

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

RAVEN WOLF C. FELTON	)	
JENNINGS II, and	)	
RAYMOND DOUGLAS	)	
	)	
Plaintiffs,	)	
	)	Cause No.: 4:20-cv-00584
v.	)	
	)	
CITY OF UNIVERSITY CITY,	)	
MISSOURI,	)	
	)	
Defendant.	)	

**DEFENDANT CITY OF UNIVERSITY CITY, MISSOURI'S  
ANSWER TO PLAINTIFFS' PETITION**

Defendant City of University City, Missouri, by and through the undersigned counsel of record, for its Answer to Plaintiffs' Petition, states as follows:

1. The Delmar Loop (the "Loop") in University City, Missouri has traditionally been a place where music thrived and musicians' talents were welcomed. In 2017, one travel website named it a top destination for outdoor musicians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.**

2. Music is celebrated throughout the Loop: from the "Walk of Fame," whose honorees include musicians like legendary jazz trumpeter Miles Davis and musical composer Scott Joplin, to the statute of St. Louis's own Chuck Berry, the renowned singer-songwriter and rock-and-roll pioneer.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, except that it admits that the Delmar Loop includes a “Walk of Fame” celebrating notable musicians, among others.**

3. But this history of celebrating music and musicians came to a halt when University City began enforcing an ordinance and associated policies which effectively shut down the ability of musicians to perform outdoors in the Loop.

**RESPONSE: Denied.**

4. Plaintiffs Raven Wolf C. Felton Jennings II (“Mr. Jennings”) and Raymond Douglas (“Mr. Douglas”) are musicians who have regularly performed in the Loop. Mr. Jennings plays multiple instruments and describes his style as “Spiritual Jazz.” Mr. Douglas plays the acoustic guitar in the blues or classic rock styles.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, except that it admits Plaintiffs profess to be musicians and that they have performed in the Loop.**

5. Since approximately June 2019, Plaintiffs have each been told repeatedly by Defendant or Defendant’s officers or agents that they are prohibited from playing music in the Loop pursuant to University City Ordinance § 215.720 (the “Ordinance”), which forbids “any person to stand or remain idle . . . in a public place in such manner so as to [o]bstruct any . . . public sidewalk . . . by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians . . . .”

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, except that it admits the existence of the Ordinance, which Plaintiffs quote from in part.**

6. Plaintiffs have, at various times, also been told by Defendant or Defendant's officers or agents that it is the policy of University City that musicians are only permitted if they are not stationary (the "Musician Non-Stationary Policy").

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and specifically deny the existence of a Musician Non-Stationary Policy as alleged.**

7. Plaintiffs have, at various times, also been told by Defendant or Defendant's officers or agents that the only way they can play music on private property is if the musician gets a permit or the business outside of which they wish to perform is able to get a permit from University City that provides the artist with the City's permission to play on the business's private property (the "Musician Permit Policy").

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and specifically deny the existence of a Musician Permit Policy as alleged.**

8. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them University City's Ordinance. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them the City's Musician Non-Stationary Policy, which forbids musicians from performing in the Loop unless not stationary. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them the City's Musician Permit Policy,

which forbids musicians from performing in front of businesses unless businesses have permits. Plaintiffs assert that, both individually and taken together, the Ordinance and University City's Musician Non-Stationary Policy and Musician Permit Policy unconstitutionally prohibit expression protected under the First Amendment by restricting the ability of Plaintiffs to perform on or adjacent to sidewalks in the Loop.

**RESPONSE: Defendants admit that Plaintiffs are seeking the relief identified in this paragraph, but deny that they are so entitled, and specifically deny that that Ordinance is unconstitutional on its face.**

9. Plaintiffs seek declaratory and prospective relief, nominal damages, and reasonable attorneys' fees under 42 U.S.C. § 1983.

