



“home occupation” similar to any of those anticipated in Section 405.395, but also argue that if their cookie stand does fall within the code’s prohibition the code exceeds the government’s police power and thus deprives the Plaintiffs of their liberty and property without providing the due process of law required by the U.S. and Missouri Constitutions. Plaintiffs bring this action to obtain declaratory and injunctive relief against Defendant’s improper application of this ordinance.

### **OVERVIEW OF RELIEF SOUGHT**

1. This is a civil action for declaratory judgment and injunctive relief brought by Carolyn Mills and her minor children, Caitlin Mills and Abigail Mills (collectively, “the Mills Family”), against the City of Hazelwood (“the City” or “Hazelwood”) pursuant to Mo. R. Civ. P. Rule 87, section 536.150, RSMo, and 42 U.S.C. § 1983.

### **PARTIES AND JURISDICTION**

2. Plaintiff Carolyn Mills is an adult citizen and resident of the State of Missouri. Mills brings this action on behalf of herself, individually, and as legal guardian of Caitlin Mills and Abigail Mills, minors.

3. Plaintiff Caitlin Mills is a 16-year-old girl, born December 6, 1994, who is the daughter of Carolyn Mills.

4. Plaintiff Abigail Mills is a 14-year-old girl, born October 8, 1996, who is the daughter of Carolyn Mills.

5. Defendant City of Hazelwood is a municipal corporation and constitutional charter city organized and existing under the laws of the State of Missouri and situated within St. Louis County.

6. This Court has jurisdiction of this action pursuant to Article V, section 14 of

the Missouri Constitution.

7. Venue is proper in this Court pursuant to section 508.050, RSMo, in that Hazelwood is situated in St. Louis County.

**ALLEGATIONS COMMON TO ALL COUNTS**

8. The Mills Family resides at 8462 Latty Avenue in Hazelwood, St. Louis County, Missouri 63042.

9. Caitlin and Abigail Mills are members of Girl Scout Troop 570 and for several years have helped their troop raise funds by participating in the annual sale of Girl Scout cookies.

10. In addition to its fundraising function, the annual Girl Scout cookie sale helps Caitlin, Abigail, and other scouts develop skills in math, business, budgeting and money management, goal setting, customer service, interpersonal communication, public speaking, and problem solving.

11. Most of the proceeds of Girl Scout cookie sales go to finance the local Girl Scout council; Caitlin and Abigail do not keep any of the proceeds from the sale of these cookies.

12. In or around February 2005, as Carolyn Mills was counting boxes of cookies outside of their home, a couple of cars pulled up and the drivers asked if they could purchase some of the boxes. Sensing a good sales opportunity, Caitlin and Abigail set up a table on their family's property at which they could sell boxes of cookies to passersby.

13. Since then the Mills Family has set up their cookie stand for a few weeks each year in connection with the annual Girl Scout cookie sale.

14. During these few weeks, the Mills Family typically puts the stand out for two

or three hours each evening, between the time the girls come home from school and sundown.

15. The Mills Family believes that the people who stop to purchase cookies from the stand are almost always people who normally drive up and down Latty Avenue on their way to and from their homes and businesses.

16. The Mills Family has not observed any unusual increase of traffic on the road as a result of their cookie stand.

17. On March 7, 2011, Carolyn Mills received a "Courtesy Infraction Notice" from City of Hazelwood Code Enforcement (attached as Plaintiffs' Exhibit A) stating that she was violating Section 405.395 of the Hazelwood City Code, which regulates Home Occupations. The notice stated that selling products at their home "is prohibited," and the City gave her one day in which "to correct the above violation," or else she would "be issued a Hazelwood Municipal Court Summons and the violation [would] be abated."

18. While Carolyn Mills did not believe that their cookie stand fell within the scope of Section 405.395, on March 7, 2011, she submitted an application for a license to sell Girl Scout cookies (attached as Plaintiff's Exhibit B) in front of her family's home. In the meantime, the Mills family continued to operate their cookie stand.

19. On March 11, a representative of the City told her that the application had been denied and that there was nothing further she could do to change the City's position. She was told that if the cookie stand was still in operation on Monday, March 14, 2011, the City would issue her a Summons as had been warned in the City's warning letter.

20. While their cookie sales are completed for 2011 and they are not currently operating their cookie stand, the Mills family plans to set up their cookie stand when the

fundraiser begins again in February 2012 and in future years.

