

IN THE FRANKLIN COUNTY COMMON PLEAS COURT
CIVIL DIVISION

Pins Mechanical Co., LLC
DBA Pins Mechanical Company
141 N Fourth St.
Columbus, OH 43215

JUDGE:

CASE NO.:

and

16-Bit, LLC
DBA 16-Bit Bar + Arcade
254 S Fourth St.
Columbus, OH 43215

VERIFIED COMPLAINT
INC. TEMP. RESTRAINING
ORDER, INJUNCTIVE
RELIEF & DECLARATORY
JUDGEMENT & DAMAGES

and

Troy Allen
292 Neruda Ave.
Columbus, OH 43215

and

LNS Restaurants, LLC
DBA Late Night Slice
268 S Fourth St.
Columbus, OH 43215

and

LNS Restaurants II, LLC
DBA Late Night Slice
457 N High St.
Columbus, OH 43215

and

Tainted Monkey, LLC
DBA Odfellows
1038 N High St.
Columbus, OH 43201

and

William Michael Sorboro

1312 Neil Ave.
Columbus, OH 43201

and

Bryce Ungerott
206 E Beck St.
Columbus, OH 43206

and

Kai Rae, LLC
DBA Threes Above High
2203 N High St.
Columbus, OH 43201

and

Windsors Crown, LLC
DBA Fours on High
1116-1120 N High St.
Columbus, OH 43201

and

Scott Ellsworth
5525 Bristol Parkway
Dublin, OH 43017

and

Greene Appell Crosswoods, LLC
DBA Pastimes Pub & Grill
121 E Campusview Blvd.
Columbus, OH 43235

and

Greene Appell, LLC
DBA Pastimes Pub & Grill
1333 Worthington Center Dr.
Columbus, OH 43085

and

Andy Greene

4615 Sanctuary Dr.
Westerville, OH 43082

and

Wesley Appell
641 N High St., Apt. 6
Columbus, OH 43215

and

Meister & Allen, Ltd.
DBA Quarry Co. Bar and Grill
3582 Trabue Rd.
Columbus, OH 43204

and

Bar Tec, Inc.
DBA Zeno's
384 W Third Ave.
Columbus, OH 43201

and

Mitchell Allen
2450 Sherwood Villa
Columbus, OH 43221

and

Starek Investments, LLC
DBA Oldfield's
1571 N 4th St.
Columbus, OH 43201

and

31 East 9th, LLC
DBA Leo's on the Alley
25 Chittenden Ave.
Columbus, OH 43201

and

Daniel Starek

432 E Rich St., Unit 4A :
Columbus, OH 43215 :

Plaintiffs, :

And those similarly situated :

v. :

City of Columbus, Ohio :
90 W. Broad St. :
Columbus, OH 43215 :

and :

Andrew Ginther (in his official capacity as :
Mayor of the City of Columbus, Ohio) :
90 W Broad St. :
Columbus, OH 43215 :

and :

Columbus Public Health :
240 Parsons Ave. :
Columbus, OH 43215 :

and :

Dr. Mysheika Roberts (in her official :
capacity as Health Commissioner of :
Columbus Public Health) :
240 Parsons Ave. :
Columbus, OH 43215 :

Defendants. :

**VERIFIED COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING ORDER, AND INJUNCTIVE RELIEF**

Now come Plaintiffs, Pins Mechanical Co., LLC, d/b/a Pins Mechanical
Company (hereinafter referred to as "Pins Mechanical Company"); 16-Bit, LLC, d/b/a

16-Bit Bar + Arcade (hereinafter referred to as "16-Bit Bar + Arcade"); Troy Allen; LNS Restaurants, LLC d/b/a Late Night Slice (hereinafter referred to as "Late Night Slice"); LNS Restaurants II, LLC d/b/a Late Night Slice (hereinafter referred to as "Late Night Slice"); Tainted Monkey, LLC, d/b/a Oddfellows Liquor Bar (hereinafter referred to as "Oddfellows Liquor Bar"); William Michael Sorboro; Bryce Ungerott; Kai Rae, LLC, d/b/a Threes Above High ((hereinafter referred to as "Threes Above High"); Windsors Crown, LLC, d/b/a Fours on High (hereinafter referred to as "Fours on High"); Scott Ellsworth; Greene Appell Crosswoods, LLC, d/b/a Pastimes Pub & Grill (hereinafter referred to as "Pastimes Pub & Grill"); Greene Appell, LLC, d/b/a Pastimes Pub & Grill (hereinafter referred to as "Pastimes Pub & Grill"); Andy Greene; Wesley Appell; Meister & Allen, Ltd., d/b/a Quarry Co. Bar and Grill (hereinafter referred to as "Quarry Co. Bar and Grill"); Bar Tec, Inc., d/b/a Zeno's (hereinafter referred to as "Zeno's"); Mitchell Allen; Starek Investments, LLC, d/b/a Oldfield's (hereinafter referred to as "Oldfield's"); 31 East 9th, LLC, d/b/a Leo's on the Alley (hereinafter referred to as "Leo's on the Alley"); and Daniel Starek (collectively referred to as the "Plaintiffs"), on behalf of themselves and those similarly situated, by and through counsel, and bring this Verified Complaint for Damages, Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief, against Defendants City of Columbus, Andrew Ginther, in his official capacity as Mayor of the City of Columbus, Columbus Public Health, and Dr. Mysheika Roberts, in her official capacity as Health Commissioner of Columbus Public Health (collectively referred to as the "Defendants").