**RESPONSE: Defendants admit that Plaintiffs are seeking the relief identified in this paragraph, but deny that they are so entitled.**

#### **Jurisdiction and Venue**

10. Plaintiffs brings these claims pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

**RESPONSE: Defendants admit that Plaintiffs pursue the claims identified in this paragraph, but deny the validity of such claims or that that Plaintiffs are entitled to the relief requested.**

11. The jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331 because Plaintiffs' action arises under the Constitution of the United States. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation of rights secured by the Constitution of the United States.

**RESPONSE: Defendants admit that jurisdiction in this Court is proper, but deny the validity of the claims brought or that Plaintiffs are entitled to the relief requested.**

12. Venue is proper in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in University City in St. Louis County, Missouri.

**RESPONSE: Defendants admit that venue in this Court is proper, but deny the validity of the claims brought or that Plaintiffs are entitled to the relief requested.**

13. Divisional venue is proper in the Eastern Division because the events leading to the claim for relief arose in St. Louis County and the claim for relief itself arose in St. Louis County. E.D. Mo. L.R. 2.07(A)(1), (B)(1).

**RESPONSE: Defendants admit that venue in this Court is proper, but deny the validity of the claims brought or that Plaintiffs are entitled to the relief requested.**

#### PARTIES

14. Plaintiff Raven Wolf C. Felton Jennings II is a citizen of Missouri who resides in the City of Rock Hill.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.**

15. Plaintiff Raymond Douglas is a citizen of Missouri who resides in the City of Greendale.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.**

16. Defendant City of University City, Missouri is a political subdivision of the State of Missouri and is participating in and directing law enforcement officers' practice of preventing musicians from performing in the Loop by telling them they are not allowed to play without a permit, by telling the musicians to move along or otherwise forcing the musicians to move along, or by otherwise indicating to the musicians that they are violating University City laws. University City has also established and is participating in and directing other employees' enforcement of the Musician Non-Stationary Policy and Musician Permit Policy.

**RESPONSE: Denied except that Defendant admits it is a political subdivision of the State of Missouri.**

17. All actions taken by Defendant, its officers, employees, or agents, described herein were taken under color of state law.

**RESPONSE: Denied.**

## FACTS

### *Plaintiff Raymond Douglas*

18. Mr. Douglas is blues guitarist who resides in Greendale, Missouri.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.**

19. He has been publicly performing music for 13 years, including approximately eight years playing unamplified acoustic guitar in the stretch of Delmar Boulevard known as the Loop. Mr. Douglas often played guitar on the sidewalk near the intersection of Delmar Boulevard and Leland Avenue, close to Fitz's restaurant. He performs using the stage name, "Raydle."

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.**

20. Since approximately June 2019, Mr. Douglas has been repeatedly disturbed by University City police officers and/or University City police officers have stopped him from playing music in the Loop. He has been repeatedly harassed by University City police officers for playing on the sidewalk in the Loop, he has been told by University City police officers that the city may be issuing permits for musicians, he has been told by a University City City Hall employee that permits are not issued for musicians, he has been told he cannot play while standing still, and he has been repeatedly stopped from playing in the Loop for these reasons.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.**

21. On or about June 28, 2019 in the late morning, Mr. Douglas was playing his acoustic guitar and singing while sitting on a low brick wall outside of Fitz's restaurant with his feet on the public sidewalk.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.**

22. The sidewalk at this location measures approximately twelve feet at its narrowest and approximately 25 feet at its widest.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.**

23. Mr. Douglas did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23.**

24. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic, or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.**

25. After Mr. Douglas had been playing music for approximately 10 to 15 minutes, a University City police car pulled up nearby and a University City police officer exited the vehicle.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.**

26. The officer told Mr. Douglas that he could not play music while stationary and that he could only play music if he was moving.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.**

27. Following the officer's direction, Mr. Douglas stopped playing music.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.**

28. The officer further told Mr. Douglas that the City Hall of University City might be giving out permits for musicians to perform.



