

1 UNITED STATES DISTRICT COURT FOR THE
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION

4 CARL AND JANICE DUFFNER,

5 Plaintiffs,

6 v.

7 CITY OF ST. PETERS, a
8 municipality and political
9 subdivision of the State of
10 Missouri,

11 Defendant.

Case No. 4:16-cv-1971

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF – CIVIL RIGHTS
[42 U.S.C. § 1983]

12 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

13 **INTRODUCTION**

14 1. The Plaintiffs in this case, Carl and Janice Duffner, have created a well-
15 tended, beautiful flower garden that covers their entire yard. None of the plants in
16 the Duffners' garden are illegal, and their garden does not contain any grass because
17 Janice is allergic to grass.

18 2. Although the Duffners' flower garden is perfectly harmless, as of the
19 date that this Complaint is being filed Carl and Janice are subject to criminal fines
20 of more than \$180,000 and imprisonment for more than 20 years because their flower
21 garden does not comply with St. Peters Code § 405.390(A)(4), an ordinance of St.
22 Peters, Missouri, ("the City") which forces resident private property owners to devote
23 at least half of their yards to the cultivation and maintenance of "turf grass." This
24

1 ordinance will henceforth be referred to as “the Turf Grass Mandate.” St. Peters
2 Code § 405.815, which provides the penalties for non-compliance with the Turf Grass
3 Mandate, will be referred to as “the Penalty Provision.”

4 3. If the City is permitted to impose draconian fines and imprisonment
5 simply because a citizen chooses to cultivate on their own private property lawful,
6 harmless plants of their own choosing instead of a potentially harmful plant of the
7 government’s choosing, there is no longer any principled limit to the government’s
8 control over either the property or the owners.

9 4. This civil rights lawsuit, brought pursuant to 42 U.S.C. § 1983, seeks
10 primarily to preserve and to vindicate the Duffners’ rights to use their private
11 property in lawful, harmless ways of their own choosing, and to be free of excessive
12 fines and cruel and unusual punishments; these are fundamental constitutional
13 rights protected by the Eighth and Fourteenth Amendments to the U.S.
14 Constitution, and also by Article I, sections 21, 26, and 28, of the Missouri
15 Constitution.

16
17 **JURISDICTION AND VENUE**

18 5. The Duffners bring this civil rights lawsuit pursuant to the Eighth and
19 Fourteenth Amendments to the United States Constitution; the Civil Rights Act of
20 1871, 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. § 2201. They
21 seek (1) a declaratory judgment that the Turf Grass Mandate is unconstitutional,
22 both on its face and as applied to them; (2) a declaratory judgment that the Penalty
23 Provision is unconstitutional, as applied to them; (3) a declaratory judgment that the
24

1 Turf Grass Mandate exceeds the zoning authority granted the City under Missouri
2 law; (4) preliminary and permanent injunctions preventing the City from enforcing
3 the Turf Grass Mandate; (5) nominal damages; and (6) reasonable attorney fees.

4 6. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. §§
5 1331 (federal questions arising under the constitution and statutory laws of the
6 United States), 1343 (an action brought to redress deprivations under color of state
7 law of rights, privileges, and immunities secured by the U.S. Constitution and an
8 action to secure equitable relief under an act of Congress providing for the protection
9 of civil rights), 1367 (supplemental jurisdiction over claims related to those giving
10 rise to original jurisdiction in U.S. District Court), and 2201 (authority to issue
11 declaratory judgment).

12 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2)
13 because the events giving rise to the Duffners' claims occurred in the City of St.
14 Peters, Missouri.

15 8. Venue is proper in the Eastern Division pursuant to Local Rule 3-
16 2.07(1).

17
18 **PARTIES**

19 9. Plaintiffs Carl and Janice Duffner own and live in a residence located
20 at 1 Fishers Hill Drive in St. Peters, Missouri.

21 10. Defendant City of St. Peters, Missouri, is a municipality and a political
22 subdivision of the State of Missouri.

ORDINANCES AT ISSUE

1
2 11. St. Peters Code § 405.390(A)(4) is part of Chapter 405 of the St. Peters
3 Code and was enacted by the St. Peters Board of Aldermen on October 23, 2008, by
4 the adoption of Ordinance 5096; this provision was adopted under color of law.

5 12. Section 405.390(A)(4) is entitled “Landscaping and Screening—
6 Residential Districts.” It reads:

7 “It shall be at the discretion of the individual property owners to
8 landscape their lots; however, at any given time... [a]ll landscaping shall be
9 properly maintained according to City ordinances presently in effect. **A**
10 **minimum of fifty percent (50%) of all yard areas shall be comprised of**
11 **turf grass.** Trees shall not be planted within six (6) feet of a property line in
12 the side and rear yard. The individual owner shall be responsible for such
13 maintenance.” (emphasis added)

14
15 13. The only portion of § 405.390(A)(4) at issue in this case is the single
16 sentence emphasized above, in which the City requires that at least fifty percent of
17 all residential yard areas must be planted with “turf grass.”

18 14. All efforts the City has made and will make to enforce the Turf Grass
19 Mandate are done under color of law.