INTRODUCTION

1. All Plaintiffs are businesses located in Columbus, Ohio and their owners. These Plaintiffs, like the rest of the citizens and businesses of this jurisdiction, have been adversely affected by the COVID-19.

2. During this public health crisis, Plaintiffs have cooperated with health authorities and directives to prevent and control the spread of infectious diseases.

3. At all times relevant hereto, Plaintiffs operated their businesses in accordance with every Director's Order issued by the Ohio Department of Health.

4. During a public health crisis, governments, like the city of Columbus, are afforded police power to reasonably address public health and safety issues, including pandemics such as COVID-19.

5. As part of the response to the COVID-19 pandemic bars and restaurants were closed beginning March 15, 2020 at 9:00 p.m. Slowly, they were allowed to reopen in various capacities in May 2020. This industry suffered dearly during the original mandated shut down.

6. On Friday, July 24, 2020 Columbus Mayor Andrew Ginther announced he was going to propose City Council circumvent state law and mandate a shut down of bars, restaurants, and night clubs beginning at 11:00 p.m. each day. He eventually changed his request from 11:00 p.m. to 10:00 p.m. On July 27, 2020 he and Defendant Roberts held a press conference attempting to justify their request. A transcript of the Press conference is attached as Exhibit 1-A. For information purposes, a "rough draft" transcript of the City Council meeting is attached as Exhibit 1-B.

7. City Council heard testimony on the evening of July 27, 2020 and eventually enacted Ordinance 1821-2020 and took effect on July 28, 2020, at 8:00 a.m. A copy of the Ordinance is attached as Exhibit 2.

8. Although Ordinance 1821-2020 states that it was intended to be a guide toward developing long-term safety measures and to slow and end the transmission of COVID-19 in the city of Columbus, it, without reliable scientific data, arbitrarily closes all restaurants, bars, and nightclubs for onsite consumption of food, beer, wine, and liquor each night at 10:00 p.m.

9. Ordinance 1821-2020 allows bars, restaurants, and night clubs to continue to operate after 10:00 p.m. solely for carry out and delivery activities. This minor exception does very little for the bottom line of Plaintiffs.

10. There is no reliable scientific evidence that establishes a causal relationship between the spread of COVID-19 and the hours of operation for restaurants, bars, and night clubs.

11. The police power afforded to governments to reasonably address public health and safety issues is not limitless.

12. The rights secured by the Ohio Constitution and United States Constitution do not disappear during a public health crisis.

13. The United States Supreme Court has recognized the fundamental constitutional right to engage in activities protected by the First Amendment to include the right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.

14. Ordinance 1821-2020's disparate treatment of restaurants, bars, and night clubs that serve food, beer, wine, and liquor for onsite consumption is not narrowly tailored to achieve a compelling government interest.

15. Ordinance 1821-2020's disparate treatment between bars, restaurants, and night clubs that do and do not engage in carry out and delivery activities lacks a real or substantial scientific relation to the spread of COVID-19.

16. Defendants, by and through Ordinance 1821-2020, exercised their police power in an unreasonable manner which illegally infringed upon the fundamental rights of the Plaintiffs.

17. Defendants, by and through Ordinance 1821-2020, exercised their police power in an arbitrary and unreasonable manner which exceeded what was reasonably required for public safety.

18. This lawsuit challenges Ordinance 1821-2020, which arbitrarily and unreasonably closes Plaintiffs' businesses. It also seeks to enjoin enforcement of the provisions by the City of Columbus, Law enforcement and the Department of Health.

19. Ordinance 1821-2020 provides no scientific-based benefit in stopping the spread of COVID-19 and only serves to penalize and to harshly punish Plaintiffs in the operation of their businesses when engaging in the sale of food, wine, and liquor for onsite consumption.

20. The Ordinance does not include a single additional health and safety requirement or suggestion for Plaintiffs.

21. Without injunctive relief, Plaintiffs and those similarly situated, will suffer irreparable harm, which includes but is not limited to the following: loss of their First

and Fourteenth Amendment freedoms; loss of property and employees; and losses which would result in the permanent closure of their businesses.

22. Plaintiffs, all well respected businesses and their owners, bring this lawsuit under Section 3, Article XVIII of the Ohio Constitution and 42 U.S.C. § 1983 and corresponding State Law and Other U.S. Constitutional claims. They seek declaratory relief, injunctive relief, and damages from the unconstitutional ordinance.

