and told me I would be arrested if I panhandled in Grandview again without a permit. Officer Poynter provided no other reason that I could not panhandle and did not say that I was breaking any other law.

9. I feared being arrested or cited, so I stopped panhandling and left Grandview.

10. On June 24, 2016, I called the City Clerk's office at (816) 316-4800 to learn how to obtain a permit so that I could continue panhandling in Grandview.

11. The woman who answered asked me what I wanted to sell. When I told her I wanted to panhandle, she told me no permits were issued for panhandling and my permit application would not be accepted.

12. I understand that Section 14-126 of the Grandview City Code prohibits "[p]ersons or organizations desiring to solicit contributions, sell, collect money or collect items from persons in vehicles on city streets by standing in, or beside, city streets" from doing so without a permit from the city and applies to me and what I was doing on June 23, 2016.

13. Even if the City Clerk's Office did accept a permit application from me, I understand that I would need to pay $50 and show two forms of identification before I could get an annual solicitation permit.

14. I cannot afford to pay $50.

15. I do not have two forms of the types of identification listed explicitly on the permit application form (driver license, state issued ID, passport, and military ID).

16. Because of my fear of arrest and prosecution under § 14-126 if I solicit donations in Grandview, I have altered my behavior by not soliciting in Grandview at all after June 23, 2016. If not for § 14-126, then I would seek donations in Grandview.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/20/2016

Roger Walker
Roger Walker

Sec. 14-126. - Solicitation of persons in vehicles.

(a) For purposes of this section, the term "solicit" shall mean and include the act of standing on, in, in the median of, or in the right-of-way of any city street, or entering on the same, for the purpose of soliciting contributions or selling, offering for sale or advertising any product, property or service of any kind from persons in vehicles for himself or on behalf of any other person or organization.

(b) *Permit requirement.*

(1) *Annual solicitation permit.*

a. Persons or organizations desiring to solicit contributions, sell, collect money or collect items from persons in vehicles on city streets by standing in, or beside, city streets must apply for a permit on a form to be developed by the chief of police.

b. The solicitation permit application shall be submitted with an application fee of fifty dollars ($50.00) and shall include:

1. The location(s) of the solicitation;

2. The number of solicitors to be involved at each location of the solicitation; and

3. Confirmation of satisfaction of the qualifications herein if the applicant is an organization.

c. Solicitation permits shall be valid for a period of one (1) year from the date of issuance.

(2) *Qualifications for organizations.*

a. Any organization for which funds or other items of value are being collected must be a charitable organization providing services/benefits to local individuals.

b. The charitable organization receiving a benefit from the collection must be qualified by the IRS under IRS Code § 501(c)(3).

c. The charitable organization must provide proof of insurance in the amount of at least two hundred thousand dollars ($200,000.00) for any liability arising out of the fund raising activities and agree to indemnify the city for any damages the city may suffer arising out of the fund raising activities. The insurance shall also provide coverage against claims against the applicant and claims against the city, its elected and appointed officials and its employees.

(c) *Conduct.*

(1) It is unlawful to conduct collections at intersections not controlled by four-way stop signs. For purposes of this section, signal lights are not considered stop signs.

(2) It is unlawful for an individual who is less than seventeen (17) years of age to solicit as described herein.

(3) It is unlawful for more than ten (10) persons to solicit at one (1) intersection at one (1) time.

(4) It is unlawful to solicit the occupant of a vehicle, unless the vehicle has come to a complete stop.

(5) It is unlawful to solicit unless the solicitor is wearing at all times a brightly colored outer garment.

(6)

EXHIBIT 2

It is unlawful to solicit unless the permittee is wearing at all times a photo ID issued by the police department in conjunction with the issuance of a solicitation permit. When the permittee is a charitable organization, the photo ID shall be issued to a designated representative of the organization who shall be present and wearing said ID at all times during solicitation activities. At the request of the applying organization, more than one (1) photo ID may be issued by the police department for the purpose of insuring that at least one (1) representative of the organization is present and wearing a photo ID at each location where solicitation occurs.