20 15. Although the Duffners contend that the one highlighted sentence
21 constituting the Turf Grass Mandate is facially unconstitutional, the Plaintiffs
22 emphasize that in this case they **do not** contest the City’s general authority to enact
23 zoning ordinances in accordance with state statutes, nor do they contest the validity
24

1 of any law that might prohibit the cultivation or maintenance of plants in a manner
2 that might constitute a nuisance or otherwise might negatively impact the public
3 health and safety.

4 16. The Turf Grass Mandate does not make any reference to “weeds” or
5 otherwise prohibit property owners from having “weeds” on their property, nor have
6 the Duffners been accused of violating any “weed” ordinance; “weeds” are not in any
7 way at issue in this case.

8 17. The Turf Grass Mandate does not prohibit private property owners
9 from cultivating any particular species or category of plant in their yards; all of the
10 flowers and decorative plants the Duffners are cultivating are perfectly lawful, so
11 this case is not in any way about the cultivation of illegal plants.

12 18. The Turf Grass Mandate does not limit the height of the required turf
13 grass, nor does it limit the height of any other plant, nor have the Duffners been
14 accused of violating any ordinance limiting the height of plants on their property;
15 this case is not in any way about overgrown plants of any variety.

16 19. The Turf Grass Mandate does not make any reference to “vermin” or
17 otherwise prohibit property owners from having “vermin” on their property, nor have
18 the Duffners been accused of harboring “vermin” on their property; “vermin” are not
19 in any way at issue in this case.

20 20. The City has no evidence that merely planting a certain percentage of
21 a yard with either flowers or turf grass will have any predictable effect on the
22 presence or prevalence of “vermin.”
23
24

1 21. The Turf Grass Mandate does not state that failure to comply with the
2 mandate creates a “nuisance.”

3 22. The City has no evidence that a well-maintained, weedless yard that
4 contains plants other than turf grass should be considered a “nuisance.”

5 23. The Duffners have not been accused of maintaining a “nuisance” on
6 their property, nor of violating any ordinance making it unlawful to maintain a
7 “nuisance” on their property; this case is not in any way about the maintenance of a
8 “nuisance” on private property.

9 24. St. Peters Code § 405.815 was enacted by the St. Peters Board of
10 Aldermen and states the penalties for violations of Chapter 405; this provision was
11 adopted under color of law.

12 25. Section 405.815 states that the penalties for violations of Chapter 405
13 are as follows:

14 “1. Except as provided in Subsection (4) of Section 89.120, RSMo., the
15 owner or general agent of a building or premises where a violation of
16 any provision of said regulations has been committed or shall exist...
17 shall be guilty of a misdemeanor punishable by a fine of not less than
18 ten dollars (\$10.00) and not more than two hundred fifty dollars
19 (\$250.00) for each and every day that such violation continues or by
20 imprisonment for ten (10) days for each and every day such violation
21 shall continue or by both such fine and imprisonment in the discretion
22 of the court.
23

1 “Notwithstanding the provisions of Section 82.300, RSMo., however, for
2 the second (2nd) and subsequent offenses involving the same violation at
3 the same building or premises, the punishment shall be a fine of not less
4 than one hundred dollars (\$100.00) or more than five hundred dollars
5 (\$500.00) for each and every day that such violation shall continue or by
6 imprisonment or ten (10) days for each and every day such violation
7 shall continue or by both such fine and imprisonment in the discretion
8 of the court.

9 “2. Any such person who having been served with an order to remove
10 any such violation shall fail to comply with such order within ten (10)
11 days after such service or shall continue to violate any provision of the
12 regulations made under authority of Section 89.010 to 89.140, RSMo., in
13 the respect named in such order shall also be subject to a civil penalty
14 of two hundred fifty dollars (\$250.00).

15
16 “3. Nothing herein contained shall prevent the City from taking such
17 other lawful action as it deems necessary to prevent or remedy any
18 violation.”

19 26. Upon information and belief, St. Peters Code § 405.815 prescribes the
20 penalties the City is required to impose on the Duffners and any other of the City’s
21 residential property owners who do not comply with the Turf Grass Mandate.

22 27. The Penalty Provision establishes a mandatory minimum daily fine for
23 violations of the Turf Grass Mandate, and also grants a court discretion to impose
24

1 additional fines and imprisonment up to a set maximum daily penalty. § 405.815.1.

2 28. The Penalty Provision authorizes the imposition of a separate penalty
3 for each day a person does not comply with the requirements of St. Peters Code
4 Chapter 405 (which includes the Turf Grass Mandate) and it does not establish a
5 statute of limitations to limit the City's ability to seek penalties for violations; the
6 only limit to the extent of the fines and prison time that a citizen might face for
7 refusing to comply with the Turf Grass Mandate is the number of days they have
8 been out of compliance with the Turf Grass Mandate. *Id.*

9 29. For example, if the first time an owner chose not to comply with the
10 Turf Grass Mandate their non-compliance lasted for 365 days, they would face a
11 minimum fine of \$3,650, a maximum fine of \$91,250, and up to ten years in prison;
12 if theirs was a second or subsequent offense, after 365 days of noncompliance they
13 could face a minimum fine of \$36,500, a maximum fine of \$182,500 and
14 imprisonment for a term of ten years.

15
16 **FACTUAL BACKGROUND**

17 30. Carl and Janice Duffner own and live in a home located at 1 Fishers
18 Hill Drive in St. Peters, Missouri; the City has zoned this property as R-1 Single
19 Family Residential.