JURISDICTION AND VENUE

23. This Court has original jurisdiction over this civil case pursuant to Ohio Revised Code § 2305.01.

24. Venue is appropriate under Ohio Rules of Civil Procedure, Sections 3(C) because Defendants are governmental bodies located in this County and the wrongful acts, omissions and injuries described in the body of the Complaint all occurred here.

25. The jurisdiction of this lawsuit is proper in the Franklin County Court of Common Pleas.

26. Plaintiffs' claims for declaratory and injunctive relief are authorized by Ohio Rules of Civil Procedure, Sections 57 and 65(A), respectively.

PARTIES

27. Plaintiff Pins Mechanical Co., LLC, d/b/a Pins Mechanical Company, is an Ohio limited liability company with its principal office located at 141 N Fourth St., Columbus, OH 43215.

28. Plaintiff 16-Bit, LLC, d/b/a 16-Bit Bar + Arcade, is an Ohio limited liability company with its principal office located at 254 S Fourth St., Columbus, OH 43215.

29. Plaintiff Troy Allen is an individual who owns Pins Mechanical Company and 16-Bit Bar + Arcade and resides in Franklin County.

30. Plaintiff LNS Restaurants, LLC, d/b/a Late Night Slice, is an Ohio limited liability company with its principal office located at 268 S Fourth St., Columbus, OH 43215.

31. Plaintiff LNS Restaurants II, LLC, d/b/a Late Night Slice, is an Ohio limited liability company with its principal office located at 457 N High St., Columbus, OH 43215.

32. Plaintiff Tainted Monkey, LLC, d/b/a Oddfellows Liquor Bar, is an Ohio limited liability company with its principal office located at 1038 N High St., Columbus, OH 43201.

33. Plaintiff William Michael Sorboro is an individual who owns Late Night Slice and Oddfellows Liquor Bar and resides in Franklin County.

34. Plaintiff Bryce Ungerott is an individual who owns Late Night Slice and Oddfellows Liquor Bar and resides in Franklin County.

35. Plaintiff Kai Rae, LLC, d/b/a Threes Above High, is an Ohio limited liability company with its principal office located at 2203 N High St., Columbus, OH 43201.

36. Plaintiff Windsors Crown, LLC, d/b/a Fours on High, is an Ohio limited liability company with its principal office located at 1116-1120 N High St., Columbus, OH 43201.

37. Plaintiff Scott Ellsworth is an individual who owns Threes Above High and Fours on High and resides in Franklin County.

38. Plaintiff Greene Appell Crosswoods, LLC, d/b/a Pastimes Pub & Grill, is an Ohio limited liability company with its principal office located at 121 E Campusview Blvd, Columbus, OH 43235.

39. Plaintiff Greene Appell, LLC, d/b/a Pastimes Pub & Grill, is an Ohio limited liability company with its principal office located at 1333 Worthington Center Dr., Columbus, OH 43085.

40. Plaintiff Andy Greene is an individual who owns Pastimes Pub & Grill and resides in Franklin County.

41. Plaintiff Wesley Appell is an individual who owns Pastimes Pub & Grill and resides in Franklin County.

42. Plaintiff Meister & Allen, Ltd., d/b/a Quarry Co. Bar and Grill, is an Ohio limited liability company with its principal office located at 3582 Trabue Rd., Columbus, OH 43204.

43. Plaintiff Bar Tec, Inc., d/b/a Zeno's, is an Ohio corporation with its principal office located at 384 W Third Ave., Columbus, OH 43201.

44. Plaintiff Mitchell Allen is an individual who owns Quarry Co. Bar and Grill and Zeno's and resides in Franklin County.

45. Plaintiff Starek Investments, LLC, d/b/a Oldfield's, is an Ohio limited liability company with its principal office located at 1571 N 4th St., Columbus, OH 43235.

46. Plaintiff 31 East 9th, LLC, d/b/a Leo's on the Alley, is an Ohio limited liability company with its principal office located at 25 Chittenden Ave., Columbus, OH 43201.

47. Plaintiff Daniel Starek is an individual who owns Oldfield's and Leo's on the Alley, and resides in Franklin County.

48. Plaintiffs operate as businesses with liquor permits in the city of Columbus.

49. Defendant City of Columbus, is a municipal corporation and political subdivision of the state of Ohio.

50. Defendant Andrew Ginther is the mayor of the city of Columbus and as such oversees law enforcement, and other personnel for the city of Columbus, Ohio.

51. Defendant Columbus Public Health is a subdivision of the city of Columbus, Ohio.

52. Defendant Dr. Mysheika Roberts is the Health Commissioner of Columbus Public Health. Her office was granted authority under this legislation to enforce the goals of the Ordinance.

53. Pursuant to ORC 2721.12, although not named as party, a copy of this Complaint is also being served upon the Ohio Attorney General.

