

Wild Willpower – www.WildWillpower.org
Alexandra Wilson, Campaign Organizer
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Ankeny, IA 50023
8/22/2018

CITY OF AMES IOWA
ATTN: MAYOR, CITY COUNCIL, *et al*
PO BOX 811, 515 Clark Ave
Ames, IA 50010-0811

MOTION TO AMEND CITY OF AMES MUNICIPAL CODE SEC. 22.4

Dear Sirs:

OUR INTENT - On Tuesday (8/7/2018) I visited the City Manager's office to inform the City of Ames of our intent to periodically set up a table alongside the sidewalk, in various public spaces, to:

- (1) communicate with fellow citizens;
- (2) disseminate campaign materials;
- (3) gather petition signatures; and
- (4) raise funds to further our campaign.

We frequently perform outreach in such manner, and thus we've become accustomed to having officers approach us to determine if we're performing commercial activity (due to the fact that many municipalities require vendors to obtain a commercial permit). We're also accustomed to adhering to reasonable common sense policies many municipalities (and court rulings) have established regarding such activity, such as *not blocking the right-of-way, keeping an orderly booth with no stray chairs, etc. that people could trip over, respecting peoples' personal choice as to whether or not they care to engage with us, etc.* We assumed that by informing the City of Ames *ahead of time*, misunderstandings between officers and ourselves, and between ourselves and city officials, could be averted. We hoped that such communication would lead to our being able to perform First Amendment activity unimpeded, and we hoped it would help foster a positive relationship between city officials and ourselves.

The employees working in the City Manager's office directed me to speak with Deputy City Clerk *Heidi Petersen* because she “typically deals with permitting requirements.” Deputy Petersen informed me that “petitioning with a clipboard is fine,” *however* if we plan to set up a table (which we do), we'll *first* need to apply for a Temporary Obstruction Permit to comply with Sec. 22.4(1) of the *City of Ames Municipal Code*:

Sec. 22.4 TEMPORARY OBSTRUCTIONS

(1) It is unlawful for any person to place any... materials... or place other temporary obstructions within the limits of... public parking lots or sidewalks in the city without first obtaining written permission from the city manager setting out the time to do the work. The permission given by the city manager shall specify the time, place and manner of placing the temporary obstructions and the precautions to be observed to protect the public during the time the obstructions are in place. The city manager may withdraw the permission at any time the obstructions become hazardous to the public or upon failure of the person failing or refusing to observe the instructions as set forth in the written permit.

Deputy Petersen also informed me that in order for the permit to be approved, unless a waiver is approved on our behalf, pursuant to Sec. 22.4(3) we will need to purchase Commercial General Liability Insurance:

(3) *Insurance*. An insurance certificate naming the City of Ames, its officers, and employees as an additional insured with comprehensive general liability limits in the amount of \$500,000 combined single limit shall be in full force and effect during the life of any temporary obstruction permit. The coverage shall be at least as broad as the ISO Form Number CG0001 covering commercial general liability written on an occurrence basis only. A waiver of this requirement may be granted by the City Manager for Sections 22.4(1) and (2). A copy of the current insurance certificate shall be maintained on file with the City Clerk.

(a) Waivers of the insurance requirement shall be based on the following criteria:

- (1) Type of obstruction
- (2) Nature of the event requiring an obstruction
- (3) Anticipated volume of traffic and whether street closings will be required
- (4) Whether the event is for a commercial or private purpose
- (5) The zoning of the area in which the obstruction will occur. Areas with commercial and high density residential zoning will [likely] require insurance¹

DILEMMA - After informing Deputy Petersen that *because we do not intend to perform commercial activity, commercial insurance should not be required – especially for First Amendment activity*, I was directed to inquire with the City Manager with regard to the waiver: *otherwise* “proof of insurance would be required.”

The City Manager's secretary directed me to contact Assistant City Manager *Bob Kindred* (due to the fact that the City Manager was “out of the office for the week”). After emailing Mr. Kindred, on Fri., Aug. 10 I received the following response: “*With regards to a waiver of the insurance certificate, that seems like a reasonable request given the scale and mobility of your obstruction, as long as your table and chairs create no hazard for the public. That determination will be part of our location review after we receive your application.*”

While I very much appreciate Mr. Kindred's timely response, *there appears to be misunderstanding in regard to my activities vs. the scope of Sec. 22.4 altogether*: I am planning to perform First Amendment activity which is *noncommercial activity*. Citizens performing First Amendment activity ought be *exempted* from having to purchase commercial general liability insurance. When Mr. Kindred responded to my email, he referenced the “mobility and scope” of our intended activity rather than the *nature* of our activities.