20 31. Shortly after purchasing their property in 2002, Carl and Janice began
21 converting their entire yard into a lush, well-tended garden full of flowers and
22 ornamental greenery; this conversion was designed to stabilize a hill in their back
23 yard, to deter erosion that had been resulting from water draining into their yard

1 from city property, and also to minimize Mrs. Duffner's allergic reactions from
2 exposure to grass pollen.

3 32. The Duffners' yard now comprises the landscaped hillside, mulched
4 areas, various planting beds, two small ponds, pathways, and seating areas.

5 33. The foliage is a mix of flowering plants and decorative greenery,
6 including in many places ground cover that gives an appearance, height, and scale
7 similar to grass, but the yard does not contain any turf grass.

8 34. At some point prior to May 14, 2014, an unidentified person complained
9 to the City that the Duffners did not have any turf grass in their yard; on May 14,
10 2014, Julie Powers, the City's Director of Planning, Economic and Community
11 Development, notified the Duffners that failure to maintain turf grass on fifty
12 percent of their yard would constitute noncompliance with the Turf Grass Mandate.
13 See May 14, 2014, Letter From Julie Powers, Attached as Exhibit 1.

14 35. On May 23, 2014, the Duffners submitted to the City an application
15 requesting a variance that would completely exempt their property from the Turf
16 Grass Mandate. See Duffner Application for Variance, Attached as Exhibit 2.

17 36. In a sworn statement made to the St. Peters Board of Adjustment on
18 June 18, 2014, Julie Powers stated as part of "the City's position" in regard to the
19 Duffners' request for a total exemption from the requirements of the Turf Grass
20 Mandate that the Duffners' plants are "very attractive and well kept," and that
21 "there is a lot of ground cover which is low to the ground and, therefore, gives an
22 appearance, height, and scale that is similar to grass." A copy of the Minutes of the
23

1 June 18, 2014, St. Peters Board of Adjustment Hearing are attached as Plaintiffs'
2 Exhibit 3.

3 37. After a hearing before the St. Peters Board of Adjustment held on June
4 18, 2014, the Board of Adjustment decided not to grant the requested total variance
5 the Duffners had requested, and instead purported to grant a variance that required
6 the Duffners to plant at least five percent of their property with turf grass, and to
7 locate that turf grass "in the front or in the side yard in front of the homeowner's
8 fence."

9 38. The Board of Adjustment issued Conclusions of Law justifying its
10 decision to grant the variance, concluding that (1) the variance would not impair the
11 supply of light or air to the adjacent properties; (2) the variance would not increase
12 congestion in the public streets; (3) the variance would not impact the safety of the
13 community; and (4) the variance would not impact the general health and welfare of
14 the community. *See* Board of Adjustment Findings of Fact and Conclusions of Law,
15 Attached as Exhibit 4.

16 39. Julie Powers notified the Duffners that they were required to comply
17 with the Turf Grass Mandate, as modified by the variance, no later than December
18 1, 2014. *See* July 1, 2014, Letter From Julie Powers, Attached as Exhibit 5.

19 40. Because they believe the City has no constitutional or statutory
20 authority to require them to cultivate and maintain on their private property a plant
21 they do not want and that makes Janice sick, the Duffners did not comply with the
22 Turf Grass Mandate by December 1, 2014, and as of the filing of this Complaint they
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1 still have not planted any turf grass in their yard.

2 41. The Duffners love their yard as it is, full of well-tended flowers and
3 ornamental greenery; both for aesthetic and financial reasons, as well as for reasons
4 of Janice's physical comfort, they have no desire to plant any turf grass in it.

5 42. Maintaining turf grass in residential yards is bad for the environment
6 because it wastes water to grow the turf grass, can lead property owners to introduce
7 large quantities of polluting chemicals in the form of herbicides and pesticides, can
8 lead to increased levels of greenhouse gasses, and frequently leads to increased
9 consumption of fossil fuels due to the requirement that grass must be kept below a
10 certain height.

11 43. In recognition of the negative environmental effects of grass yards, the
12 trend among cities all over the nation has been to limit the percentage of turf grass
13 a property owner may maintain.

14 44. In addition to the negative environmental consequences of grass yards,
15 maintaining turf grass requires the property owner either to exert physical labor or
16 to pay for someone else to perform that labor. The Duffners do not wish to devote
17 physical labor or financial resources to maintaining a plant they do not want on their
18 private property.

19 45. Among the bundle of rights historically associated with private
20 property ownership are the owner's right to use their property in any lawful and
21 harmless way and to refrain from using their property in any way the owner finds
22 disadvantageous.
23

1 46. By requiring Carl and Janice to destroy part of their harmless, lawful
2 flower garden and replace it with turf grass, the City has usurped for itself
3 fundamental rights that belong to private property owners.

4 47. Upon information and belief, the City has no evidence that the
5 Duffners' choice to use their private property as a flower garden has diminished the
6 value of any identifiable other person's private property.

7 48. Upon information and belief, the City has no evidence that planting at
8 least fifty percent of the Duffners' private property with turf grass would appreciably
9 increase the value of any other identifiable person's private property.

10 49. Upon information and belief, the City has no evidence that planting at
11 least five percent of the Duffners' private property with turf grass would appreciably
12 increase the value of any other identifiable person's private property.