FACTUAL ALLEGATIONS

A. GOVERNMENTAL RESPONSES TO COVID-19

53. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic.

54. On March 13, 2020, the President of the United States of America declared a national state of emergency in response to COVID-19.

55. Subsequent to these declarations, the State of Ohio began a robust set of purported health and safety regulations and directives regarding a multitude of matters.

These orders are fairly summarized in the “WHEREAS” sections of the Ordinance. Most important is the Responsible Restart Ohio Dine Safe Order, attached as Exhibit 3.

B. THE CHALLENGED ORDINANCE – ORDINANCE 1821-2020

56. On July 27, 2020, Defendants enacted Ordinance 1821-2020 for the City of Columbus, Ohio.

57. Ordinance 1821-2020 states that all bars, night clubs, and restaurants within the City of Columbus shall not open for the sale of food, beer, wine and liquor for onsite consumption earlier than 6:00 am and shall not remain open for the sale of food, beer, wine and liquor for onsite consumption any later than 10:00 p.m.

58. Ordinance 1821-2020 states that the premises of all bars, night clubs, and restaurants must be vacated by the general public no later than 60 minutes following closing except as necessary for carry out and delivery activities.

59. Ordinance 1821-2020 states that these time restrictions apply seven (7) days per week.

60. Ordinance 1821-2020 declares to be an emergency measure taking full force and effect at 8:00am on Tuesday July 28, 2020 and will remain in effect until such time as all governing public health orders associated with the COVID-19 pandemic expire.

61. Ordinance 1821-2020 allows fast-food restaurants and carryout restaurants to remain fully operational, while traditional bars, restaurants, and night clubs are forced to close their onsite bars and dining rooms at 10:00 p.m.

62. All Plaintiff’s genuinely believe they could cease to exist if they are forced to close early and/or again due to the precarious financial positions they are in.

C. “PINS MECHANICAL COMPANY” AND “16-BIT BAR + ARCADE”

63. Pins Mechanical Company and 16-Bit Bar + Arcade both have Class D-5-6 Liquor Permits, which, pursuant to ORC 4303.18, allow the businesses to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

64. Pins Mechanical Company and 16-Bit Bar + Arcade are both owned by Troy Allen.

65. Mr. Allen's businesses strive to develop provide unique customer experience in a safe, sanitary, and fun environment.

66. Pins Mechanical Company and 16-Bit Bar + Arcade have followed all guidelines of Responsible Restart Ohio, and have gone above and beyond by enacting and enforcing stringent health and safety measures since re-opening after the previous closure due to COVID-19.

67. They have invested over \$100,000.00 across all locations (including additional locations outside of the city of Columbus) in signage, UV technology, and more.

68. They have also employed a cleaning team of four (4) people at every location.

69. The previous mandatory closure as a result of COVID-19 and city curfew negatively impacted these businesses tremendously.

70. On average, Mr. Allen's businesses are down 80%, because of the COVID pandemic in weekly revenue currently. The earlier closure of the business will have an additional deleterious effect on revenue.

71. Pins Mechanical Company and 16-Bit Bar + Arcade has suffered significant economic damages and loss of good will directly as a result of the extensive COVID-19 regulations, and will suffer even more as a result of Ordinance 1821-2020

72. The declaration of Troy Allen is attached as Exhibit 4.

73. Pins Mechanical Company and 16-Bit Bar + Arcade have a robust health and safety plan that is attached as Exhibit 5.

D. "LATE NIGHT SLICE" AND "ODDFELLOWS LIQUOR BAR"

74. Late Night Slice has two Columbus locations, with each location holding a Class D-1-2-3-3A-6 Liquor Permit, which, pursuant to ORC 4303.13, 4303.14, 4303.15, and 4303.16, allows the businesses to serve beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

75. Oddfellows Liquor Bar has one Columbus location, holding a Class D-5-6 Liquor Permit, which pursuant to ORC 4303.18, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

76. Late Night Slice and Oddfellows Liquor Bar are owned by William Michael Sorboro and Bryce Ungerott.

77. Late Night Slice is "Columbus' Original Street Pizza," operating since 2009, and catering to a diverse group of customers, including families, friends, and late-night crowds.

78. Late Night Slice lives true to their name by staying open and operating much later than most other businesses in Columbus, with closing times that reach into the late hours of the morning – 4:00 a.m. on Fridays and Saturdays.

79. Oddfellows Liquor Bar is an experience based cocktail lounge that is out of the ordinary – providing a welcoming place for people from all walks of life in a safety and sanitary environment.

80. The effects of COVID-19 have resulted in an approximate 50% decrease in sales for Late Night Slice, and 60% decrease in sales for Oddfellows Liquor Bar.

81. Prior to the COVID-19 pandemic, Late Night Slice generated approximately 55% of its sales after 10 p.m., and Oddfellows Liquor Bar generated approximately 70% of its sales after 10 p.m.