**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.**

29. Mr. Douglas walked to City Hall and spoke to a University City employee, who told him the city does not provide permits for musicians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.**

30. Approximately one week later, Mr. Douglas returned to the same location on the sidewalk near the intersection of Delmar Boulevard and Leland Avenue, on the west side of Fitz's, to play music. Mr. Douglas began playing his acoustic guitar and singing.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.**

31. Mr. Douglas did not use speakers or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.**

32. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.**

33. Mr. Douglas had been playing for approximately 40 to 45 minutes when a University City police car driving east on Delmar Boulevard honked its horn at Mr. Douglas as it drove by.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.**

34. The police car pulled over a short distance away, where another musician was playing on the sidewalk on the east side of Fitz's, near the statue of Chuck Berry.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.**

35. Mr. Douglas walked towards where the police car had stopped. A University City police officer informed both Mr. Douglas and the other musician that they could not play music on the public sidewalk and had to move along.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.**

36. Approximately one week later, Mr. Douglas was playing his acoustic guitar in an outdoor dining space in front of the FroYo at 6329 Delmar Boulevard with the manager's permission. The same police officer who directed Mr. Douglas to cease playing on approximately June 28, 2019 pulled up in a police car.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.**

37. The sidewalk at this location measures approximately 23 feet and eight inches in width.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.**

38. The officer stated to Mr. Douglas that he thought he had previously told Mr. Douglas he was not supposed to be playing music.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.**

39. Mr. Douglas responded that FroYo's manager had a permit. The officer inquired as to whether the permit specifically stated that FroYo could allow musicians to play on the patio or simply allowed people to eat there.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.**

40. The FroYo manager retrieved the permit. The officer told Mr. Douglas and the manager that the permit did not allow Mr. Douglas to play music and he could not play music in the outdoor dining area.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.**

41. The officer further directed Mr. Douglas that he could play music outside of University City's city limits, but that he could not play music on the sidewalks in University City.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.**

42. Mr. Douglas, following the officer's direction, ceased playing music and did not return to play music in University City that day.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.**

43. After this third incident, Mr. Douglas did not return to playing in the University City portion of the Loop to avoid further incidents with University City police until late November.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.**

44. On November 24, 2019, Mr. Douglas was playing acoustic guitar and singing on the public sidewalk in front of Emporium, located at 6254 Delmar Boulevard, on the southeast corner of Delmar Boulevard and Limit Avenue. Mr. Douglas believed this location to be on the east side of the boundary between St. Louis and University City and thus within the City of St. Louis.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.**

45. Mr. Douglas did not use speakers or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.**

46. The sidewalk at this location measures approximately twelve feet in width.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.**

47. Emporium had placed a fold-out, chalkboard sign on the sidewalk and against the store's front wall. Mr. Douglas was sitting in a small chair immediately adjacent to the sign and against the front wall.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47.**

48. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.**

49. At approximately 2:45 p.m. to 3 p.m., Mr. Douglas was approached by Sergeant Lott of the University City Police.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.**

50. Sergeant Lott told Mr. Douglas he could not perform on the sidewalk if he was remaining stationary.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50.**

51. Sergeant Lott then told Mr. Douglas that he would need to move along.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.**

52. Mr. Douglas informed Sergeant Lott that he was trying to obey the law and believed that he was located in the City of St. Louis city limits, not in University City. Sergeant Lott stated that Mr. Douglas was in University City.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.**

53. Mr. Douglas asked Sergeant Lott whether he would be cited if he refused Sergeant Lott's order to move along. Sergeant Lott responded that Mr. Douglas would not be cited but would instead be arrested and taken to jail.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.**

54. Following Sergeant Lott's instruction, Mr. Douglas crossed to the north side of Delmar Boulevard and moved to a location within the city limits of the City of St. Louis.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.**

***Plaintiff Raven Wolf C. Felton Jennings II***

55. Mr. Jennings is a resident of Rock Hill.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.**

56. He is a multi-instrumentalist singer/songwriter who plays a musical style that he describes as "Spiritual Jazz" and has recorded and published two albums.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.**

57. Mr. Jennings has been performing music in the Loop for more than 25 years. Since 2009, he has played music on the paved area adjacent to the public sidewalk under the marquee of Vintage Vinyl, located at 6610 Delmar Blvd. in University City. He plays at this location with the permission of Vintage Vinyl's owner, Tom "Papa" Ray.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57, except that it admits that Vintage Vinyl has expressed its consent for Mr. Jennings to play at that location.**

58. The pedestrian passageway, including the public sidewalk and private area under the marquee, at this location measures approximately 26 feet in width.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58.**

59. Mr. Jennings, Vintage Vinyl, and University City share the belief that the area Mr. Jennings performs in is within Vintage Vinyl's property lines.