13 50. Upon information and belief, Carl and Janice are subject to penalties
14 required under § 405.815 because they did not bring their property into compliance
15 with the Turf Grass Mandate as of December 1, 2014, as instructed by the City.

16 51. On October 18, 2016, the City sent another warning letter to the
17 Duffners, commanding them to comply with the Turf Grass Mandate by December
18 16, 2016, and stating that if they did not, they would be issued a summons. A copy
19 of this October 18, 2016 Letter is attached as Exhibit 6.

20 52. The Penalty Provisions are mandatory, not discretionary.

21 53. Furthermore, if the City contends that it does not intend to apply the
22 Penalty Provisions against the Duffners for their noncompliance with the Turf Grass
23

1 | Mandate, this would acknowledge that the Turf Grass Mandate is so devoid of any
2 | legitimate public purpose that it need not be enforced.

3 | 54. Upon information and belief, no appellate court in the nation has ruled that
4 | the government may force all owners of private residential property in a specified
5 | jurisdiction to dedicate an arbitrary percentage of their private residential property
6 | to the cultivation and maintenance of a plant the property owners may not want.

7 | 55. The Turf Grass Mandate is a purely irrational effort by the City to force
8 | private property owners to use that private property in a way of the City's choosing,
9 | rather than a way of the owners' choosing.

10 | 56. The City cannot lawfully intrude onto the Duffners' property, tear out their
11 | flower garden, and replace it with turf grass, so the City is attempting to impose
12 | draconian penalties that will compel the Duffners—against their will—to do what
13 | the City is powerless to do directly.

14 | 57. If the City has the power to impose the Turf Grass Mandate, there is no
15 | principled reason that the City could not impose other mandates on its citizens, such
16 | as compelling them to devote a certain portion of their property to the installation
17 | and maintenance of a swimming pool, or compelling them to put up decorative lights
18 | of the government's choosing during the holiday season each year.
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1 CLAIMS FOR RELIEF

2 COUNT I

3 **Deprivation of Fundamental Right to Use Private Property**
4 **in Harmless, lawful manners of the Owner's Choosing and of Fundamental**
5 **Right to Exclude Unwanted Persons from Private Property**
6 **(42 U.S.C. § 1983; U.S. Const. Amend. XIV; Mo. Const. Art. I, § 10)**

7 58. The Fourteenth Amendment of the U.S. Constitution precludes any
8 State from “depriv[ing] any person of life, liberty, or property, without due process
9 of law.” U.S. Const. Amend. XIV, § 1; *see also* Mo. Const. Art. I, § 10.

10 59. The property rights Carl and Janice are asserting are deeply embedded
11 in the English and American legal traditions; even before the founding of the
12 American republic courts recognized that “a person’s right to property included ‘the
13 free use, enjoyment, and disposal of all his acquisitions.” *See* 1 W. Blackstone,
14 *Commentaries on the Laws of England* 125 (1769).

15 60. Shortly after the ratification of the U.S. Constitution and the Bill of
16 Rights, which expressly protects citizens’ right to property, James Madison observed
17 that the protection of private property is one of the reasons people institute
18 governments and that, having established constitutional safeguards against the
19 direct taking of private property, the United States should also not allow government
20 *indirectly* to deprive citizens of their property rights. *See* James Madison, “Property”
21 (1792), in 6 *The Writings of James Madison* 103 (G. Hunt ed. 1906).

22 61. Courts in Missouri and all over the country have long recognized that
23 the right to own, possess, and make harmless, lawful use of private property is one
24 of the fundamental constitutional rights that protects citizens against improper

1 government intrusion; a central aspect of citizens' property rights is the owner's
2 authority to control the asset in question.

3 62. The Missouri Supreme Court, in particular, has observed that the right
4 to property includes "ownership and possession and also right to use in enjoyment
5 for lawful purposes." *See Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d
6 267, 271 (Mo. banc 2002).

7 63. In the instant case, the Defendant's Turf Grass Mandate usurps the
8 Duffners' fundamental right to use their private property in a harmless, lawful
9 manner of their own choosing.

10 64. Nothing in Missouri law or St. Peters' ordinances make it unlawful for
11 citizens to cultivate and maintain a flower garden on their property.

12 65. The City has no evidence that any identifiable person has been, is being,
13 or is likely to be harmed as a consequence of the Duffners' decision to cultivate and
14 maintain a flower garden on their property.

15 66. Although it is perfectly lawful for the Duffners to devote any given part
16 of their entire yard to the cultivation and maintenance of a flower garden on their
17 property, and although their decision to do so has not harmed, is not harming, and
18 does not threaten to harm any identifiable person, the Turf Grass Mandate threatens
19 the Duffners' fundamental right to put their private property to a harmless, lawful
20 use.
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22 67. Instead, the Turf Grass Mandate requires Carl and Janice to cultivate
23 and maintain on their private property a plant of the government's choosing even
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1 | though the presence of that plant will not promote the public health and safety and
2 | will negatively impact Janice’s health and comfort.

3 | 68. The Turf Grass Mandate infringes upon the Plaintiffs’ fundamental
4 | property rights, protected under the Fourteenth Amendment of the U.S.
5 | Constitution.

6 | 69. A law that infringes upon a fundamental right is subject to strict
7 | scrutiny.

8 | 70. The Turf Grass Mandate is not supported by any compelling
9 | government interest and it is not narrowly tailored to burden citizens’ fundamental
10 | property rights only so much as is reasonably necessary to accomplish a compelling
11 | government interest.