82. Currently, Late Night Slice and Oddfellows Liquor Bar generate approximately 45% of their sales after 10 p.m.

83. Late Night Slice and Oddfellows Liquor Bar have initiated the following measures pursuant to Responsible Restart Ohio: (1) each ordering area has a divider that is at least 3x5 ft – hung from the ceiling so that it can be cleaned frequently, (2) social distancing floor plans, (3) social distancing floor stickers, (4) a security guard from 9:00 p.m. to close in each location to direct traffic and keep occupancy at its proper level to match only the available seats, (5) hand sanitizer stations throughout the restaurants, (6) a printed roadmap for what to do if an employee contracts COVID-19, (7) an Atomizer with virucide is available 24/7 for any restaurant to be used for deep cleaning, (8) a cleaning company on call to deep clean the restaurant if an employee tests positive for COVID-19, (9) a printed roadmap for the administrative team that delegates responsibilities for who is responsible for which step to ensure the team’s safety if an employee at a location tests positive for COVID-19, (10) dividers for waiting areas to keep patrons separated, (11) providing facial coverings for all employees, (12) providing

facial coverings for any customer who may need one, (13) scheduled deep cleanings every hour, accompanied with a cleaning log and timer to keep track of when a cleaning is next needed, (14) a bio thermometer and online database of all temperatures of all employees for each shift they work, (15) limited menu to create a faster ordering and pickup time, (16) marketing focused on delivery and carryout to help limit in shop interaction, and (17) proper signage from the Ohio COVID-19 website to be consistent with the State's requests.

84. Late Night Slice and Oddfellows Liquor Bar have expended additional costs as a result of the COVID-19 pandemic, include employing an in-house door person as well as a trained security guard for six (6) hours per night at \$4,000 per week, and miscellaneous compliance costs of approximately \$10,000 for the month of July.

85. Late Night Slice and Oddfellows Liquor Bar have 130 company-wide employees, with 100 of those employees working in the city of Columbus.

86. Columbus City Ordinance 1821-2020 will force Late Night Slice and Oddfellows Liquor Bar to lay employees off throughout every position in the organization.

87. The Declaration of William Michael Sorboro is attached as Exhibit 6

88. The Declaration of Bryce Ungerott is attached as Exhibit 7

89. Their Health and Safety plan is attached as Exhibit 8.

E. "THREES ABOVE HIGH" AND "FOURS ON HIGH"

90. Threes Above High holds a Class D-5 Liquor Permit, which pursuant to ORC 4303.18, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

91. Fours on High holds a Class D-5-6 Liquor Permit, which pursuant to ORC 4303.18, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

92. Since the outbreak of the COVID-19 pandemic, and all times relevant hereto, Threes Above High and Fours on High have been operated in total compliance with every Ohio Health Department COVID-19 directive. They are down at least 50% since COVID-19 regulations began.

93. While Ordinance 1821-2020 is in effect, Threes Above High and Fours on High have to continue to pay expenses, including rent, utilities, insurance, and other operating costs. They expect to lose 90% of their revenue after 10 p.m. They have spent considerable monies on sanitation and safety measures including but not limited to providing free masks for customers, employee health and safety staff nightly, and the like.

94. Threes Above High and Fours on High is suffering significant economic damages and loss of goodwill directly as a result of Ordinance 1821-2020.

95. The declaration of Scott Ellsworth is attached as Exhibit 9.

F. "PASTIMES PUB & GRILL"

96. Pastimes Pub & Grill has two locations in Columbus, Ohio, with both locations operating with a Class D-5-6 Liquor Permit, which allows the businesses to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

97. Since the outbreak of the COVID-19 pandemic, and all times relevant hereto, Pastimes Pub & Grill have been operated in total compliance with every Ohio Health Department COVID-19 directive.

98. While Ordinance 1821-2020 is in effect, Pastimes Pub & Grill have to continue to pay expenses, including rent, utilities, insurance, and other operating costs.

99. Pastimes Pub & Grill is suffering significant economic damages and loss of goodwill directly as a result of Ordinance 1821-2020.

100. Like all Plaintiffs, they have expended considerable monies on health and safety matters and follow all State directives.

101. The declaration of Wesley Appell is attached as Exhibit 10.

G. "QUARRY CO. BAR AND GRILL" AND "ZENO'S"

102. Quarry Co. Bar and Grill holds a Class D-1-3-3A-6 Liquor Permit, which pursuant to ORC 4303.13, 4303.15, and 4303.16, allows the businesses to serve beer and spiritous liquor until 2:30 a.m.

103. Zeno's holds a Class D-5-6 Liquor Permit, which pursuant to ORC 4303.18, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

104. Since the outbreak of the COVID-19 pandemic, and all times relevant hereto, Quarry Co. Bar and Grill and Zeno's have been operated in total compliance with every Ohio Health Department COVID-19 directive.

105. While Ordinance 1821-2020 is in effect, Quarry Co. Bar and Grill and Zeno's have to continue to pay expenses, including rent, utilities, insurance, and other operating costs.

