

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

KOOL PETROLEUMS, INC.
3381 N 35th St.
Milwaukee, WI 53216,

and

KULWANT DHILLON
3754 W. Jerelin Dr.
Franklin, WI 53132,

Plaintiffs,

Case No. 23-cv-1484

v.
CITY OF MILWAUKEE
200 East Wells Street
Milwaukee, WI 53202

and

MILWAUKEE POLICE DEPARTMENT
200 East Wells Street
Milwaukee, WI 53202

Defendants.

COMPLAINT

NOW COMES Plaintiffs, Kool Petroleums, Inc. and Kulwant Dhillon (the “Plaintiffs”) through their attorneys, OVB Law & Consulting, S.C., and as for their complaints against the City of Milwaukee, hereby alleges as follows:

THE PARTIES

1. Plaintiff Kool Petroleums, Inc. is, and at all times relevant was, a Wisconsin corporation with its principal place of business at 3381 N 35th St., Milwaukee, WI 53216.
2. Plaintiff Kulwant Dhillon is the owner and operator of Kool Petroleums, Inc., and

resides at 3754 W. Jerelin Dr., Franklin, WI 53132.

3. Defendant City of Milwaukee (the “City”) is, and at all times mentioned was, a municipal corporation organized and existing under the Constitution and laws of Wisconsin, maintaining a principal office at 200 East Wells Street, Milwaukee, WI 53202.

4. Defendant Milwaukee Police Department is the City’s law enforcement department. At all times relevant, the police department was tasked by the City with issuing violations of the challenged ordinance.

JURISDICTION AND VENUE

5. This action arises under the laws and Constitution of the United States, specifically, the First Amendment of the U.S. Constitution, and involves violations of federal law, actionable pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 as this is a civil action arising under the Constitution of the United States and under 42 U.S.C. § 1983.

7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) as all involved parties are domiciled or hold principal places of business within the State of Wisconsin and within this District.

FACTUAL BACKGROUND

8. Plaintiffs are engaged in the business of operating a gas station within the City of Milwaukee and have been in operation for decades.

9. Defendant enacted an ordinance entitled Section 80-10 of the Milwaukee City Ordinances (MCO) (hereinafter referred to as the “Chronic Nuisance Ordinance” or the “Ordinance”), providing as follows: “Whenever the chief of police determines that the police department has responded to 3 or more nuisance activities that have occurred at a premises during a 30-day period or that the police department has responded to 2 or more nuisances of the types

defined in sub. 2-c-1-e, i to L that have occurred at a premises within one year, the chief of police may notify the premises owner or other responsible party in writing that the premises is a nuisance.”

10. A copy of Chapter 80 of the Milwaukee City Ordinance is attached as Exhibit A and incorporated by reference (collectively referred herein as the “Nuisance Ordinances”).

11. The Ordinance grants the City’s police department with unfettered discretion on whether or not to accept an abatement plan; however, there are no cognizable or objective standards for what makes an abatement plan acceptable to the police department.

12. Property owners and occupiers whose properties are designated a nuisance under the Ordinance are then subject to exorbitant bills and charges from the City for law enforcement services.

13. The Ordinance makes no distinction for calls for services made by employees or property owners seeking assistance or when they are the victims of crimes, or when the underlying incidents are not of the property owner’s fault, or for calls that do not result in any prosecution or arrests.

14. For properties that involve the operation of businesses licensed by the City, the mere designation as a nuisance property could subject the business owners to adverse actions and penalties on their licenses, including suspensions and revocations.

15. On May 3, 2023, the Milwaukee Police Department sent Plaintiffs a Notice of Nuisance Premises stating that their property (a licensed gas station and convenience store) located at 3381 N 35th Street, Milwaukee, Wisconsin, was deemed a nuisance under the Ordinance (the “Notice”).

16. According to the Notice, the Milwaukee Police Department received three calls from Plaintiffs on August 10, 2022, October 23, 2022, and April 29, 2023, for shootings on the premises (“Calls for Services”).

17. Based on the Calls for Services, the Plaintiffs' property was put in nuisance status under MCO 80-10-2-C-1-K.

18. For all or some of the Calls for Services in question, Plaintiff's employee and or agents made the 911 calls to the police for service.

19. The Chronic Nuisance Ordinance is constitutionally overbroad and facially invalid under the First, Fifth, and Fourteenth Amendments of the United States Constitution and under section 4 of the Wisconsin State Constitution. The ordinance has the effect of deterring Plaintiffs, and other similarly situated parties affected by the law, from seeking police assistance by placing them at risk of losing their businesses and paying substantial fines, facially prohibiting a real and substantial amount of expression afforded by the First Amendment and sec. 4 of the Wisconsin State Constitution.

20. The Ordinance establishes multiple methods by which a property may be identified as a public nuisance based on a platter of criminal and non-criminal events.

21. Nothing in the Ordinance precludes the assessment of fines or adverse designation against a property for police involvement resulting from an owner or tenant's exercise of the right to petition the government for redress by summoning police. Critically, there is no distinction between crimes committed by property owners or occupants and crimes committed against them.

22. For parties like the Plaintiffs, a nuisance designation under the Ordinance can lead to the loss of the Plaintiffs business licenses.

23. As such, the Ordinance allows for property owners and occupants, like Plaintiffs, to face fines and the potential loss of property solely because they are victims of one or more crimes.

24. The burdens imposed by the Ordinance are not narrowly tailored to serve the government interests of protecting residents and the public from crime, nor does it permit an alternative channel for expression by providing a means by which the Plaintiff, and other similarly

situated parties affected by the Ordinance, can exercise their right to request assistance from police without risking determinations that their properties are public nuisances.