12 | 71. Governmental interference with a fundamental right may be sustained
13 | only upon a showing that the legislation is closely tailored to serve an important
14 | governmental interest.

15 | 72. Furthermore, the Turf Grass Mandate is facially unconstitutional
16 | under *any* standard of scrutiny because it is unreasonable, arbitrary, and
17 | unnecessary for the advancement of any compelling or permissible state objective;
18 | in short, the Turf Grass Mandate is “truly irrational.”

19 | 73. As the Board of Adjustment acknowledged in its Conclusions of Law
20 | regarding the Duffners’ variance request, the amount (or absence) of turf grass in a
21 | residential yard does not affect the supply of light or air to adjacent properties, does
22 | not increase congestion in the public streets, does not impact the safety of the
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1 community, and does not impact the general health and welfare of the community.

2 74. The Turf Grass Mandate is truly irrational primarily, but not
3 exclusively, because it requires residential property owners to use their property and
4 involuntarily to apply their labor for the cultivation and maintenance of a
5 governmentally-selected type of plant even though the presence or absence of that
6 plant will not impact the safety, general health, or welfare of the community.

7 75. Unlike familiar municipal ordinances prohibiting noxious weeds or
8 establishing a maximum height for grass, the Turf Grass Mandate does not prohibit
9 a potentially harmful use of property.

10 76. The Turf Grass Mandate merely requires owners of residential property
11 in St. Peters to dedicate a specific, arbitrary percentage of their yard to the
12 cultivation of a plant selected by the government.

13 77. The Turf Grass Mandate is truly irrational primarily, but not
14 exclusively, because the City has no evidence that the presence of turf grass in
15 residential yards serves any compelling or permissible governmental objective, much
16 less that planting a specific percentage of a yard with turf grass is necessary for
17 accomplishing such a purpose.

18 78. The government cannot assert any legitimate objective sufficient to
19 justify imposing the Turf Grass Mandate, which forces citizens to plant and
20 permanently maintain on their own private property plants of the government's
21 selection, depriving those private property owners of their fundamental right to use
22 their private property in harmless, lawful manners of the property owner's own
23

1 choosing.

2 79. The Duffners contend that whatever interest the City might have in the
3 “aesthetics” of residential properties, those interests alone cannot be sufficient
4 justification for depriving private property owners of their constitutionally protected
5 right to use their private property in a harmless, lawful way.

6 80. The City cannot legitimately assert an interest in maintaining certain
7 aesthetic uniformity because nothing in the Turf Grass Mandate dictates that
8 private property owners must plant the required grass in a place visible to the public;
9 many property owners could comply with the mandate without planting any grass
10 in a place visible to the public.

11 81. Thus, the Duffners contend that because the Turf Grass Mandate does
12 not specify where on property turf grass must be maintained, the Turf Grass
13 Mandate cannot serve whatever aesthetic interest the City might have in requiring
14 private property owners to plant at least half of their property with turf grass.

15 82. In the alternative, the Turf Grass Mandate violates the fundamental
16 right to exclude unwanted persons or things from their private property.

17 83. By enacting the Turf Grass Mandate, the City has assumed permanent
18 control over how the City’s private property owners will use at least half of their yard
19 space, requiring the owners to submit to the permanent physical occupation of a
20 large part of their property by unwelcome, health-destructive plants.

21 84. The constitutionally-protected right to private property includes “the
22 exclusive possession *and control* of [the owned] property, and the right to devote it
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1 to such lawful uses as will subserve” the owner’s interests. *See City of Fredricktown*
2 *v. Osborn*, 429 S.W.2d 17, 22 (Mo. App. 1968).

3 85. The Turf Grass Mandate not only deprives property owners of choice as
4 to what they will grow on at least half of their private property, it imposes a
5 permanent obligation on the owner to cultivate and maintain that unwanted
6 physical presence on their property for no reason other than that the government
7 commands it.

8 86. That the government has, by fiat, required property owners not only to
9 accept on their private property an unwanted physical presence, but to cultivate and
10 maintain that physical presence, unjustifiably denies the property owners their
11 fundamental right to exclude unwanted persons or things from their private
12 property.

13 87. It would plainly be a violation of citizens’ property rights for the
14 government to come onto private property, forcibly tear out harmless, lawfully-
15 grown flowers and replace them with turf grass, so the City cannot avoid the
16 violation by forcing its residents, on pain of extraordinary fines and jail time, to do
17 what the City could not lawfully do itself.

18 88. If the City has the power to force property owners to devote a certain
19 percentage of their property to the cultivation and maintenance of a government-
20 designated plant, there is no principled limit to the government’s power to dictate
21 what property owners must put or maintain on their property.

22 89. The City’s position regarding property rights is that citizens have no
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1 constitutional protection if a government passed a law requiring them to cover a
2 specified percentage of their house with holiday lights every December.

3 90. The City's position regarding property rights is that citizens would have
4 no constitutional protection if the City passed a law requiring them to put up and
5 maintain around their yard a fence of a government-designated design.

6 91. The City's position regarding property rights is that citizens would have
7 no constitutional protection if the City passed a law requiring them to install and
8 maintain a swimming pool that covered a certain percentage of the yard.