**RESPONSE: Defendant admits that Vintage Vinyl and Mr. Jennings believe the area where Mr. Jennings seeks to perform is within Vintage Vinyl's property lines, but Defendant lacks knowledge or information sufficient to form a belief as to whether the exact location where Mr. Jennings has performed or intends to performed is within Vintage Vinyl's property line.**

60. Mr. Jennings performs with saxophones, flutes, drums, and vocals. He does not use amplifiers.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60.**

61. Beginning in approximately July 2019, Mr. Jennings has been repeatedly disturbed by University City police officers and/or University City police officers have stopped him from playing music. He has been told by University City police officers that he cannot play music outside of Vintage Vinyl without a permit and that he cannot play music while standing still, and he has been repeatedly stopped from playing outside of Vintage Vinyl for these reasons. In his attempts to obtain a permit, he was provided a block party permit request by a University City employee, then later told that he cannot play music unless Vintage Vinyl has a conditional use permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61.**

62. On approximately July 5, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62.**

63. Mr. Jennings did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63.**

64. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.



**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64.**

65. Regardless, he was approached by a University City police officer who asked him whether he had a permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65.**

66. At this time, Mr. Jennings did not have a permit and did not know about any permit requirement.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66.**

67. Despite Mr. Jennings' lack of a permit, the University City police allowed him to continue playing music that day.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67.**

68. On approximately July 6, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68.**

69. Mr. Jennings did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69.**

70. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70.**

71. At approximately 6:29 p.m., Mr. Jennings was approached by a University City police who asked him whether he had a permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71.**

72. University City police told Mr. Jennings that he could not play music and he would have to leave.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72.**

73. Mr. Jennings left after University City police told him to.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73.**

74. After this incident, on approximately July 10, 2019, Mr. Jennings traveled to University City's City Hall to inquire about permit forms.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74.**

75. He spoke with Linda Schaeffer, Secretary to the City Manager, who provided him a Block Party Permit Request Form (street performance permit).

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75.**

76. As part of the Block Party Permit Request Form, University City requires applicants to acquire all the neighbors' signatures of approval (a minimum four houses in both directions/both sides of the street) and the request form must be completed and returned two weeks in advance of the event.

**RESPONSE: Defendant admits that it issues a Block Party Permit Request Form. The contents and requirements of such form speak for themselves and is the best evidence thereof. Defendant otherwise denies the allegations of this paragraph.**

77. Ms. Schaeffer informed Mr. Jennings that as part of this request he would also need a letter of recommendation from Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77.**

78. On or about July 11, 2019, Mr. Jennings submitted the completed Block Party Permit Request Form and a letter from Mr. Ray. The letter from Mr. Ray requested that Mr. Jennings "be allowed to continue performing in front of [Vintage Vinyl] at 6610 Delmar." Mr. Ray added that "as far as 'impeding foot traffic,' this [had] never been the case due to Mr. [Jennings], given [Vintage Vinyl's] physical set-up at 6610" and that "there is enough room for an entire class of elementary children visiting our neighborhood to walk past, with no congestion whatsoever."

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 787. To the extent that Mr. Jennings submitted a Block Party Permit Request Form and a letter from Mr. Ray, the contents of such documents speak for themselves and are the best evidence thereof. Defendant otherwise denies the allegations of this paragraph.**

79. On or about July 17, 2019, Mr. Ray received from Ms. Schaeffer an email that Vintage Vinyl would need to apply for a Conditional Use Permit in order for Mr. Jennings to play music outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79. To the extent that Ms. Schaeffer sent such email, the contents thereof speaks for itself and is the best evidence thereof. Defendant does not herein claim that a Conditional Use Permit would be required.**

80. On or about July 17, 2019, Clifford Cross, University City's director of planning and development, also informed Mr. Ray that Vintage Vinyl would need a Conditional Use Permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80. Defendant does not herein claim that a Conditional Use Permit would be required.**

81. University City requires a Conditional Use Permit for "those types of uses which tend to be problematic because they (1) Have a tendency to generate significant traffic volumes and/or turning movements, (2) Have operational characteristics that may have a detrimental impact on adjacent or nearby properties, or (3) Have other characteristics which may impact public health, safety, or welfare . . . ." University City Code § 400.2670.