Mandating that citizens must purchase *commercial* insurance in order to be able to perform *noncommercial* activity (e.g. petitioning, disseminating campaign materials) is arbitrary. Citizens who cannot afford general liability insurance, such as ourselves, could potentially be *prevented* from being able

¹ **City of Ames Municipal Code, CHAPTER 22 STREETS AND SIDEWALKS § 22.4:**
<http://www.cityofames.org/home/showdocument?id=264>

to set up a table at all, and thus our First Amendment activity would become restricted because we wouldn't be able to effectively communicate several key issues related to our campaign. We would be restricted to communicating *only with the materials we could carry in our hands*, and our presentation would be severely impaired. To demonstrate my point, let's take a look at 1976 U.S. Supreme Court ruling *Buckley v. Valeo*, where the court noted in its unanimous decision that:

“A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today’s mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event.... [I]ncreasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.”²

Just as *restricting campaign contributions* restricts one's ability to effectively address issues, so does the *limiting of citizens' ability to present written material* via limiting them to only what they can carry in their hands. A reasonably-sized table which is not *blocking the main part of the sidewalk, which allows fellow citizens to safely pass by*, is *absolutely necessary* for nearly all forms of effective petitioning and dissemination of related materials. We would like for people to be able to view all the materials we are presenting at once, *attractively displaced on a table*. However, **the threat of being fined, charged with a misdemeanor and/or infraction, and/or having our materials confiscated by the City of Ames if we do not apply for a permit (and possibly arbitrarily be mandated to have to purchase commercial insurance) has effectively prevented us from being able to perform First Amendment activity** within the City of Ames for the past several weeks. Having a table with written materials on it, which are directly related to our campaign, *is* a protected form of political speech.

Hague v. Congress of Industrial Organizations, 307 U.S. 496; 59 S. ct. 954; 83 L. Ed. 1423 (1939) is a case involving the validity of a city ordinance (in Jersey City) which sought to prohibit assemblies “in or upon public streets, highways, public works, or public buildings” without a permit from the director of public safety. In reliance on this ordinance, **officers of the city enforced a policy against the distribution of circulars, leaflets, and handbills** against the Congress of Industrial Organizations, which was then organizing in the city. The case brought forth the following question: “Does an ordinance prohibiting public assemblies without permits violate the due process clause of the Fourteenth Amendment?” In a 5-2 decision, **the Court ruled that the ordinance violated the due process clause, which secures existing rights against state abridgment**, the right peaceably to assemble and discuss topics and communicate respecting them, whether orally or in writing, being among those secured rights.³ Sec. 22.4(a) should explicitly exempt citizens performing First Amendment activity such as “petitioning alongside the sidewalk” from having to apply for a permit. This is not just for our organization's sake, but for the sake of future citizens who may not find sufficient legal representation, and who could thus potentially be obstructed from exercising their rights. Amending Sec. 22.4 could also stem liability which could arise from a lawsuit against the city, should someone have their protected activity obstructed by city officials in the future.

Sec. 22.4 provides more authority to the City Manager than he may lawfully possess; he should not have the authority to arbitrate as to whether or not citizens performing activities protected by the First

²Encyclopædia Britannica: “*Buckley v. Valeo*” by Clifford A. Jones Published May 22, 2015 by Encyclopædia Britannica, inc (Accessed August 09, 2018August 09, 2018).:

<https://www.britannica.com/event/Buckley-v-Valeo>

³ **ESSENTIAL SUPREME COURT DECISIONS; SUMMARIES OF LEADING CASES IN U.S. CONSTITUTIONAL LAW** (16th ed.) by John R. Vile. © 2014 by Rowman & Littlefield. ISBN-978-1-4422-2557-2. Page 262.

Amendment *should or should not have to show proof of insurance*, nor should he have the authority to deny such activity altogether. If citizens break a legitimate law, they can be held accountable, and it would prove they went outside the scope of performing First Amendment activity. Citizens should not have to *wait* in order to have their *request to exercise their First Amendment right* “approved.” Here are some of our responses to the various vague criteria outlined in Sec. 22.4, as it is currently written:

(1) Type of obstruction ◀ *This section of the code should explicitly exempt certain noncommercial activities from both the insurance waiver and the permitting process.*

(2) Nature of the event requiring an obstruction ◀ *This section of the code should at least specify perhaps the most benign, effective form of First Amendment activity: petitioning and dissemination of written and oral material for noncommercial purposes.*

(3) Anticipated volume of traffic and whether street closings will be required ◀ *It is extremely unlikely that a large crowd will gather around a table, and any reasonable person setting up a table would not place it in such a manner so as to block the main part of the sidewalk: that would be reckless. Many rights-of-way are obstructed by crowds of business customers every day; citizens tend to move against the building because it is common sense that one should make room for pedestrians. Ames citizens are well-accustomed to such courtesy.*

(4) Whether the event is for a commercial or private purpose ◀ *This section of the code does not consider petitioning, which is a public purpose. It is neither commercial nor private.*

(5) The zoning of the area in which the obstruction will occur. Areas with commercial and high density residential zoning will [likely] require insurance ◀ *Parks and downtown areas (including commercial districts) serve as modern day town squares, civic centers, city squares, urban squares, market squares, public squares, piazzas, plazas, and town greens. Petition and information booths are typically set up in these types of areas throughout cities. Many municipalities consider such activity during the zoning process and accommodate such activities instead of restricting and/or obstructing them.*

The procedure for obtaining the permit and/or insurance waiver are so slow and burdensome that, when followed, they prevent several days to weeks of petitioning and communicating with the public, and they can be used to potentially prevent such activity altogether.