9 92. The Duffners contend that if constitutional protection for citizens'
10 property rights is to have any significance, those rights must create an articulable
11 limit on the extent to which government may interfere with a citizen's choices
12 regarding the use of their private property; the Turf Grass Mandate defies any such
13 articulable limit.

14 93. The Turf Grass Mandate threatens to impose significant and
15 irreparable harm on the Plaintiffs, including the loss of their constitutional rights,
16 monetary damages, and physical discomfort in the form of Mrs. Duffner's sensitivity
17 to grass pollen.

18 94. Unless this Court declares the Turf Grass Mandate unconstitutional on its
19 face and enjoins the Defendant from enforcing the Turf Grass Mandate, the
20 Plaintiffs will suffer great and irreparable harm.
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COUNT II

**Violation of Prohibition Against
Excessive Fines and Cruel and Unusual Punishment
(42 U.S.C. § 1983; U.S. Const. Amend. VIII; Mo. Const. Art. I, § 21)**

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5 95. The Plaintiff incorporates by reference all of the preceding paragraphs in this
6 Complaint as if fully set forth herein.

7 96. The Eighth Amendment to the U.S. Constitution (made applicable to state
8 and local governments through the Fourteenth Amendment) and Article I, § 21 of
9 the Missouri Constitution forbid state and local governments from imposing
10 excessive fines or inflicting cruel and unusual punishments.

11 97. A penalty violates the Excessive Fines Clause of the Eighth Amendment if it
12 is “grossly disproportional” to the gravity of the offense.

13 98. The fines authorized by the Penalty Provisions are imposed as punishment
14 upon individuals who have violated Chapter 405 of the St. Peters Code.

15 99. The City has no evidence that a citizen’s decision to plant flowers and
16 decorative greenery on their private property rather than turf grass causes any
17 quantifiable harm to others.

18 100. The City has no evidence that a citizen’s decision to plant flowers on their
19 private property rather than turf grass defrauds the City or takes money out of the
20 public treasury.

21 101. The City has no evidence that a citizen’s decision to plant flowers on their
22 private property rather than turf grass indicates that the person making this choice
23 has a depraved mind or is in any cognizable sense a threat to the health or safety of
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1 the community.

2 102. The liability for fines and prison time authorized by § 405.815 continue to
3 accumulate each day the owner is out of compliance and the ordinance establishes
4 no limit on the fines and prison time that may accumulate if a property owner
5 remains out of compliance with one of the provisions of Chapter 405, including the
6 Turf Grass Mandate.

7 103. The City has not asserted that the Duffners' decision not to comply with the
8 Turf Grass Mandate implicates any other "illegal" activities.

9 104. The Duffners are senior citizens; any fines they are forced to pay would
10 severely impact their livelihood and imprisonment of any length of time would be
11 extremely hard on them.

12 105. As of the filing of this Complaint, Carl and Janice have been out of compliance
13 with the Turf Grass Mandate for each of the 749 days since the December 1, 2014,
14 deadline the City gave them for compliance.

15 106. Consequently, pursuant to the Penalty Provisions, Carl and Janice are facing
16 a minimum penalty of \$7,490 and a maximum penalty of \$187,250 *and* 7,490 days
17 (20 years, 190 days) in prison because they have chosen to grow flowers rather than
18 a government-mandated plant that makes Janice sick.

19 107. Even the minimum penalty the Duffners are facing is grossly disproportionate
20 to an "offense" that poses no significant risk to the public health and safety, but the
21 maximum penalty is "truly irrational" and plainly excessive.

22 108. Likewise, the penalties required under § 405.815 are so grossly
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1 disproportionate to the “offense” that they must be considered “cruel and unusual.”
2 109. Unless this Court declares § 405.815 unconstitutional as it is threatened to be
3 applied to the Duffners and enjoins the Defendant from enforcing § 405.815 in
4 relation to violations of the Turf Grass Mandate, the Plaintiffs will suffer great and
5 irreparable harm.

6 **COUNT III**

7 **Taking of Private Property for Private Use and**
8 **Exceeding Proper Scope of Police Power**
9 **(Mo. Const. Art. I, § 28)**

10 110. The Plaintiffs incorporate and reallege the allegations contained in the
11 foregoing paragraphs of this Complaint as if set forth fully herein.

12 111. Article I, § 28 of the Missouri Constitution provides: “That private property
13 shall not be taken for private use with or without compensation... and that when an
14 attempt is made to take private property for a use alleged to be public, the question
15 whether the contemplated use be public shall be judicially determined without
16 regard to any legislative declaration that the use is public.”

17 112. To the extent that the City might try to claim that the Turf Grass Mandate is
18 intended to subsidize residential private property values, residential property values
19 are a matter of private interest, not a “public use.”

20 113. Thus, a government taking of private property rights exclusively for the
21 purpose of subsidizing the value of private property is prohibited by Article I, § 28 of
22 the Missouri Constitution.

23 114. Under the plain terms of Article I, § 28 of the Missouri Constitution, not even
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1 the police power can justify a taking of private property if the taking is intended to
2 benefit private interests rather than the public as a whole.

3 115. The City has no evidence that the general public will realize any concrete,
4 specific benefit from requiring owners of residential property to devote at least half
5 of their property to the cultivation and maintenance of turf grass.

6 116. Unless this Court declares the Turf Grass Mandate an unconstitutional
7 taking of private property for private purposes and enjoins the Defendant from
8 enforcing the Turf Grass Mandate, the Plaintiffs will suffer great and irreparable
9 harm.