**RESPONSE: Defendant admits that Plaintiffs have quoted portions of University City Code §400.2670.**

82. As part of the Conditional Use Permit application, University City requires applicants to submit twelve copies of an exacting memo detailing the applicants' historical information, reasoning for venue location, and the estimated impact of the conditional use such as usual traffic volumes at the location and surrounding areas and how the conditional use will affect traffic flow and volume. University City also requires twelve copies of an accurate site plan, survey, or diagram drawn to scale containing substantial site details. Additionally, the application must go through a public hearing process and requires a \$250.00 non-refundable fee.

**RESPONSE: Defendant admits that certain requirements exist in order to obtain a Conditional Use Permit, but denies that the process is "exacting" as alleged or that Plaintiff has fairly characterized the process. Moreover, Defendant does not herein claim that a Conditional Use Permit would be required.**

83. At approximately 11 a.m. on or about September 13, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83.**

84. Mr. Jennings did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84.**

85. Mr. Jennings was not obstructing any public street, public highway, public sidewalk, or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85.**

86. At approximately 6:33 p.m., Mr. Jennings was approached by University City police who asked him if he had a permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86.**

87. University City police told Mr. Jennings that until Vintage Vinyl had proper approval Mr. Jennings could not play music and would have to leave.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87.**

88. Mr. Jennings left after University City police told him to.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 88.**

89. Between approximately September 13 and approximately November 21, Mr. Jennings did not play music in the Loop to avoid trouble with the police.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89.**

90. During or about the week of November 11, 2019, Mr. Jennings returned to University City's City Hall to request a permit application.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90.**

91. He spoke with Mr. Cross, who provided him with a conditional use permit application.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91.**

92. Mr. Cross informed Mr. Jennings that the application requires a \$250.00 fee, the approval committee meets once a month, and the application must be submitted 15 days in advance.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92.**

93. On November 29, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93.**

94. Mr. Jennings did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94.**

95. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 95.**

96. Nevertheless, the University City police ordered Mr. Jennings to stop playing.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 96.**

97. In addition, University City informed Vintage Vinyl that the store, and not Mr. Jennings, needed to obtain a conditional use permit before Mr. Jennings could resume playing on the store's property.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97.**

98. On November 30, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 98.**

99. Mr. Jennings did not use a speaker or any amplification.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 99.**



100. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100.**

101. Again, University City police ordered Mr. Jennings to stop playing.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 101.**

*The Ordinance*

102. University City seeks to regulate the obstruction of public places through University City's Ordinance § 215.720.

**RESPONSE: Admitted**

103. Section 215.720 **Obstructing Public Places** states:

- 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:
  1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede 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 fails or refuses to obey such orders shall be guilty of a violation of this Section.

**RESPONSE: Admitted.**

104. It has been the custom, policy, or practice of Defendant and Defendant's officers and agents since at least June 2019 to enforce § 215.720 against musicians who are standing still in the Loop, thereby effectively preventing these musicians from performing in the Loop.

**RESPONSE: Denied.**

105. It is University City's stated policy that: "Musicians are only permitted who are not stationary." Exhibit 1, Letter from Assistant to the City Manager of University City dated July 22, 2019.

**RESPONSE: Denied.**

106. It has been the custom, policy, or practice of Defendant and Defendant's officers and agents since at least June 2019 to enforce this Musician Non-Stationary policy against musicians who are standing still in the Loop, thereby effectively preventing these musicians from performing in the Loop.

