

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

RAVEN WOLF C. FELTON
JENNINGS II, and
RAYMOND DOUGLAS

Plaintiffs,

v.

CITY OF UNIVERSITY CITY,
MISSOURI,

Defendant.

Cause No.: 4:20-cv-00584

DECLARATION OF GREGORY ROSE

Gregory Rose, being of lawful age and otherwise competent to testify in a Court of law, under the provisions of 28 U.S.C § 1746 and subject to the penalty of perjury, do hereby declare and states:

1. I am the City Manager for the City of University City, Missouri. ("City"). I have personal knowledge of the matters set forth in this Declaration. I submit this Declaration in opposition to the Motion for Preliminary Injunction herein.

2. The City uses a Council-Manager form of government, under which elected City Council members have hired me as City Manager to manage and be responsible for the general operations of the City and its day-to-day operations, including, among other things, ensuring that the municipal code and policies approved by elected officials are implemented and equitably enforced throughout the city; the supervision of all department heads, including the police, and other city employees; and submitting policy proposals to elected officials and providing them with facts and recommendations on matters of policy as a basis for making decisions.

3. The letter attached hereto as Exhibit A dated June 4, 2020 from City Attorney John Mulligan to Plaintiffs' counsel was authorized by me. As generally summarized below, that letter reflects the official position of the City concerning the issues in the present lawsuit and provides:

- The playing of unamplified music on private property adjacent to a public sidewalk in the Delmar Loop does not require a conditional use or other permit from University City, including private property at 6610 Delmar (Vintage Vinyl) and 6329 Delmar (FroYo).
- The obstructing public places ordinance (Municipal Code Section 215.720) ("Ordinance"), only applies where there is an *actual* instance of obstruction of vehicles, traffic or pedestrians. Further, only where a person causing or committing such conditions knowingly fails or refuses a police officer's order to cease such activity will the Ordinance be violated. As the City's chief administrative officer having the power to enforce all laws and ordinances of the City pursuant to City Charter, Section 19, I have so instructed the police.
- There is and never has been a no "Musician Non-Stationary Policy" forbidding musicians from playing in the Delmar Loop unless they are not stationary. The unsigned document (Cmplt. Ex. 1) dated July 22, 2019 and addressed to "Whom it May Concern," on letterhead from then-Director of Economic Development Libbey M. Tucker was not a policy issued or authorized by the City Manager and was not based on any ordinance or other law.
- I have agreed to recommend to the City Council (which has final authority) an amendment to the existing Ordinance to remove the reference to "tending to" and add "knowingly" before "fails or refuses to obey such orders."
- The City will consider comments and suggestions from Plaintiffs' counsel, and other interested parties, to the proposed amendments to the existing Ordinance to address the issues raised in the present lawsuit in an attempt to resolve all issues.

4. The letter attached hereto as Exhibit B is a true and correct copy of the response to Exhibit A received by the City Attorney on June 8, 2020.

5. As stated in Exhibit A, I have recommended amendments to the Ordinance that would make it clear that a violation would exist only where there is an actual instance of obstruction of vehicles, traffic or pedestrians and only where a person causing or committing such conditions knowingly fails or refuses a police officer's order to cease such activity. Subject to any suggestions

or comments from Plaintiffs' counsel, it is my intention to place a legislative bill substantially in the form attached hereto as Exhibit C on the City Council's agenda for July 13, 2020, and recommend that the bill be introduced at that meeting and passed at its next regular meeting on August 10, 2020.

6. While there has never been a "Musician Non-Stationary Policy," there was some confusion regarding same based on the unsigned document (Cmplt. Ex. 1) and the following statement I made on September 18, 2019:

Street musicians, protestors, and any other group legally exercising their right of freedom of speech are not prohibited in University City's Delmar Loop. However, individuals conducting these activities cannot be stationary for an unreasonable amount of time while in the public rights of way. University City' (sic) Loop is diverse and welcoming, in which we will continue to balance the rights of all our citizens while maintaining a safe environment for people to recreate.