After pointing out my concerns to Deputy Petersen I was told that I could request for the ordinance to be changed via:

- (1) writing a letter to the Mayor *and* City Council by Aug. 22 (today);
- (2) attending the City Council meeting on Aug. 28; and
- (3) waiting for the ordinance to be changed.

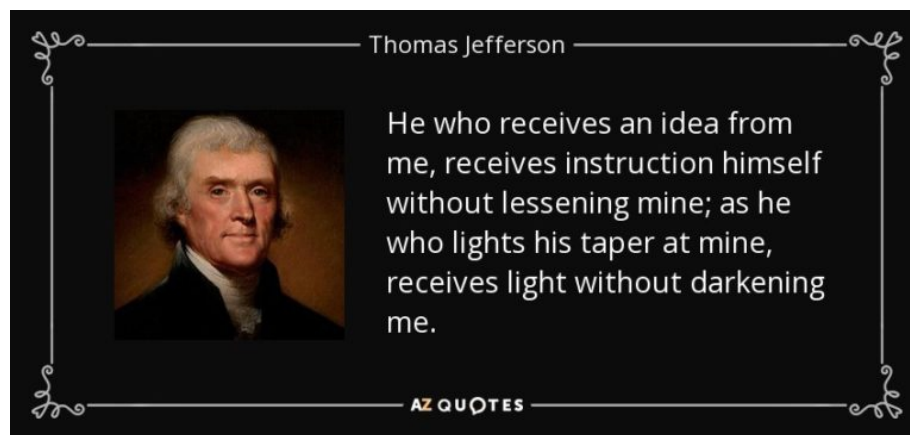
I am concerned that *if I write a written request asking permission to set up a table*, that my request may arbitrarily and/or capriciously denied, restricted, and/or revoked – in which case *the lengthy procedure I would have to follow to remedy the situation would prevent several months of petitioning, outreach, and fundraising.* This would ultimately *result in a costly drain of our campaign's limited resources*, which would be unfair to myself, our organization, our contributors, and fellow citizens who may wish to perform

similar activities without having to jump through all the hoops or risk being shut down in the future. I am in part writing to avert this disastrous situation *and* to hopefully expedite our ability to set up with the blessing of the city, *and* in order to bring this code to the city's attention so that it may be amended. If we had to adhere to this type of procedure in every city we go to, we would have to wait weeks to be able to petition in every city! Our campaign would thereby be severely impaired.

In regards to the permit: *I do not know where we plan to set up* each day. We may choose to be downtown for one or two days (especially when it is windy out because the buildings block the wind), and we may move to the campustown area on days that it is not windy, but we do not know in advance where we will be due to weather restrictions. We have *no intention* of applying days, weeks, or months in advance each time we plan to set up: it is dependent upon too many factors, and our planned activity will be ongoing. We are not a typical business who can set up rain or shine every day and *depend* upon such stability. We are requesting that the City of Ames anticipate *and encourage* active citizenry during the city planning process, rather than creating red tape which appears to be designed more for construction projects, etc. than for petitioning. Areas of use should be planned in every part of town, and should not be located where there is no foot traffic. *Maintaining* an active citizenry which adheres to a respectful “common law” in how we interact with one and other is *part* of the rich culture we ought foster, and I hope city officials and citizens around Ames will speak in favor, and with genuine concern, with regard to the merits of our concerns.

Thank you for your service to Ames citizens and the general public, and for considering our perspective and requests. Please forward this letter to anyone to whom this request may pertain. We look forward to reading your written response.

At this time we *do* intend to respectively set up our table in various locations throughout the city. We hope we do not have to face the threat of being fined or having our property wrongfully confiscated. Although we cannot afford liability insurance, we also cannot afford to halt our campaign for days, weeks, or months. We plan to attend the City Council meeting Aug. 28, and we hope you invite this opportunity as a chance for positive change for the future of Ames *and* for our country for generations to come. I would like to end this letter with a quote from Thomas Jefferson, as written in *a letter to Isaac McPherson* Aug. 13, 1813:⁴



Sincerely,
Alexandra Wilson

4 **The Founders' Constitution, Thomas Jefferson in a letter to Isaac McPherson (13 Aug. 1813):**
<http://press-pubs.uchicago.edu/founders/>