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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

SOUTHERN UTAH DRAG STARS, LLC,
and MITSKI AVALOX,

Plaintiffs,

vs.

CITY OF ST. GEORGE, CITY COUNCIL OF
ST. GEORGE, COUNCILMEMBER JIMMIE
HUGHES, COUNCILMEMBER DANIELLE
LARKIN, COUNCILMEMBER NATALIE
LARSEN, COUNCILMEMBER GREGG
MCARTHUR, COUNCILMEMBER
MICHELLE TANNER, MAYOR MICHELE
RANDALL, and CITY MANAGER JOHN
WILLIS,

Defendants.

**DEFENDANTS' RESPONSES TO THE
COURT'S QUESTIONS IN DOCKET #56**

Civil No. 4:23CV44

Honorable David Nuffer

Pursuant to the Court's Order in Docket #56, Defendants submit the following responses
to the Court's questions.

1. Provide documents, if any, demonstrating how the city defines “events for which the city is a sponsor” and guidelines and criteria used to determine whether events are “city-sponsored” for purposes of the exception to the advertising prohibition.

“City sponsored” events are not defined in the City Code. In practice, the City has defined "City Sponsored" events as those for which the City has agreed to provide financial (including fee-waivers), in-kind, or other support. Events of some non-profit organizations and partner governmental agencies such as the University, School District or the County are also considered “City sponsored” as the fees are generally waived for those events. This is shown in the following documents:

- March 21st List of Reoccurring Events ([Dkt. #54, Exh. 2](#))
- Council minutes: [July 14, 2022 @ 00:00:07](#) (sponsorship discussion at [00:03:20-00:04:25](#)); [March 9, 2023 @ 00:43:07](#); [March 16, 2023 @ 00:56:53](#), [April 6, 2023 @ 00:28:48](#); June 8, 2023 (minutes not yet approved but recording found here: <https://www.utah.gov/pmn/files/987475.MP3>)
- Council minutes re requested sponsorship [January 5, 2023 @ 01:06:14](#) (St. George Market) and [01:12:40](#) (Downtown Farmers’ Market).
- Council agenda packet: July 14, 2022 (Exhibit 1 attached)
- Council agenda packet March 9, 2023 (Exhibit 2 attached)

2. Provide documentary evidence, if any, demonstrating the impetus and timeline for the City determining to enforce the advertising prohibition.

Although the City employs two full time code enforcement officers, all code enforcement within the City is done on a complaint basis. When a complaint is made, an investigation occurs,

and enforcement action taken where appropriate. The same is true in the case of the advertising prohibition. A complaint was received by City staff via an email from Council member Tanner on March 17, 2023 in which she reported hearing a complaint from a “concerned local mental health therapist” who had seen advertising. *See* Exhibit 1. There are no records of any other complaints or enforcement actions that we have found. *See* Decl. of John Willis, Exhibit 3 attached.

3. Provide documentary evidence, if any, demonstrating the impetus and timeline of the creation of exceptions to the advertising prohibition for recurring and city-sponsored events.

Ordinance 2023-03-003 creating the moratorium was adopted March 16, 2023 and enacted upon publication on that same day. *See* Dkt. #54, Exh. 10. The moratorium applied to all applications except City events on City owned property. A complaint about Southern Utah Drag Stars advertising before obtaining a permit was received the next day on March 17, 2023. *See* Response to #2, above. On March 21, 2023 City Manager John Willis met with staff to discuss both enforcement of the 45-day application requirement as well as the advertising prohibition. *See* Affidavit of John Willis, DSTAR 52-53, Avalox Declaration Exhibit A. An investigation was thereafter conducted by Jocelyn Chavez on that same day (March 21, 2023). *See* Affidavit of Ryan Dooley, DSTAR 54-59, Avalox Declaration Exhibit A. Based upon the results of that investigation, staff was directed on March 31, 2023 to enforce the advertising provisions and three (3) event permit applications were denied as a result. Staff was also directed on March 31, 2023, to exempt from the moratorium and advertising provisions, City

sponsored and reoccurring events which amendment was adopted in Ordinance 2023-04-001 on April 6, 2023. *See* [Dkt. #54, Exh. 11](#).

4. Does the special event moratorium prevent applications by non-city entities for new special events that are city-sponsored? Please explain.

The moratorium prevents new applications from non-city entities. “New” is anything not on the March 21st reoccurring list. The City does not decide to sponsor a new event unless a request by the applicant is made, at which time it is brought before the Council at a regular meeting to determine what, if any, City sponsorship there will be. Thus, there would not be a new city sponsored event for which the moratorium exemption would apply. Reoccurring city sponsored events are exempted from the moratorium. *See* Decl. of Christina Fernandez, [Dkt. #54, Exh. 12](#); *see also* City Council Meeting Minutes: [June 23, 2022 @ 00:01:07](#) (Downtown Farmers’ Market); [July 14, 2022 @ 00:00:07](#); [January 5, 2023 @ 01:06:14](#) (St. George Market) and [01:12:40](#) (Downtown Farmers’ Market).