106. Quarry Co. Bar and Grill and Zeno's will suffer significant economic damages and loss of goodwill directly as a result of Ordinance 1821-2020.

107. The declaration of Mitchell Allen is attached as Exhibit 11.

H. “OLDFIELD’S” AND “LEO’S ON THE ALLEY”

108. Oldfield’s holds a Class D-5-6 Liquor Permit, which, pursuant to ORC 4303.18, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

109. Leo’s on the Alley holds a Class D-1-2-3-3A-6 Liquor Permit, which, pursuant to ORC 4303.13, 4303.14, 4303.15, and 4303.16, allows the business to sell beer, wine, mixed beverages, and spiritous liquor until 2:30 a.m.

110. Since the outbreak of the COVID-19 pandemic, and all times relevant hereto, Oldfield’s and Leo’s on the Alley have been operated in total compliance with every Ohio Health Department COVID-19 directive.

111. While Ordinance 1821-2020 is in effect, Oldfield’s and Leo’s on the Alley have to continue to pay expenses, including rent, utilities, insurance, and other operating costs.

112. Oldfield’s and Leo’s on the Alley are suffering significant economic damages and loss of goodwill directly as a result of Ordinance 1821-2020. They are down almost \$400,000 in revenue since the outset of COVID-19. They estimate 40% of their business is after 10 pm at Oldfields and 80% at Leo’s.

113. The declaration of Daniel Starek is attached as Exhibit 12

CAUSES OF ACTION

Count I: Violation of Home Rule Authority

114. Plaintiffs incorporate all paragraphs, as if alleged herein in full.

115. Ohio cities have flexibility under Ohio law to establish laws in accordance with the powers of local self-government, otherwise known as “Home Rule Authority”.

116. Section 3, Article XVIII of the Ohio Constitution reads, “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.” (Emphasis added.)

117. In determining whether a conflict exists between a statutory enactment and a municipal ordinance, the test is whether the ordinance forbids and prohibits that which the statute permits or licenses and vice versa. (See *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519).

118. If a municipal ordinance is found to be in conflict with the general laws of the state of Ohio, then said ordinance is unconstitutional (See *Westlake v. Mascot Petroleum Co.*, 61 Ohio St. 3d 161, 573 N.E.2d 1068 (1991)).

119. Ordinance 1821-2020 requires bars, night clubs, and restaurants to cease operations for the sale of food, beer, wine, and liquor for onsite consumption at 10:00 p.m. seven (7) days per week. Mixed beverages are not referenced.

120. The Ordinance also requires them to not open prior to 6:00 a.m.

121. ORC § 4303.13 allows the holder of a D-1 permit to sell beer at retail for consumption on the premises where sold until 1:00 a.m.

122. ORC § 4303.14 allows the holder of a D-2 permit to sell wine and prepared and bottled cocktails, cordials, and other mixed beverages at retail for consumption on the premises where sold until 1:00 a.m.

123. ORC § 4303.15 allows the holder of a D-3 permit to sell spiritous liquor at retail for consumption on the premises where sold until 1:00 a.m.

124. ORC § 4303.16 allows the holder of a D-3a permit to sell beer, wine and prepared and bottled cocktails, cordials, and other mixed beverages, and spiritous liquor at retail for consumption on the premises where sold until 2:30 a.m.

125. ORC § 4303.18 allows the holder of a D-5 permit to sell beer and any intoxicating liquor (which includes wine and prepared and bottled cocktails, cordials, and other mixed beverages, and spiritous liquor) at retail for consumption on the premises where sold until 2:30 a.m.

126. OAC § 4303:1-1-49 is a liquor control commission rule that further clarifies the hours of sale of alcoholic beverages, and is referenced in ORC § 4303.16. This rule applies to the retail sale of beer, wine mixed beverages, or spiritous liquor, and states that businesses are permitted to operate and sell alcohol until 1:00 a.m. or 2:30 a.m. (depending on the type of permit).

127. The above-referenced ORC provisions are general laws as defined in Section 3, Article XVIII of the Ohio Constitution.

128. Defendants' actions in passing Ordinance 1821-2020 directly contradicts and is in conflict with these ORC provisions, and is therefore unconstitutional.

129. As a direct and proximate cause of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered injuries and damages.

130. As a direct and proximate cause of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights,

privileges and immunities afforded under the law and seek damages, declaratory relief, and injunctive relief to prevent such further deprivation.

**Count II: 42 U.S.C. § 1983, Violations of Substantive Due Process
and related State Law**

131. All paragraphs of the Complaint are incorporate herein.

132. 42 U.S.C. § 1983 states, in pertinent part, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

133. Defendants are a “person” under the Civil Rights Act of 1871.

134. Government actions that burden the exercise of fundamental rights are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling government interest.

135. “Ohio has always considered the right of property to be a fundamental right. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces.” *Norwood v. Horney*, 110 Ohio St.3d 353. At 361-62 (2006).