**RESPONSE: Denied.**

107. It is University City's stated policy that: "If the business owner engages and supports a performer on their own private property, not in the right of way, they may contact the City Manager's office for approval." See Exhibit 1.

**RESPONSE: Denied.**

108. University City has, at various times, stated that the required permit for a single musician to play music adjacent to the public sidewalk is a Block Party Permit or a Conditional Use Permit.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 108.**

109. It has been the custom, policy, and practice of University City and its officers and agents since at least June 2019 to require musicians to have a business obtain a permit in order for a musician to play on that business's private property adjacent to the public sidewalk.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 109.**

## CAUSES OF ACTION

### COUNT I – University City Ordinance § 215.720

*Violation of the First and Fourteenth Amendments to the U.S. Constitution  
Claim for Nominal Damages and Declaratory and Injunctive Relief*

110. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

**RESPONSE: Defendant repeats and incorporates herein by reference its responses to Paragraphs 1 to 109 as and for their response to Paragraph 110.**

111. Plaintiffs engaged in constitutionally protected expression when they played music on and adjacent to the sidewalk, a traditional public forum.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 111, except that Defendant admits that a public sidewalk is a traditional public forum subject to content neutral reasonable time, manner and place restrictions of constitutionally protected speech.**

112. Plaintiffs have been chilled from engaging in constitutionally protected speech because they reasonably fear citation, arrest, and/or prosecution.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 112.**

113. Fear of citation, arrest, and/or prosecution under the Ordinance would chill a person of ordinary firmness from continuing to engage in a constitutionally protected activity.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 113 as alleged in its speculative form.**

114. The Ordinance directly infringes upon Plaintiffs' Free Speech rights under the First Amendment to the Constitution, incorporated through the Fourteenth Amendment, because it burdens substantially more speech than is necessary for Defendant to achieve the City's legitimate interest in ensuring the safety and traversability of sidewalks.

**RESPONSE: Denied.**

115. The Ordinance is neither narrowly tailored nor the least restrictive means to achieve any sufficiently strong government interest, and it does not leave open ample alternative channels for Plaintiffs to communicate.

**RESPONSE: Denied.**

116. The Ordinance burdens more speech than is necessary because Plaintiffs do not actually obstruct the sidewalks.

**RESPONSE: Denied.**

117. Unless struck down by this Court, the Ordinance will continue restraining individuals who are exercising or wish to exercise their First Amendment rights, thereby preventing musicians, including Plaintiffs, from playing music in the Loop.

**RESPONSE: Denied.**

**COUNT II – University City Ordinance § 215.720**  
*Violation of the Due Process Clause of the Fourteenth Amendment*  
*Claim for Nominal Damages and Declaratory and Injunctive Relief*

118. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

**RESPONSE: Defendant repeats and incorporates herein by reference its responses to Paragraphs 1 to 117 as and for their response to Paragraph 118.**

119. If a statute or ordinance fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits, such law is void-for-vagueness in violation of the Due Process Clause.

**RESPONSE: Paragraph 119 is a conclusion of law to which no response is required. To the extent any response is or may be required Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119 as alleged in its speculative form. Defendant specifically denies that the Ordinance is void for vagueness.**

120. The Due Process Clause requires that the legislature establish minimal guidelines to govern law enforcement in a manner that does not encourage arbitrary and discriminatory enforcement.

**RESPONSE: Paragraph 120 is a conclusion of law to which no response is required. To the extent any response is or may be required Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119 as alleged in its speculative form. Defendant specifically denies that the Ordinance encourages arbitrary or discriminatory enforcement.**

121. The Ordinance violates the Due Process Clause because it does not include any guidelines to govern law enforcement.

**RESPONSE: Denied.**

122. The Ordinance does not include a *mens rea* requirement.

**RESPONSE: Denied.**

123. The Ordinance contains the phrase “tending to hinder or impede.” This language fails to provide notice to individuals as to what conduct is prohibited by the Ordinance because it is not clear how someone might “tend[] to hinder or impede.”