10 **COUNT IV**

11 **Taking or Damaging Private Property for Public Use**
12 **Without Just Compensation**
13 **(Mo. Const. Art. I, § 26)**

14 117. The Plaintiffs incorporate and reallege the allegations contained in the
15 foregoing paragraphs of this Complaint as if set forth fully herein.

16 118. Article I, § 26 of the Missouri Constitution states in relevant part “That
17 private property shall not be taken or damaged for public use without
18 compensation.”

19 119. Historically, this provision was understood to protect property owners such as
20 the Duffners against government restrictions on the use of their property unless
21 those restrictions had an identifiable connection to protecting the public health and
22 safety.

23 120. The Missouri Supreme Court interpreted the language now comprising Article
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1 I, § 26 of the Missouri Constitution to limit the government’s power to destroy or
2 subvert a property owner’s “unrestricted right of use, enjoyment, and disposal of”
3 their property, even if “there be no actual or physical invasion” of that property. *See,*
4 *e.g., City of St. Louis v. Hill*, 22 S.W. 861, 862 (Mo. 1893) (striking down a “boulevard
5 law” because it deprived property owners of due process and subjected them to
6 takings of property without compensation).

7 121. Historically, to the extent that the Missouri Constitution did permit
8 government to restrict a citizen’s use and enjoyment of their own private property,
9 the Missouri Supreme Court held that the constitution required the government to
10 compensate the property owner for the infringement on their rights. *See, e.g., City of*
11 *Kansas City v. Liebi*, 252 S.W. 404 (Mo. banc 1923) (finding constitutional a
12 “boulevard law” that provided for the compensation of property owners negatively
13 affected by its provisions).

14 122. Missouri’s constitutional text protecting property rights against
15 uncompensated takings for public use has not changed in any significant way since
16 the people of Missouri adopted it in 1875. *Compare* Mo. Const. 1875 Art. II, § 21 *with*
17 Mo. Const. Art. I, § 26.

18 123. The meaning of constitutional guarantees never varies unless the people
19 themselves alter the wording of the relevant constitutional provisions.

20 124. Yet as time has passed Missouri courts have tended to disregard citizens’
21 constitutionally-protected property rights in favor of allowing government to impose
22 any restriction it likes on the use of private property whether or not the government
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1 provides any compensation.

2 125. This diminution of respect for the explicitly-stated constitutional protections
3 for citizens' property rights has been claimed to be justified by judicial expansion of
4 government's "police power," which is not defined or given clear scope in the Missouri
5 Constitution.

6 126. Although the government's police power may be broad, the exercise of the
7 police power cannot be made a cloak under which to overthrow or disregard
8 constitutional rights; it cannot be that the passage of time has so enlarged the courts'
9 conception of the police power that local governments may invoke that power to
10 compel unwilling citizens to dedicate a government-designated percentage of their
11 private property to the cultivation and maintenance of a government-designated
12 plant that the property owner does not want.

13 127. To be clear, the Duffners are arguing that Article I, § 26 of the Missouri
14 Constitution does not authorize the damaging of the Duffners' private property
15 rights *at all*, and their requested remedy is the invalidation of the Turf Grass
16 Mandate, *not* compensation for the loss of their property rights.

17 128. In the alternative, however, if the Court determines that the police power does
18 justify local government's efforts to force private property owners to cultivate and
19 maintain unwanted plants on their property, the Duffners seek a judicial declaration
20 that Article I, § 26 of the Missouri Constitution requires the government to pay a
21 private property owner subject to a regulatory taking just compensation for the loss
22 of control over what they own.
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1 129. The Duffners specifically assert that the Missouri Constitution's protections
2 for the rights of private property owners are more extensive than those provided
3 under the Fourteenth Amendment to the U.S. Constitution.

4 130. Furthermore, the Duffners assert that however extensive the police power
5 might be, it does not authorize governments to force private property owners to
6 devote half of their property and to expend their own labor and/or resources to
7 cultivate and maintain a plant that they do not want, that has no bearing on the
8 health or safety of the public at large, and that makes the private property owner
9 sick.

10 131. To the extent that Missouri courts' interpretation and application of
11 constitutional protections for the rights of private property owners have changed in
12 the time since those provisions were last altered by the people of Missouri, the
13 Duffners explicitly seek to preserve for Missouri Supreme Court review two
14 questions: (1) whether the more recent interpretation and application of those
15 constitutional protections are inconsistent with the people's intentions when they
16 adopted those constitutional protections, and (2) if the more recent interpretation
17 and application of those constitutional protections is inconsistent with the people's
18 intentions when they adopted those constitutional protections, whether courts must
19 alter the standard under which they review government infringements on the rights
20 of private property owners.
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22 132. Because the City has taken or damaged the Duffners' property for reasons not
23 justified under the police power or, in the alternative, because the City has not
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1 compensated the Duffners for the loss of their right to determine what plants they
2 will grow on their property, the City has violated Article I, § 26 of the Missouri
3 Constitution and the Turf Grass Mandate must be declared violative of the Missouri
4 Constitution.

5 **COUNT V**

6 **Exceeding Statutory Zoning Power**
7 **(§§ 89.020, 89.040, RSMo.)**

8 133. The Plaintiffs incorporate and reallege the allegations contained in the
9 foregoing paragraphs of this Complaint as if set forth fully herein.