The statement that persons cannot be stationary for an unreasonable amount of time was intended to state my general understanding of when an unlawful obstruction was occurring. I acknowledge that it did not include the technical language in the Ordinance and was perhaps inartfully stated. My intent has always been that the Ordinance should be enforced as written. Consistent with the above, the Ordinance will only be enforced when actual obstruction is taking place and only after a warning has been given.

7. I have instructed my Department heads, including the Chief of Police, that during the pendency of this litigation and until some resolution by agreement or judicial action, street performers and street musicians are allowed to perform in the Delmar Loop and will not be asked to cease doing so or to move to another location unless they are actually obstructing pedestrian traffic or otherwise violating a City ordinance.

8. In this action, Plaintiffs seek a preliminary injunction enjoining the City from enforcing the Ordinance. Any injunction enjoining the City from enforcing the Ordinance would create an undue and extreme hardship to the City and would not be in the public interest because it would prevent the City from ensuring the free and unimpeded flow of pedestrian traffic on City sidewalks.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 22, 2020.



Gregory Rose

Respectfully submitted,

LEWIS RICE LLC

Dated: June 23, 2020

By: /s/ John M. Hessel

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*Attorneys for Defendant City of
University City, Missouri.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by the Court's electronic filing system on this 23rd day of June, 2020, on the counsel of record listed below.

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By: /s/ John M. Hessel

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June 4, 2020

VIA E-MAIL ONLY

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**Re: Raven Wolf C. Felton Jennings, II, et al. v. City of University City, Missouri;
Case No.: 4:20-cv-00584**

Dear Ms. Hoppenjans and Mr. Rotherth:

The purpose of this letter is to make clear the position of the City of University City ("City") with respect to proceedings in this litigation, and to propose an agreement to stay the proceedings based upon the following terms and representations:

1. The playing of unamplified music on private property adjacent to a public sidewalk in the Delmar Loop does not require a conditional use or other permit from University City. This includes but is not limited to private property at 6610 Delmar (Vintage Vinyl) and 6329 Delmar (FroYo), the two addresses listed in the Complaint.

2. The obstructing public places ordinance (Municipal Code Section 215.720), only applies where there is an actual instance of obstruction of vehicles, traffic or pedestrians. In such instance, a police officer shall order the person to stop causing or committing such conditions and to move on or disperse. If the person knowingly fails or refuses to obey the order, he or she will be guilty of a violation of the ordinance, but not before then.

3. There is no "Musician Non-Stationary Policy" which forbids musicians from playing in the Delmar Loop unless they are not stationary. There has never been such a policy. The unsigned

June 4, 2020

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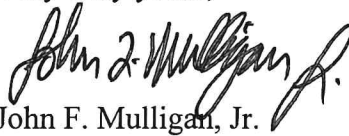
document (Petition Exhibit 1) dated July 22, 2019 and addressed to "Whom it May Concern," on letterhead from then-Director of Economic Development Libbey M. Tucker, stating there was such a policy per the City Manager, was not authorized by the City Manager and was not based on any ordinance or other law.

4. The City Manager agrees, represents and warrants that the obstructing public places ordinance will be enforced only under the precise provisions of the ordinance as stated in paragraph 2 above. The City Charter, Section 19, provides that the City Manager is the chief administrative officer of University City and has the power to enforce all laws and ordinances of the City.

5. The City Manager will recommend an amendment to the existing obstructing public places ordinance to remove the reference to "tending to" and add "knowingly" before "fails or refuses to obey such orders" and the City welcomes comments and additional edits from Plaintiffs' counsel to the current ordinance to address additional issues, if any. Of course, the ultimate decision on any amendments will require City Council approval.