136. Plaintiffs have a fundamental right under the First Amendment of the United States Constitution to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends without undue government interference.

137. These “venerable rights associated with property” are not confined to the mere ownership of property: “[t]he rights related to property, i.e., to acquire, use, enjoy, and dispose of property, are among the most revered in our law and traditions.” *Norwood v. Horney*, 110 Ohio St.3d 353, at 361-62 (2006). In sum, “the free use of property is guaranteed by Section 19, Article I of the Ohio Constitution.” *State v. Cline*, 125 N.E.2d 222, 69 Ohio Law Abs. 305.

138. More specifically, Ohio businesses “have a constitutionally protected property interest” in freedom “from unreasonable and arbitrary interference from the government.” *Mariemont Apartment Association v. Village of Mariemont*, 2007-Ohio-173, at Paragraph 40-42.

139. Ordinance 1821-2020 is an official policy and regulation of Defendants.

140. Plaintiffs’ fundamental rights under the First Amendment were violated by Defendants, by and through its official policy – Ordinance 1821-2020.

141. Ordinance 1821-2020’s disparate treatment between restaurants is not narrowly tailored to achieve a compelling government interest.

142. Ordinance 1821-2020’s disparate treatment between restaurants lacks a real or substantial scientific relation to the spread of COVID-19.

143. As a direct and proximate cause of Defendants’ actions and/or omissions stated herein, Plaintiffs have suffered injuries and damages.

144. As a direct and proximate cause of Defendants’ actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges, and immunities afforded under the law and seek damages, declaratory relief, and injunctive relief to prevent such further deprivation.

Count III: 42 U.S.C. § 1983, Violations of Equal Protection Clause of the Fourteenth Amendment and related State Law

145. Plaintiffs incorporate all foregoing paragraphs, as if alleged herein in full.

146. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution protects every citizen against intentional, arbitrary government discrimination, whether based on a policy's express terms or improper implementation by government agents.

147. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits discrimination by government which either burdens a fundamental right, targets a suspect class, or intentionally treats one differently than others similarly situated without any rational basis for the difference.

148. A regulation of property violates the Ohio Constitution's guarantees of Due Process and Equal Protection when it is "arbitrary," "unduly oppressive upon individuals," not "necessary for the public welfare," or fails to substantially advance a legitimate interest through a substantial relationship to it. See *Direct Plumbing Supply v. City of Dayton*, 138 Ohio St. 540 (1941); *Olds v. Klotz*, 131 Ohio St. 447, 451 (1936); *City of Cincinnati v. Correll*, 141 Ohio St. 535, 539 (1943).

149. No classification may be arbitrary: "the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.'" *State v. Mole*, 149, 2016-Ohio-5124 Paragraph 12-29. "Discrimination of an unusual character especially suggest[s] careful consideration to determine whether they are obnoxious to the constitutional provision." *Id.*

150. Defendants, by and through Ordinance 1821-2020 deprived Plaintiffs of their fundamental rights guaranteed under the United States Constitution and Ohio Law.

151. Plaintiffs' fundamental rights were violated by Defendants, by and through its official policy and/or regulation – Ordinance 1821-2020.

152. Defendants' actions and/or omissions, as stated herein, constitute a violation of the Equal Protection Clause and corresponding State Law as Plaintiffs were treated differently than similarly situated businesses.

153. As a direct and proximate cause of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered injuries and damages.

154. As a direct and proximate cause of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities afforded under the law and seek damages, declaratory relief, and injunctive relief to prevent such further deprivation.

Count IV: Right to Property

155. Plaintiffs incorporate all foregoing paragraphs, as if alleged herein in full.

156. "Ohio has always considered the right of property to be a fundamental right. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces." See Norwood.

157. Further, Ohio courts apply a higher level of scrutiny to such claims regarding property rights, and homeowners who have acted without knowledge or intent to enjoy greater protections. *Yoder v. City of Bowling Green*, 2019 U.S. Dist. LEXIS

16549, at p. 10, citing Mariemont Apartment Ass'n v. Village of Mariemont, 2007-Ohio-173, 2007 WL 120727, at *7 (Ohio Ct. App.).

158. Before the police power can be exercised to limit an owner's control of private property, it must appear that the interests of the public require its exercise and the means of restriction must not be unduly oppressive upon individuals. *State ex rel. Pizza v. Rezcallah*, 84 Ohio St.3d 116, 131, 1998-Ohio-313, 702 N.E.2d 81, citing *Froelich v. Columbus* (1919), 99 Ohio St. 376, 124 N.E. 212.

159. Ordinance 1871-2020 and Defendants' enforcement of the same have denied Plaintiffs their right to property by preventing their businesses from earning money from patrons between 10:00 p.m. to 6:00 a.m. while the Ordinance 1871-2020 is in place.

160. Wherefore, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional because it infringes upon the fundamental constitutional rights of Plaintiff, including the right to property and grant the injunctive relief against the curfews in the Order.