21. The City's interpretation of Hazelwood City Code Section 405.395 would deny the Mills family their right to do so and would subject them to penalties for violating the ordinance.

22. Upon information and belief, Defendant possesses no evidence that Plaintiffs' cookie stand poses any significant threat to the public health, safety, or welfare.

## **COUNT I**

### **(Improper Application of Hazelwood City Code Section 405.395)**

23. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

24. Hazelwood City Code, Section 405.040, defines "Home Occupation" as:  
Any occupation, profession or activity that is a customary, incidental and secondary use of a residential unit carried on by a member of the immediate family residing on the premises, in connection with which there is used no sign other than a nameplate not more than one (1) square foot in area or no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling and which does not alter the exterior of the property or affect the residential character of the neighborhood; there is no commodity sold upon the premises; no person is employed other than a member of the immediate family residing on the premises; no unusual traffic is generated; and no mechanical equipment is used except such as is permissible for purely domestic household purposes.

25. Examples of home occupations permitted under Hazelwood City Code, Section 405.395(B), include but are not limited to: “tutoring, artist, mailings, telephone answering service and Internet-related occupations.”

26. Examples of home occupations prohibited under Hazelwood City Code, Section 405.395(B), include but are not limited to: “auto and truck repair; auto sales; vehicle painting; storage of construction materials or equipment; retail and wholesale sales; eating or drinking establishments.”

27. All of the occupations described under Hazelwood City Code, Section 405.395(B), whether permitted or prohibited, are jobs or for-profit “employment” that people might pursue for the purpose of earning a living.

28. The definition of “Home Occupation” as stated in Hazelwood City Code, Section 405.040, does not fairly encompass children setting up a cookie or lemonade stand in front of their home, especially when the children do not stand to make a profit from their sales.

WHEREFORE, Plaintiffs request this Court to declare that their temporary operation of a cookie stand is not a “home occupation” within the meaning of Hazelwood City Code, Section 405.040; to enjoin Defendant from enforcing Hazelwood City Code, Section 405.395, against Plaintiffs on account of their cookie stand; to award Plaintiffs’ attorney’s fees and costs as permitted under Chapter 536, RSMo; and to award such other relief as the Court deems just and proper.

## COUNT II

### **(42 U.S.C. § 1983: Deprivation of Liberty and Property Without Due Process Under the Fourteenth Amendment)**

29. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

30. The Fourteenth Amendment to the U.S. Constitution prohibits any State to “deprive any person of life, liberty, or property, without due process of law.”

31. Through its cookie stand prohibition, Defendant has used and is using its legislative and enforcement powers to deny the Mills family their liberty and their right to use their private property for a harmless activity; absent a declaration of Plaintiffs’ constitutional rights, Defendant will continue to violate Plaintiffs’ rights.

32. The Defendant’s cookie stand prohibition does not serve any legitimate government interest and is without any rational basis related to the public health, safety, and welfare.

33. Unless the cookie stand prohibition and the Code provisions on which it is based are declared unconstitutional and Defendant’s employees, agents, representatives and successors are enjoined from enforcing the cookie stand prohibition, Plaintiffs are in imminent danger of suffering and/or will continue to suffer irreparable harm.

34. For reasons including but not limited to those stated in this Petition, the Plaintiffs have no other adequate legal or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

WHEREFORE, Plaintiffs request this Court to grant declaratory judgment in their favor and against Defendant on the grounds that Defendant’s cookie stand prohibition denies

Plaintiffs of their liberty and property without due process of law; to enjoin Defendant from further enforcing its cookie stand prohibition against Plaintiffs; to award Plaintiffs' attorney's fees and costs as permitted under 42 U.S.C. § 1983; and to award such other relief as the Court deems just and proper.

### **COUNT III**

#### **(Deprivation of Liberty, Property, and the Pursuit of Happiness Under Article I, Sections 2 and 10, of the Missouri Constitution)**

35. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

36. Article I, Section 2, of the Missouri Constitution establishes that all persons have a natural right to life, liberty, property, and the pursuit of happiness, and that "to give security to these things is the principal office of government."

37. Article I, Section 10, of the Missouri Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law."

38. Through its cookie stand prohibition, Defendant has used and is using its legislative and enforcement powers to deny the Mills family their liberty and their right to use their private property for a harmless activity; absent a declaration of Plaintiffs' constitutional rights, Defendant will continue to violate Plaintiffs' rights.

39. The Defendant's cookie stand prohibition does not serve any legitimate government interest and is without any rational basis related to the public health, safety, and welfare.

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