

INTRODUCED BY: Councilmember Stay Clay

DATE: May 11, 2020

BILL NO. 9404

ORDINANCE NO. 7125

AN ORDINANCE AMENDING CHAPTER 215, ARTICLE V OF THE UNIVERSITY CITY MUNICIPAL CODE, RELATING TO OFFENSES CONCERNING PUBLIC PEACE, BY ENACTING THEREIN A NEW SECTION TO BE KNOWN AS "SECTION 215.685. PICKETING BEFORE OR ABOUT RESIDENCE OR DWELLING OF ANY INDIVIDUAL."

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

Section 1. Chapter 215, Article V of the University City Municipal Code, relating to the offenses concerning the public peace, is hereby amended by enacting therein a new section to be known as "Section 215.685. Picketing Before or About Residence or Dwelling of Any Individual," which shall read as follows:


Section 215.685. Picketing Before or About Residence of Dwelling of Any Individual.

It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual, where such residence or dwelling is located in any area designated residentially zoned in the Zoning Code of the City.

Section 2. Any person violating this ordinance shall, upon conviction thereof, be subject to penalty provided in Section 100.190 of the University City Municipal Code.

Section 3. This ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED and ADOPTED this 26th day of May 2020.


MAYOR

ATTEST:


CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:


CITY ATTORNEY



Council Agenda Item Cover

MEETING DATE: May 26, 2020

AGENDA ITEM TITLE: An Ordinance Amending Chapter 215, Article V, Relating to Offenses Concerning the Public Peace, by Enacting Therein a New Section to be Known as Section 215.685. Picketing Before or About Residence or Dwelling of Any Individual.

AGENDA SECTION: Unfinished Business Bills

CAN THIS ITEM BE RESCHEDULED?: Yes

BACKGROUND:

This Bill in effect revives Ordinance No. 5609, which was passed on July 6, 1987 and repealed on December 9, 2013 when the former Municipal Code was recodified by Ordinance No. 6948. Because Ordinance No. 5609 (former Code Section 9.16.100) was not included in the new Municipal Code, it was repealed pursuant to Section 3 of Ordinance No. 6948, which generally repealed all ordinances of a general and permanent nature not included in the new Municipal Code. It is not apparent why Ordinance No. 5609 was not included in the new Municipal Code.

The City's first ordinance on the subject was passed on December 4, 1978 and read: "It shall be unlawful for any person to engage in picketing before or about the residence or dwelling of an individual." Ordinance No. 5126. It was amended by Ordinance No. 5609, so as to add, "where such residence or dwelling is located in any area designated residentially zoned in the Zoning Code of the City."

The United States Supreme Court, in *Frisby v. Schultz*, 487 U.S. 474 (1988), upheld an ordinance containing language identical to that in Ordinance No. 5126, stating:

'The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.' Our prior decisions have often remarked on the unique nature of the home, 'the last citadel of the tired, the weary, and the sick,' and have recognized that '[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value.' One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, the home is different. 'That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech ... does not mean we must be captives everywhere.' Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom. This principle is reflected even in prior decisions in which we have invalidated complete bans on expressive activity, including bans operating in residential areas. In all such cases, we have been careful to acknowledge that unwilling listeners may be protected when within their own homes. It remains to be considered, however, whether the Brookfield ordinance is narrowly tailored to protect only unwilling recipients of the communications. A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy. A complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil...

The type of focused picketing prohibited by the Brookfield ordinance is fundamentally different from more generally directed means of communication that may not be completely banned in residential areas. In such cases 'the flow of information [is not] into ... household[s], but to the public.' Here, in contrast, the picketing is narrowly directed at the household, not the public. The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way. Moreover, even if some such picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy. The devastating effect of targeted picketing on the quiet enjoyment of the home is beyond doubt: 'To those inside ... the home becomes something less than a home when and while the picketing ... continue[s].... [The] tensions and pressures may be psychological, not physical, but they are not, for that reason, less inimical to family privacy and truly domestic tranquility.' In this case, for example, appellees subjected the doctor and his family to the presence of a relatively large group of protesters on their doorstep in an attempt to force the doctor to cease performing abortions. But the actual size of the group is irrelevant; even a solitary picket can invade residential privacy. The offensive and disturbing nature of the form of the communication banned by the Brookfield ordinance thus can scarcely be questioned. The First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech. The target of the focused picketing banned by the Brookfield ordinance is just such a captive.' The resident is figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing is left with no ready means of avoiding the unwanted speech. Thus, the 'evil' of targeted residential picketing, 'the very presence of an unwelcome visitor at the home,' is 'created by the medium of expression itself.' Accordingly, the Brookfield ordinance's complete ban of that particular medium of expression is narrowly tailored. Id. at 484-488 (citations omitted).

University City residents have recently been subject to stay-at home orders issued to protect the public from the coronavirus (COVID-19) pandemic. National, State, County and City emergency declarations also have been issued. This Bill will protect residents from targeted residential picketing during and after the pandemic.

RECOMMENDATION:

City Manager recommends approval.

ATTACHMENT:

Bill 9404