Count V: Declaratory Judgment

161. Plaintiffs incorporate all foregoing paragraphs, as if alleged herein in full.

162. Plaintiffs are interested parties seeking declaration of their rights under the Ohio Constitution as Ordinance 1821-2020 has functioned to deprive Plaintiffs of their fundamental rights and caused injuries and damages.

163. Plaintiffs seek a declaratory judgment that Ordinance 1821-2020 is in violation of Plaintiffs' Rights under Section 3, Article XVIII of the Ohio Constitution.

164. Plaintiffs seek a declaratory judgment that Ordinance 1821-2020 is in violation of Plaintiffs' First Amendment Rights.

165. Plaintiffs seek a declaratory judgment that Ordinance 1821-2020 is in violation of Plaintiffs' right to equal protection of the law as guaranteed by the United States Constitution.

166. Plaintiffs seek a declaratory judgment that Ordinance 1821-2020 is in violation of Plaintiffs' right to property under the Ohio Constitution.

167. In addition to the declaratory judgments sought herein, Plaintiffs seek further necessary or proper prospective relief as justice may require pursuant to Ohio Rule of Civil Procedure 57.

Count VI: Request for Injunctive Relief

168. Plaintiffs incorporate all foregoing paragraphs, as if alleged herein in full.

169. Plaintiffs seek a temporary restraining order preventing Defendants from enforcing any restriction in Ordinance 1821-2020 which violates Plaintiffs' rights under the Ohio Constitution/laws and United States Constitution as they (a) likely to succeed under the merit, (b) they will suffer irreparable harm, and (c) the other factors of successful injunctive relief are satisfied.

170. Plaintiffs seek a temporary restraining order preventing Defendants from enforcing any restrictions in any other local ordinance or health order or directive which violates Plaintiffs' rights under the Ohio Constitution, State Law, and United States Constitution.

171. In absence of the issuance of a temporary restraining order Defendants will cause, and continue to cause, immediate and irreparable harm to Plaintiffs including,

but not limited to, loss of their First and Fourteenth Amendment freedoms: loss of property and employees, and losses which would result in the permanent closure of their businesses.

172. Plaintiffs are likely to succeed on the merits as the Ohio 10th District Court of Appeals has opined that that a City of Columbus ordinance prohibiting the holder of a permit issued by Department of Liquor Control or such holder's agent or employee from selling beer between the hours of 12:00 midnight on Saturday and 11:00 a. m. on Sunday following such Saturday was unconstitutional because it was in conflict with state statute and regulation prohibiting the sale of beer between the hours of 1:00 a. m. and 5:30 a. m. on Sundays. (See *City of Columbus v. Mauk*, 1 Ohio App. 2d 38, 203 N.E.2d 653 (Ohio Ct. App. 1963)).

173. Public policy favors the entry of a preliminary and permanent injunction because, inter alia, such relief will prevent unlawful conduct and will preserve and protect Plaintiffs' respective business interests.

174. The harm to the Plaintiffs and businesses who are subjected to Defendants' discriminatory and unconstitutional official policy and regulation discussed herein substantially outweighs any harm to the Defendants.

175. Plaintiffs also seek preliminary and permanent injunctions premised on the bases asserted herein for issuance of a temporary restraining order.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants jointly and severally as follows:

A. Declare that Defendants' actions as set forth herein were in violation of the Ohio Constitution and Ohio Law deprived Plaintiffs of their rights, immunities, and privileges afforded thereunder;

B. Declare that Defendants' actions as set forth herein were in violation of the United States Constitution and deprived Plaintiffs of their rights, immunities, and privileges afforded thereunder;

C. Issue a temporary restraining order, preliminary injunction, and permanent injunction restraining and prohibiting Defendants from enforcing any restriction in Ordinance 1821-2020 which violates Plaintiffs' rights under the Ohio Constitution and United States Constitution so long as bars and restaurants continue to operate safely;

D. Issue a temporary restraining order, preliminary injunction, and permanent injunction restraining and prohibiting Defendants from enforcing any restriction in any Health Order and Directive or Ordinance which violates Plaintiffs' rights under the Ohio Constitution and United States Constitution, so long as bars and restaurants continue to operate safely;

E. Order Defendants to pay Plaintiffs compensatory damages for the economic injuries sustained as a result of Defendants' conduct in amounts to be determined at trial;

F. Order Defendants to pay all pre-judgment and post-judgment interest on all compensatory damages;

G. Award attorney's fees and costs pursuant to 42 U.S.C. § 1988; Pursuant to Ohio Revised Code Section 2335.39 and other applicable law, award Plaintiffs' its actual costs, damages, nominal damages/expenses, and reasonable attorney's fees.

H. Grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that Notice of Filing of the foregoing document was provided to Defendants via the Franklin County Clerk of Courts e-filing system and via electronic mail on July 28, 2020.

/s/ Edward W. Hastie, III, Esq. _____