(7) It is unlawful to solicit except during daylight hours between thirty (30) minutes after sunrise and thirty (30) minutes before sunset.

(8) It is unlawful to solicit money or other things of value or to solicit the sale of goods or services in violation of section 17-49 of the Code of Laws (aggressive solicitation).

(d) *Exceptions.*

(1) The foregoing notwithstanding, section 14-126 shall not apply to any situation where the city has, in its discretion, through the use of barricades or other traffic-control measures, taken affirmative action or actions to control traffic flow to protect individuals in an area.

(2) Three-day solicitation permit.

a. Persons or organizations desiring to solicit in conformity with this section 14-126 at intersections not controlled by four-way stops may apply for a three-day solicitation permit on a form to be developed by the chief of police at least eleven (11) days prior to the first day of solicitation.

b. The three-day solicitation permit application shall be accompanied by a five dollar ($5.00) application fee and shall include:

1. The dates (maximum of three (3) days within a twelve-month period) and times the solicitation is to occur;
2. The location(s) of the solicitation;
3. The number of solicitors to be involved at each location; and
4. Confirmation of satisfaction of the qualifications herein if the applicant is an organization.

c. Except as otherwise provided in this subsection 14-126(d)(2), solicitation pursuant to a three-day solicitation permit shall be governed by the same regulations that apply to annual solicitation permits.

(e) *Penalties.*

(1) It shall be unlawful for any person or organization to solicit on any public street within the city without first obtaining a valid permit.

(2) It shall be unlawful for any person or organization to solicit in a manner that fails to comply with any provision contained in section 14-126(c).

(3)

A violation of any provision of section 14-126 shall be punished by a fine not exceeding five hundred dollars ($500.00), or such imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment. Each day there is any violation of this section shall constitute a separate offense.

(Ord. No. 964, art. 8, § 9; Ord. No. 6189, § 2, 4-22-08)

GRANDVIEW POLICE

GRANDVIEW POLICE DEPARTMENT

1200 MAIN STREET ◆ GRANDVIEW MO 64030

APPLICATION FOR LICENSED STREET SOLICITOR PERMIT

DATE: _____

NAME: _____

HOME ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

RACE: _____ SEX: _____

ORGANIZATION NAME: _____ PHONE: (____) _____

COORDINATOR: _____ SSN: _____

DESCRIPTION OF PRODUCT(S) TO BE SOLD: _____

LOCATION(S) OF SOLICITATION: _____

NUMBER OF SOLICITORS AT EACH LOCATION: _____

Have you ever been found guilty in any court anywhere in the United States for a crime for which you served time, received a suspended sentence or were placed on probation? If yes, give a brief explanation:

_____

_____

This application for a Licensed Solicitor will be processed by the Grandview Police Department. You understand that furnishing false or incomplete information on this application may be grounds for denial of the permit. There is no refund of the fee that accompanies this application if for any reason it is denied or revoked.

THIS PERMIT WILL NOT BE USED OR REPRESENTED IN ANY WAY AS AN ENDORSEMENT BY THE CITY OR ANY DEPARTMENT, EMPLOYEE OR OFFICER THEREOF.

THIS PERMIT IS NOT TRANSFERABLE AND MUST BE RETURNED WITHIN SEVEN (7) DAYS OF ITS DATE OF EXPIRATION.

APPLICANT'S SIGNATURE: _____ DATE: _____

TWO TYPES OF IDENTIFICATION REQUIRED:

____ DRIVER LICENSE ____ STATE ISSUED ID ____ PASSPORT

____ MILITARY ID ____ OTHER

DURATION OF PERMIT: _____ EXPIRES: _____

FEE COLLECTED: ANNUAL $50.00 _____ 3 DAY $5.00 _____

APPROVED _____ DENIED _____ _____

(Official's Signature)

GVPD Form 209
Initiated 04152008

EXHIBIT 3