**RESPONSE: Denied, except that Defendant admits the Ordinance contains the words “tending to hinder or impede.”**

124. The Ordinance fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited and authorizes and encourages arbitrary and discriminatory enforcement.

**RESPONSE: Denied.**

**COUNT III – Defendant’s Musician Non-Stationary Policy**  
*Violation of the First and Fourteenth Amendments to the U.S. Constitution*  
*Claim for Nominal Damages and Declaratory and Injunctive Relief*

125. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

**RESPONSE: Defendant repeats and incorporates herein by reference its responses to Paragraphs 1 to 124 as and for their response to Paragraph 125.**

126. Defendant’s Musician Non-Stationary Policy, which forbids musicians from playing in the Loop unless they are not stationary, directly infringes upon and chills reasonable persons from engaging in expression protected by the First Amendment.

**RESPONSE: Denied, because there is not such policy.**

127. Defendant and Defendant’s officers and agents have deprived, and continue to deprive, Plaintiffs of their rights under the First Amendment to the U.S. Constitution, incorporated through the Fourteenth Amendment.

**RESPONSE: Denied.**

128. Defendant and Defendant’s officers’ and agents’ orders to individuals who are violating no valid law and who are not obstructing or encumbering the passage of persons or vehicles upon, through, or into any street, street corner, business entrance, sidewalk, or other public place to refrain from playing music while stationary on and adjacent to sidewalks and threatening arrest for non-compliance is the cause-in-fact of the constitutional violation.

**RESPONSE: Denied.**

129. Defendant’s policy is neither narrowly tailored nor the least restrictive means to achieve any sufficiently strong government interest, and it does not leave open ample alternative channels for Plaintiffs to communicate.

**RESPONSE: Denied.**

130. Unless restrained by this Court, Defendant will continue its practice of ordering individuals who are violating no valid law to refrain from playing music while stationary in the Loop and threatening arrest for non-compliance.

**RESPONSE: Denied.**

**COUNT IV – Defendant’s Musician Non-Stationary Policy**  
*Violation of the Due Process Clause of the Fourteenth Amendment*  
*Claim for Nominal Damages and Declaratory and Injunctive Relief*

131. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

**RESPONSE: Defendant repeats and incorporates herein by reference its responses to Paragraphs 1 to 130 as and for their response to Paragraph 131.**

132. Plaintiffs are aware of no valid law that permits Defendant or Defendant’s officers or agents to order Plaintiffs not to play music while standing still in the Loop when they are not obstructing or encumbering the passage of persons or vehicles upon, through, or into any street, street corner, business entrance, sidewalk, or other public place.

**RESPONSE: Admitted.**

133. The practice described herein fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited and authorizes and encourages arbitrary and discriminatory enforcement.

**RESPONSE: Deny that there is any policy or practice as alleged.**

134. Defendant’s policy has been enforced in an arbitrary manner, regardless of the actual impact that a musician has on pedestrian or vehicular traffic.



**RESPONSE: Denied.**

**COUNT V – Defendant’s Musician Permit Policy is an Unconstitutional Prior Restraint**  
*Violation of the First and Fourteenth Amendments to the U.S. Constitution*  
*Claim for Nominal Damages and Declaratory and Injunctive Relief*

135. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

**RESPONSE: Defendant repeats and incorporates herein by reference its responses to Paragraphs 1 to 134 as and for their response to Paragraph 135.**

136. Plaintiffs are engaged in expression that is protected by the First Amendment when they play music on or adjacent to public sidewalks.

**RESPONSE: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 136, except that Defendant admits that a public sidewalk is a traditional public forum subject to content neutral reasonable time, manner and place restrictions of constitutionally protected speech.**

137. Defendant’s policy prohibiting musicians who have the property owner’s permission from playing unamplified music on private property adjacent to public sidewalks without the City’s approval violates the First and Fourteenth Amendments because it is an unconstitutional prior restraint on constitutionally protected speech.

**RESPONSE: Defendant denies the existence of any such policy or practice and otherwise denies the allegations of this paragraph.**

138. Defendant’s policy places unbridled discretion in the hands of University City to determine whether Plaintiffs’ constitutionally protected speech, expressed through music, will be deemed acceptable by the City to merit a permit.