Based upon these express representations, the City believes that there is no need for the parties to proceed on plaintiffs' motion for preliminary injunction. In light of the above, the City proposes the parties agree to a 90 day stay and such Motion to Stay will be filed with the Court, including the terms set forth above, with the understanding that IF the City violates any of these terms or for other good cause the Plaintiffs could seek immediate injunctive relief at any time prior to expiration of the stay. I understand that you believe that a consent order is needed. We respectfully disagree and hope that you would recognize that a stay can be entered into based upon the aforementioned terms. Please notify me immediately if you disagree so that John Hessel and Joe Martineau can discuss with you the preparation of responsive pleadings.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Mulligan, Jr.", written in a cursive style.

John F. Mulligan, Jr.
City Attorney
City of University City, Missouri

cc: John Hessel
Joe Martineau



First Amendment Clinic

June 8, 2020

VIA ELECTRONIC MAIL

John F. Mulligan, Jr.
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Suite 1280
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jfmulliganjr@aol.com

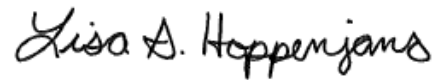
Dear John:

I am writing in response to your June 4, 2020 letter.

We appreciate University City's engagement in discussing a potential resolution of this matter, and our clients are certainly interested in a speedy resolution that will address the constitutional violations identified in their complaint. As I explained in my May 26 email, however, if University City wishes to significantly delay briefing and a hearing on the motion for preliminary injunction in order to allow the parties to discuss a permanent resolution of this matter, we believe the appropriate course is for the city to agree to a stipulated preliminary injunction to expire upon a date certain if the parties' discussions are not successful. As I further stated in our call on June 1, Mr. Jennings and Mr. Douglas are not willing to agree to a stay of proceedings absent such an order that would protect their constitutional rights.

The City was provided with ample opportunity to voluntarily address these matters before Mr. Jennings and Mr. Douglas initiated litigation, including following the January 16, 2020 meeting with you, City Manager Gregory Rose and Mayor Terry Crow in which Tony Rothert and I specifically outlined our concerns about University City's ordinance and policies and stated our intention to file a lawsuit on behalf of our clients unless the city addressed its constitutional violations. We did not hear from University City after that meeting until we initiated litigation on April 28, 2020. We are encouraged by University City's willingness to consider changes now, and we will look closely at the amendments to the obstruction ordinance proposed in your letter and provide our comments in a separate communication. Because a court order is required to adequately protect our clients' rights while these discussions proceed, however, we are unable to agree with the proposal to stay proceedings as outlined in your letter.

Best regards,

A handwritten signature in black ink that reads "Lisa S. Hoppenjans". The signature is written in a cursive, flowing style.

Lisa S. Hoppenjans

CC: Tony Rothert
John Hessel
Joe Martineau

INTRODUCED BY:

DATE:

BILL NO.

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 215.720 OF THE MUNICIPAL CODE OF THE CITY OF UNIVERSITY CITY, MISSOURI, RELATING TO OBSTRUCTING PUBLIC PLACES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:

Section 1. Section 215.720 of the Municipal Code of the City of University City, Missouri, relating to obstructing public places, is hereby amended, so that Section 215.720, as so amended, shall read as follows:

Section 215.720. Obstructing Public Places.

A. Definition. The following term shall be defined as follows:

PUBLIC PLACE -- Any place to which the general public has access and a right of resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

B. It shall be unlawful for any person to stand or remain idle either alone or in consort with others in a public place in such manner so as to knowingly and actually:

1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding the free and uninterrupted passage of vehicles, traffic or pedestrians;
2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk, or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto;
3. Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.

C. When any person causes or commits any of the conditions in this Section, a Police Officer or any Law Enforcement Officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who knowingly fails or refuses to obey such orders shall be guilty of a violation of this Section.

Section 2. This Ordinance shall take effect and be in force after its passage as provided by law.

Exhibit C

exhibitsticker.com

PASSED and ADOPTED THIS ___ DAY OF _____ 2020.

MAYOR

(Seal)

ATTEST:

CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

CITY ATTORNEY