5. Provide documentation of any criteria or guidelines for city sponsorship of special events.

Staff will apply all of the regulations and fees uniformly. If a non-governmental applicant wants to request a fee waiver, in-kind support (parks dept, police dept, etc.) or other level of city support, a request is made to the Council who hears the request in an open and public meeting and makes the determination after discussion. For fee waiver request or other support by other governmental agencies, those requests are generally granted by staff based upon existing interlocal or other agreements. *See* City Council Meeting Minutes: [June 23, 2022 @ 00:01:07](#) (Downtown Farmers’ Market); [July 14, 2022 @ 00:00:07](#) (sponsorship discussion at

00:03:20-00:04:25); January 5, 2023 @ 01:06:14 (St. George Market) and 01:12:40 (Downtown Farmers' Market).

6. Provide documentation of the criteria or guidelines used to determine whether an event is a recurring event for purposes of the advertising prohibition.

The Special Events Section of the [City Code, § 3-10-1 et. seq](#) contains the Advertising Provision and defines Reoccurring Event. The Advertising Provision is found at [§ 3-10-4\(C\)](#). See [Dkt. #54, Exh. 1](#). A “Reoccurring Event” is defined as “[a]n event that has occurred annually without missing a year.” See [§ 3-10-2, Dkt. #54, Exh. 1](#). Pursuant to [§ 3-10-4\(B\)](#), Exempt for Recurring Events with No Substantial Changes, “[a] list of reoccurring events will be provided for city council review and authorization annually by July 1. After city council authorization, any application for reoccurring events with no substantial changes may be accepted by the city within forty-five (45) calendar days prior to the event so long as the city has sufficient time to process the application.” See *Id.*

7. Provide documentation of the criteria or guidelines used to determine whether an event is a recurring event for purposes of the moratorium.

The Moratorium was enacted on March 16, 2023 via Ordinance #2023-03-003. See [Dkt. #54, Exh. 10](#). This ordinance expressly exempted Reoccurring Events, stating, “Except as otherwise specified above, Reoccurring Events and Filming Permits as those terms are defined in City Code [§ 3-10-2](#) shall not be subject to this ordinance.” See *Id.* The ordinance also provided

Section 1. The provisions of City Code [§ 3-10-1](#) through [§ 3-10-10](#) are hereby suspended and made inapplicable for the following Special Event requests and no application shall be processed which is inconsistent with this suspension.

1.2. An application for any recurring or repeat event located on City owned property or within City facilities which was not held within the previous calendar

year and is not on the list of reoccurring events provided to the City Council by City staff on September 2, 2022.

Id.

8. Provide documentation of City guidelines and timelines for event permitting decisions, including special event permitting.

An application must be received at least forty-five (45) days in advance of the requested event. *See City Code § 3-10-4(A)*. Reoccurring events for which there is no major change, may apply in less time. *See City Code § 3-10-4(B)*. If a reoccurring event has a substantial change, it is treated as “new” event which would fall under the moratorium and advertising prohibition. *See Ordinance #2023-03-003, Dkt. #54, Exh. 10*. Staff ensures that the necessary information has been provided and works with applicant to make sure it is a completed application. *See Decl. of Christina Fernandez, Dkt. #54, Exh. 12*. An insurance certificate is required prior to the event, but applications are generally processed prior to receiving the certificate of insurance (COI). *See City Code § 3-10-5*. Completed applications are then reviewed by staff and the Special Event Review Committee (SERC) which includes planners, law enforcement, fire officials, park staff, and a member of the City Council. *See City Code § 3-10-7, see also City Council Minutes: July 14, 2022 @ 00:00:07 (permitting discussion at 00:11:20 - 00:17:25 and 00:33:35 – 00:36:20); July 28, 2022 @ 00:27:10; March 9, 2023 @ 00:43:07; June 8, 2023 (minutes not yet approved but recording found here: <https://www.utah.gov/pmn/files/987475.MP3>)*. The SERC committee makes recommendations to the City Manager for approval or denial. *See Id.* The City Manager or his designee then approves or denies the application. *See Id.* Although Plaintiffs represent that “[t]he City does not dispute that it typically issues event permits within approximately one day of the event” in Paragraph 9 of their Reply Memorandum in Support of Motion for

Preliminary Injunction (Dkt. #59), the data from Special Events in 2022 and 2023 shows that most were approved well in advance of the event, allowing sufficient time for advertising the event. In fact, only 18 of 231 (8%) special events in 2022 and 2023 had their permit approved the day of the event. *See* Exh. C to Sarah Reber Decl.

9. Provide documentation evidencing historical experience validating the city's interests in the advertising prohibition.

The advertising provision was adopted in 2015. Discussion were held regarding treating reoccurring events differently from new permits and separating out City events and City sponsored events from the special event provisions. The requirement for an application at least 45 days prior to the event was also discussed and implemented. *See* City Council Minutes: [January 15, 2015](#) (Exhibit 4 attached); [October 8, 2015](#) (Exhibit 5 attached); and [October 15, 2015](#) (Exhibit 6 attached).