**RESPONSE: Defendant denies the existence of any such policy or practice and otherwise denies the allegations of this paragraph.**

139. The lengthy, costly, and demanding permitting process has chilled Plaintiffs' free expression, preventing Plaintiffs from performing music in the Loop and thereby exercising their constitutionally protected First Amendment rights.

**RESPONSE: Defendant denies the existence of any such policy or practice and otherwise denies the allegations of this paragraph.**

140. Even if Plaintiffs were given a permit each time they or the property owner applied for one, their speech would be unconstitutionally restrained in the period between when they wished to play music and when they or the business obtained a permit.

**RESPONSE: Defendant denies the existence of any such policy or practice and otherwise denies the allegations of this paragraph.**

141. Defendant's permitting policy also violates the Constitution because it fails to place limits on the time within which the City's decision maker must issue its decision about the permit and it provides no standards or guidance by which decision makers evaluate whether a permit to play music will or will not be approved.

**RESPONSE: Defendant denies the existence of any such policy or practice and otherwise denies the allegations of this paragraph.**

#### **AFFIRMATIVE AND ADDITIONAL DEFENSES**

As and for its affirmative and additional defenses to all claims of Plaintiffs' Petition, and without assuming the burden of proof where such burden is otherwise on Plaintiffs pursuant to

applicable law, and without acknowledging that Plaintiffs have any valid or viable claim, Defendant states:

1. Any allegation of fact or law not specifically admitted herein is denied.
2. The Ordinance on its face is a valid exercise of the City's police power, and it is not overbroad, or vague in its requirements.
3. The Ordinance on its face does not does not substantially burden expression and leaves open ample alternatives for expression.
4. Defendant reserves the right to amend or supplement its Answer, including its Affirmative and Additional Defenses as appropriate or as further facts may develop or be discovered. Given the current Covid-19 crisis (including recent infections of twelve City employees) and recent Black Lives Matter protests, Counsel for Defendant has not been able to ascertain and interview the unnamed law enforcement personnel that allegedly confronted Plaintiffs asking them to cease performing to determine whether and to what extent Plaintiffs may have been creating undue congestion or impacting pedestrian movement.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant request Plaintiffs' Complaint be dismissed with prejudice and that Defendant be awarded any other further relief, including attorneys' fees and costs as this Court deems just and proper.

Respectfully submitted,

**LEWIS RICE LLC**

Dated: July 7, 2020

By: /s/ Joseph E. Martineau  
John M. Hessel, #26408MO  
Joseph E. Martineau, #32397MO  
600 Washington Avenue, Ste. 2500  
St. Louis, Missouri 63101  
Tel: (314) 444-7729  
Fax: (314) 612-7729  
jhessel@lewisrice.com  
jmartineau@lewisrice.com

*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 7<sup>th</sup> day of July, 2020, on the counsel of record listed below.

Lisa S. Hoppenjans  
**FIRST AMENDMENT CLINIC**  
**WASHINGTON UNIVERSITY IN ST. LOUIS**  
**SCHOOL OF LAW**  
Campus Box 1120  
One Brookings Drive  
St. Louis, Missouri 63130  
E-Mail: [lhoppenjans@wustl.edu](mailto:lhoppenjans@wustl.edu)

*Attorney for Plaintiffs*

Gillian R. Wilcox, #61278(MO)  
**ACLU OF MISSOURI FOUNDATION**  
406 West 34th Street, Ste. 420  
Kansas City, Missouri 64111  
Phone: (314) 652-3114  
E-Mail: [gwilcox@aclu-mo.org](mailto:gwilcox@aclu-mo.org)

*Attorney for Plaintiffs*

Anthony E. Rotherth  
**ACLU OF MISSOURI FOUNDATION**  
906 Olive Street  
Suite 1130  
St. Louis, Missouri 63101  
E-Mail: [arotherth@aclu-mo.org](mailto:arotherth@aclu-mo.org)

*Attorney for Plaintiffs*

By: /s/ Joseph E. Martineau