25. The Chronic Nuisance Ordinance is a violation of the First Amendment to the United States Constitution and Article I, Section 4 of the Wisconsin State Constitution because it impedes Plaintiffs' ability to call for law enforcement services in the event of a crime.

26. By enforcing and attempting to enforce the Chronic Nuisance Ordinance against Plaintiffs, Defendant violates and continues to violate the constitutional and civil rights of Plaintiffs, in particular, their right under the First Amendment of the United States Constitution and Article I, §4 of the Wisconsin State Constitution to petition the government.

27. In doing all of the things herein mentioned, Defendants acted and continues to act under the color of the statutes, regulations, customs and usage of the City of Milwaukee and the State of Wisconsin for purposes of state action under 42 U.S.C. § 1983 and the Wisconsin State Constitution.

28. Defendants, in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City.

29. As a proximate result of the foregoing acts of Defendants, Plaintiffs have incurred and continues to suffer damages as a result of the City's violations of its rights in an amount to be determined at trial.

30. Plaintiffs' damages are continuing in nature.

CLAIM FOR RELIEF

Count I—Violations of 42 U.S.C. § 1983: First Amendment and Fourteenth Amendment

Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

31. The First Amendment provides "Congress shall make no law ... abridging the

freedom of speech, or ... the right ... to petition the government for a redress of grievances.” U.S. Const. Amend. I.

32. The Defendants violated and continue to violate Plaintiffs’ rights under the First Amendment to the United States Constitution, as incorporated against States through the Fourteenth Amendment to the United States Constitution.

33. By designating the Plaintiffs’ property as a nuisance and threatening to levy burdensome fees under the Ordinance for calls made by the Plaintiffs to the police department for service, the Defendants have and continue to willfully interfere with the Plaintiffs’ right to petition the government, in violation of the Plaintiffs’ First Amendment rights.

34. The Ordinance has the effect of deterring Plaintiffs and other similarly situated parties affected by the law from seeking police assistance by placing them at risk of losing their businesses and incurring substantial fines, and thus facially prohibits a real and substantial amount of expression guarded by the First Amendment.

35. As a direct and proximate consequence of the Defendants’ actions, Plaintiffs have been and will in the future be denied their constitutional right to petition the government. The Defendants’ actions and policies have also subjected and may in the future subject, Plaintiffs to sanctions, fines, and loss of property for their exercise of constitutional rights. These actions have caused Plaintiffs pain and suffering, emotional distress, fear and humiliation and subsequently has and will continue to cause a chilling effect on the exercise of Plaintiffs’ First Amendment rights.

Count II: Violation of §4 of the Wisconsin State Constitution

Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

36. Wisconsin’s State Constitution protects the rights of persons to petition their government. Wis. Const. § 4.

37. The Ordinance, on its face, and by its application to the Plaintiffs, violates

Wisconsin's constitutional mandate that requires that rights of persons to petition their government shall never be abridged.

38. Further the Ordinance is preempted by Wisconsin's laws which precludes municipalities from adopting local laws that are inconsistent with the Wisconsin constitution or general laws.

Count III—Violations of 42 U.S.C. § 1983: Due Process Clause of the Fourteenth Amendment (Vagueness and Overbreadth)

Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

39. Due process requires that a law “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *see also City of Chi. v. Morales*, 527 U.S. 41, 52, 56 (1999); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 166-67 (1972). A statute which delegates unlimited discretion to enforcers of a criminal or civil law may be unconstitutionally overbroad. *See, e.g., Thornhill v. Ala.*, 310 U.S. 88, 97-98 (1940). “[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” *Grayned*, 408 U.S. at 108; *see also Tyson v. N.Y.C. Hous. Auth.*, 369 F. Supp. 513, 520 (S.D.N.Y. 1974).

40. The Ordinance in question is overly broad and vague. The definition of what constitutes a “nuisance activity” under the Ordinance is limitless, vesting the City and the police department with untrammelled discretion.

41. Violations under the Ordinance include approximately thirty different categories of activities that range from violent crimes to truancy without regard for whether any of these activities are actually conducted or condoned by the property owner (as long as the Defendants deem that the activity in question was committed by a person “associated” with the premises). However, the term “person associated with the premises” is deemed to include the premises owner, operator, manager, resident, occupant, guest, visitor, patron or employee or agent of these persons.

42. The Ordinance fails to inform a reasonable person of the proscribed conduct and includes actions not within the property owner's control.

43. The Ordinance does not require a charge or conviction for any of the activities proscribed.

44. The administrative review appeals process provided by the Ordinance does not afford litigants with an ascertainable pre-calibrated burden of proof.

45. The Ordinance is so vague that it violates the Due Process Clause of the Fourteenth Amendment because it lacks definite standards and subjects the public to uncertain application and enforcement.

46. The Ordinance is overbroad in that it criminalizes a substantial amount of protected expressive conduct relative to its legitimate sweep.

47. The overbreadth of the Ordinance deters and has deterred the Plaintiffs from engaging in constitutionally protected speech and expression.

Request for Relief

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and request that the Court award the following relief:

- (a) Declare, pursuant to 28 U.S.C.A. §§ 2201 and 2202, that the Ordinance and the Defendants' actions violated Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution and the Wisconsin Constitution.
- (b) Enjoin the Defendants immediately to cease enforcement of and rescind the Ordinance and to cease issuing similar instructions or enforcement of the Ordinance against similar parties in similar circumstances in the future.
- (c) Award Plaintiffs compensatory damages against Defendants, jointly and severally, in an amount to be determined by the jury.

- (d) Award Plaintiffs the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C.A. § 1988; and
- (e) Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a Jury Trial on the claims triable as of right by jury set forth herein.

Dated at Milwaukee, Wisconsin on this 7th day of November 2023.

OVB Law & Consulting, S.C.
Attorneys for Plaintiffs

Electronically signed by:
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