

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

MIDWEST RETAILERS /
ASSOCIATION, LTD. / Case No. 3:08-CV-851
520 Madison Avenue, Suite 820 /
Toledo, OH 43604 /

Kalid Abuali / Judge James G. Carr
3241 Dorr Street /
Toledo OH 43607 /

Kamal Abu Layla / **PLAINTIFF'S FIRST**
3550 Secor Road / **AMENDED COMPLAINT**
Toledo, OH 43606 /

Mamoun Awwad /
6234 Suffolk Court /
Maumee, OH 43537 /

Emad Dahboor /
885 King Road /
Monroe, MI 48161 /

Ayad Itawi /
549 E. Manhattan /
Toledo, OH 43608 /

Athir Jajou /
1130 W. Bancroft /
Toledo, OH 43606 /

Dergham Ridi /
3024 Alex Court /
Maumee, OH 43537 /

2. This action is based upon 42 U.S.C. § 1983, Article I and Article IV of the United States Constitution, 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 Plaintiffs are 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 Municipal Ordinance 797-07.
8. Ordinance 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 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 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 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 797-07, convenience store owners must, at their own expense, install security cameras on their premises.

15. Pursuant to § 721.13(a) of Ordinance 797-07, security cameras must be in operation “24 hours per day without interruption.”
16. Pursuant to § 721.13(a) of Ordinance 797-07, all recording devices required by Ordinance 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 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 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 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 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 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 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 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 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. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.
26. By enacting Ordinance 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 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.

28. Ordinance 797-07 creates additional penalties for prior criminal offenses of licensees, thus violating the Ex Post Facto Clause of the United States Constitution.
29. Ordinance 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

30. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.
31. The provisions of Ordinance 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 797-07 is unconstitutionally vague.

COUNT THREE:

Due Process

32. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.
33. Ordinance 797-07 grants City Officials limitless and arbitrary power to define and enforce the provisions of Ordinance 797-07. Thus, Defendant City of Toledo has deprived Plaintiffs of their Due Process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

COUNT FOUR:

Equal Protection

34. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.

35. Ordinance 797-07 violates the Equal Protection Clause by imposing burdens based on an impermissible economic classification, because Ordinance 797-07 defines the class of affected parties based on criteria wholly irrelevant to the achievement of Defendant's stated objectives.
36. Ordinance 797-07 violates the Equal Protection Clause by singling out Michigan residents for additional regulatory burdens.
37. Ordinance 797-07 also violates the Equal Protection Clause by targeting a protected racial class for unlawful discrimination.

COUNT FIVE:

Privileges and Immunities

38. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.
39. As a prerequisite for obtaining a license, Ordinance 797-07 requires applicants to undergo a criminal background check.
40. Section 721.04(e) of Ordinance 797-07 requires Michigan citizens to undergo additional criminal background checks.
41. By singling out Michigan citizens for additional regulatory burdens, Ordinance 797-07 denies Michigan citizens the "privileges and immunities" of citizens of other states, thereby violating Article IV, section 2 of the United States Constitution.

COUNT SIX:

Dormant Commerce Clause

42. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.

43. Ordinance 797-07 unduly burdens interstate commerce, thereby violating Article I, Section 8 of the United States Constitution.

COUNT SEVEN:

Conflict with State Law

44. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-24 of this Complaint.

45. Provisions of Ordinance 797-07 impermissibly conflict with general state laws, including, but not limited to, Ohio Revised Code §§ 4303.02 – 4303.23.

COUNT EIGHT:

Declaratory Judgment

46. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-34 of this Complaint.

47. Plaintiffs seek a declaratory judgment against Defendant because Ordinance 797-07 is invalid under the United States Constitution, and the laws of the State of Ohio.

COUNT NINE:

Preliminary and Permanent Injunction

48. Plaintiffs incorporate, as if fully re-alleged, paragraphs 1-36 of this Complaint.

49. Plaintiffs seek a preliminary and permanent injunction against Defendant because Ordinance 797-07 is invalid under the United States Constitution, and the laws of the State of Ohio.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray 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

Plaintiffs demand a jury for all issues properly tried to a jury.

Respectfully submitted,

/s/ Scott A. Ciolek

Scott A. Ciolek
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on Thursday, June 26, 2008, a copy of the foregoing AMENDED COMPLAINT was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

John Madigan, Law Director
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Toledo, Ohio 43604
Counsel for the Defendant

/s/ Scott A. Ciolek

Scott A. Ciolek
Attorney for Plaintiffs