

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OHIO, WESTERN DIVISION**

MIDWEST RETAILERS
ASSOCIATION, LTD.
520 Madison Avenue, Suite 820
Toledo, Ohio 43604

Plaintiffs,

-vs-

DEMAND

CITY OF TOLEDO
One Government Center
640 Jackson, Suite 2200
Toledo, OH 43604

Defendant.

Case No. _____

Judge _____

COMPLAINT AND JURY

Scott A. Ciolek (0082779)
CIOLEK & WICKLUND
520 Madison Avenue, Suite 820
Toledo, OH 43604
(419) 931-6431
(866) 890-0419

ATTORNEY FOR PLAINTIFF

Preliminary Statement

1. This action seeks declaratory and equitable relief, a preliminary and permanent injunction, and attorney's fees from Defendant, due to Defendant's enactment of an ordinance violative of the United States Constitution and the laws of the State of Ohio.
2. This action is based upon 42 U.S.C. § 1983, the Fourth, Fifth, Thirteenth and Fourteenth Amendments of the United States Constitution, and Ohio law.
3. This court has jurisdiction to hear claims for equitable relief pursuant to 28 U.S.C. § 1343(a)(3), jurisdiction to hear § 1983 claims pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction of all state law claims pursuant to 28 U.S.C. § 1367.
4. Venue lies in this forum because Plaintiff is an association of convenience store owners, located in Lucas County, Ohio, and its members will be subject to the challenged ordinance. The defendant is the City of Toledo, a municipality Located within Lucas County, Ohio. All events giving rise to this claim occurred in Lucas County, Ohio.

The Parties

5. Plaintiffs are residents of Toledo, Lucas County, Ohio, and citizens of the United States.
6. Defendant City of Toledo is an Ohio Municipal Corporation located in Lucas County, Ohio, with its offices located at One Government Center, 640 Jackson, Suite 2200.

General Allegations

7. On December 11, 2007, Toledo City Council enacted Ordinance No. 797-07.

8. Ordinance No. 797-07 requires all “convenience stores” in the City of Toledo to obtain an annual license.
9. As defined in Toledo Municipal Code § 1116.0217, a “convenience store” is a retail establishment of less than 5,000 square feet of floor space in which sales of food and beverages for home consumption are conducted.
10. In a letter dated March 17, 2008, Toledo City Council notified convenience store owners that pursuant to Ordinance No. 797-07, “the initial application [for a license] will need to be received by the City of Toledo Division of Treasury with a \$100 application fee by May 1, 2008.”
11. Pursuant to § 721.04(e) of Ordinance No. 797-07, applicants for a convenience store license must, at their own expense, provide a criminal background check. This section also provides that “[w]ithin five (5) years of the date of the application an applicant cannot have been convicted of any crime related to the occupation for which the license is sought.”
12. Pursuant to § 721.04(e), “If a violation is found there must be an additional review and approval by the Toledo Police Department of said background check.”
13. Pursuant to § 721.11 of Ordinance No. 797-07, “A license generally should not be revoked until the license has been given a reasonable opportunity to cure the problems identified at the convenience store...but once a reasonable opportunity to cure the problems has been afforded to the licensee without substantial success, a license should be revoked even though the license holder has taken all reasonable measures to achieve compliance.”

14. Pursuant to § 721.13 of Ordinance No. 797-07, convenience store owners must, at their own expense, install security cameras on their premises.
15. Pursuant to § 721.13(a) of Ordinance No. 797-07, security cameras must be in operation “24 hours per day without interruption.”
16. Pursuant to § 721.13(a) of Ordinance No. 797-07, all recording devices required by Ordinance No. 797-07 “shall be subject to periodic inspections by the Business License Division, the Toledo Police Department or any authorized City official.”
17. Pursuant to § 721.13(b)(5) of Ordinance No. 797-07, “Recorded images must be capable of being retrieved by the Toledo Police Crime Lab. Upon the request of an authorized City official, the media form shall be provided to the official no later than eight (8) hours after the request.”
18. Pursuant to § 721.15(1) of Ordinance No. 797-07, “It shall be the responsibility of the licensee to take appropriate action to prevent” enumerated classes of criminal conduct “by any persons on the business premises, including parking areas.”
19. The classes of criminal conduct enumerated in § 721.13(a), which Ordinance No. 797-07 makes convenience store licensees “responsible” for preventing, include gambling, prostitution, sale or possession of controlled substances, “indecent exposure and the exhibition and distribution of obscene materials or performances,” disorderly conduct, “unlawful possession, transportation, sale, or use of a weapon,” loitering, “permitting a public nuisance,” and “obstructing legal process.”
20. Pursuant to § 721.15(3) of Ordinance No. 797-07, “The licensee is directly and vicariously responsible for any violations on the premises, including parking

- areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the licensee.”
21. Pursuant to § 721.15(4) of Ordinance No. 797-07, “It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas.”
22. Pursuant to § 721.15(5) of Ordinance No. 797-07, convenience store owners are “required to pay all delinquent court judgments for violations of the Toledo Municipal Code including fines and costs.”
23. Pursuant to § 721.15(6) of Ordinance No. 797-07, “Areas of the premises that are not regularly monitored by employees or security shall not be accessible to patrons, customers, or the public.”
24. Penalties for violations of Ordinance No. 797-07 include fines, license revocation or non-renewal, and actions to “compel compliance.”

COUNT ONE:

Violation of Civil Rights under 42 U.S.C. § 1983

25. Plaintiff incorporates, as if fully re-alleged, paragraphs 1-24 of this Complaint.
26. By enacting Ordinance No. 797-07, Defendant City of Toledo has created an unconstitutional condition by granting licenses to operate a convenience store on condition that licensees surrender their Fourth Amendment right to be free of unreasonable searches and seizures.
27. By enacting Ordinance No. 797-07, Defendant City of Toledo has created an unconstitutional condition by granting licenses to operate a convenience store on

condition that licensees surrender their Due Process rights guaranteed by the Fifth and Fourteenth Amendments.

28. By enacting Ordinance No. 797-07, Defendant City of Toledo has created an unconstitutional condition by granting licenses to operate a convenience store on condition that licensees accept a significant infringement of their Fifth Amendment right to just compensation for regulatory takings.

29. Ordinance No. 797-07 creates additional penalties for prior criminal offenses of licensees, thus violating the Ex Post Facto Clause of the United States Constitution.

30. Ordinance No. 797-07 transfers numerous law enforcement responsibilities onto licensees, thus creating a condition of involuntary servitude in violation of the Thirteenth Amendment of the United States Constitution.

COUNT TWO:

Vagueness

31. Plaintiff incorporates, as if fully re-alleged, paragraphs 1-24 of this Complaint.

32. The provisions of Ordinance No. 797-07 are insufficiently definite, and thus fail to give a person of ordinary intelligence fair notice of what conduct is actually forbidden by the ordinance, creating the possibility of arbitrary and erratic enforcement. Consequently, Ordinance No. 797-07 is unconstitutionally vague.

COUNT THREE:

Conflict with State Law

33. Plaintiff incorporates, as if fully re-alleged, paragraphs 1-24 of this Complaint.

34. Provisions of Ordinance No. 797-07 impermissibly conflict with general state laws, including, but not limited to, Ohio Revised Code §§ 4303.02 – 4303.23.

COUNT FOUR:

Declaratory Judgment

35. Plaintiff incorporates, as if fully re-alleged, paragraphs 1-34 of this Complaint.

36. Plaintiff seeks a declaratory judgment against Defendant because Ordinance No. 797-07 is invalid under the United States Constitution, and the laws of the State of Ohio.

COUNT FIVE:

Preliminary and Permanent Injunction

37. Plaintiff incorporates, as if fully re-alleged, paragraphs 1-36 of this Complaint.

38. Plaintiff seeks a preliminary and permanent injunction against Defendant because Ordinance No. 797-07 is invalid under the United States Constitution, and the laws of the State of Ohio.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, declaring that the above ordinance violates the United States Constitution and the laws of the State of Ohio, and ordering such equitable relief, including awarding a preliminary and permanent injunction, reasonable attorney's fees and costs, and such other relief as the court may deem appropriate.

JURY DEMAND

Plaintiff demands a jury for all issues properly tried to a jury.

Respectfully submitted,

Scott A. Ciolek
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing complaint has been served on the individual listed below by delivery, this 2nd day of April, 2008:

John Madigan, Law Director
One Government Center
640 Jackson
Toledo, Ohio 43604
Counsel for the Defendant

Scott A. Ciolek
Attorney for Plaintiff