10. Provide documentation evidencing historical experience or other data (as to each city park) of the city's interests supporting the moratorium.

The City Council has expressed concerns over the use of the parks generally and specific parks for over a year. *See* Decl. of Christina Fernandez, [Dkt. #54, Exh. #12](#). Additionally, the City has one staff person who is charged with processing all applications and who was also given the task of collecting necessary use data to support a re-wright of the special event provisions in the City Code. The moratorium was necessary so that surveys could be conducted in three parks (Town Square, Vernon Worthen, and Sandtown) and so staff would not be overwhelmed with processing permit applications during this time. *See Id.* The following concerns for various parks have been noted:

- Town Square: Hosting events on the grassy area has been discussed several times by Council.
- Vernon Worthen Park: Reports of neighborhood complaints received and discussed by Council, traffic and parking concerns, sharing park space with others, etc.
- Sandtown Park: Restrooms in need of repair and overuse of grass = dirt patches. (youth soccer uses this park)
- J.C. Snow Park: Limited parking and complaints by Family Fun Center
- Confluence Park: Very limited parking. Events would require permission from County to use parking at the Dixie Conference Center.

See Decl. of Christina Fernandez, [Dkt. #54, Exh. 12](#); see also City Council Minutes: [August 11, 2022 @ 00:44:12](#); [December 8, 2022 @ 01:24:00](#); Email of Sarah Reber March 10, 2023 (DSTARS 131-132, Avalox Declaration Exhibit B); Email of Sarah Reber March 15, 2023 (DSTARS 115, Avalox Declaration Exhibit B); Declaration of Sarah Reber (Exhibit 7 attached); August 11, 2022 Agenda packet (Exhibit 8 attached); and December 8, 2022 Agenda Packet (Exhibit 9 attached).

11. Provide documentation, if any, evidencing historical experience or other data (as to each city park) of the city’s interests which support the exemptions to the moratorium.

The City believes that the reoccurring city sponsored and other events are “known” in terms of types of use, wear and tear on facilities, attendance, security, etc. The City can respond to those uses which are known and ensure that the facilities are available and ready. Introducing new events is more difficult because those events are unknown in terms of attendance, security, wear & tear, etc. and it is the unknown which is the basis for the moratorium until a balance of park usage for events v. other uses could be examined. See Decl. of Christina Fernandez, [Dkt. #54, Exh. 12](#); see also Declaration of Sarah Reber (Exhibit 7 attached); City Council minutes:

[August 11, 2022 @ 00:44:12](#); [December 8, 2022 @ 01:24:00](#); August 11, 2022 Agenda packet (Exhibit 8 attached); and December 8, 2022 Agenda Packet (Exhibit 9 attached).

12. For the period March 16 through June 9, 2023, how many special events were held in city parks, and how many events were held in city parks for the same period in 2022?

Special events are not the only use of the parks, as parks and park facilities may be reserved through the Parks department for family or group use.

From March 16th through June 9th, 2023, there were 29 Special Events (with permit) held in City owned parks.

From March 16th through June 9th, 2022, there were 18 Special Events (with permit) held in City owned parks. *See* Affidavit of Sarah Reber (Exhibit 7 attached)

13. Specify how the issuance of a preliminary injunction in this case would infringe on the constitutional rights or other or interests of non-parties.

The impact to others depends on the nature of the order entered.

If the Court were to grant Plaintiffs' request and order that an event be held in Vernon Worthen Park on June 30th, the constitutional due process rights of a family of 200 people would be infringed upon. Vernon Worthen Park and its facilities & pavilions have been reserved for June 30, 2023 for a family reunion between 5-9 p.m. If the Court were to order that the Plaintiffs show also occur on that date during those times, that family who has paid all fees for the use of the park and planned accordingly, would be unable to hold their family reunion and would be deprived of their use and enjoyment without notice or an opportunity to be heard. *See* Decl. of Tawnee Graywolf, (Exhibit 10 attached)

If the Court were to enjoin the future enforcement of the advertising provision, the impact on others would be de minimis because the current application of that provision is only for new events.

If the Court were to order that the moratorium be lifted, then the City would begin considering new applications, but the 45-day requirement in § 3-10-4(A) would remain in place to allow all departments and agencies to review the new applications as well as determine what parks are available. This would likely delay the process to make changes to the current code provisions because there is limited staff that can process both the applications and code revisions. Further, processing new applications would increase the use of an already increased burden on the parks (18 permits in 2022 vs. 29 permits in 2023 for March 16th through June 9th) which then degrades the availability and use and enjoyment for all citizens.

DATED this 14th day of June, 2023.

SNOW CHRISTENSEN & MARTINEAU

/s/ Scott Young _____
Scott Young
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 14, 2023, I caused a true and correct copy of the foregoing **DEFENDANTS' RESPONSES TO THE COURT'S QUESTIONS IN DOCKET #56** to be served upon all counsel of record:

/s/ Aliza Murad