10 134. Missouri municipalities derive their zoning powers from state statutes;
11 municipal zoning ordinances must conform to the terms of the delegation by the state
12 and local governments may not by ordinance broaden the power delegated by statute.

13 135. The Missouri statute authorizing local governments to enact zoning laws
14 empowers the passage of local ordinances “to regulate and restrict the height,
15 number of stories, and size of buildings and other structures, the percentage of the
16 lot that may be occupied, the size of yards, courts, and other open spaces, the density
17 of population, the preservation of features of historical significance, and the location
18 and use of buildings, structures and land for trade, industry, residence or other
19 purposes.” § 89.020, RSMo.

20 136. Although this statute allows local governments to impose certain restrictions
21 on uses of property, it does not authorize a Turf Grass Mandate such as the one at
22 issue in this case, which forces property owners to dedicate a specified, arbitrary
23 percentage of their property to the cultivation of a plant of the government’s
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1 choosing.

2 137. The Duffners contend that because the Turf Grass Mandate does not regulate
3 or restrict disfavored uses of property, but rather affirmatively forces owners,
4 against their will and in the face of draconian fines and imprisonment, to use their
5 private property in a government-designated way, it cannot properly be considered
6 a “zoning” law at all.

7 138. Missouri law further clarifies the essential purposes for which zoning laws
8 may be enacted, stating: “Such regulations shall be... designed to lessen congestion
9 in the streets; to secure safety from fire, panic, and other dangers; to promote health
10 and the general welfare; to provide adequate light and air; to prevent the
11 overcrowding of land; to avoid undue concentration of population; to preserve
12 features of historical significance; to facilitate the adequate provision of
13 transportation, water, sewerage, schools, parks, and other public requirements.” §
14 89.040, RSMo.

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16 139. The City has no evidence that the Turf Grass Mandate lessens congestion in
17 the streets.

18 140. The City has no evidence that the Turf Grass Mandate helps to avoid fire,
19 panic, or other dangers.

20 141. The City has no evidence that the Turf Grass Mandate promotes health and
21 the general welfare.

22 142. The City has no evidence that the Turf Grass Mandate provides “adequate
23 light and air.”

1 143. The City has no evidence that the Turf Grass Mandate helps to avoid the
2 overcrowding of land.

3 144. The City has no evidence that the Turf Grass Mandate helps to avoid undue
4 concentration of population.

5 145. The City has no evidence that the Turf Grass Mandate helps to preserve
6 features of historical significance.

7 146. The City has no evidence that the Turf Grass Mandate facilitates the adequate
8 provision of transportation, water, sewerage, schools, parks, and other public
9 requirements.

10 147. Thus, the Turf Grass Mandate does not serve any of the purposes for which
11 the General Assembly authorized local governments to implement zoning laws.

12 148. The City's general zoning ordinance was adopted on May 11, 1989.

13 149. To the extent that the City's general zoning ordinance makes broad
14 statements about the basic purposes of zoning laws, those statements cannot be
15 relied upon to establish the justification of a specific "zoning" law passed nearly
16 thirty years later.

17 150. By the City's logic, it could require private property owners to comply with
18 almost any sort of mandate regarding the use of their property—no matter how
19 disconnected it might be from any legitimate relationship to public health or safety
20 or the limits of §§ 89.020 and 89.040, RSMo.—and simply by labeling the mandate a
21 "zoning law" the City could avoid any serious judicial scrutiny of the mandate.
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23 151. Because the Turf Grass Mandate exceeds the zoning authority the General
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1 Assembly granted to the Defendant under § 89.020, RSMo., and because the Turf
2 Grass Mandate is not designed to further any of the purposes for which the General
3 Assembly has authorized the implementation of zoning ordinances, the Turf Grass
4 Mandate is not a lawful exercise of the Defendant's zoning powers and is therefore
5 void.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Plaintiffs respectfully request that this Court:

- 8 A. Enter a judgment declaring that the Turf Grass Mandate contained in St.
9 Peters Code § 405.390(A)(4) is unconstitutional on its face and as applied
10 to the Duffners because it unjustifiably violates citizens' right to use their
11 private property in lawful, harmless ways of their own choosing, which is
12 a fundamental right protected under the Fourteenth Amendment to the
13 U.S. Constitution;
- 14 B. Enter a judgment declaring that the Penalty Provisions contained in St.
15 Peters Code § 405.815 may not constitutionally be applied to persons, such
16 as the Duffners, who choose not comply with the Turf Grass Mandate,
17 because such an application would violate the prohibitions on Excessive
18 Fines and Cruel and Unusual Punishment under the Eighth Amendment
19 to the U.S. Constitution (as applied to state and local governments through
20 the Fourteenth Amendment) and Article 1, § 21 of the Missouri
21 Constitution;
- 22 C. Enter a judgment declaring that the Turf Grass Mandate contained in St.
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1 Peters Code § 405.390(A)(4) takes private property for a private use,
2 thereby violating Article I, § 28 of the Missouri Constitution;

3 D. Enter a judgment declaring that the Turf Grass Mandate contained in St.
4 Peters Code § 405.390(A)(4) unjustifiably damages the Plaintiffs' property
5 for a public use without compensating them, thereby violating Article I, §
6 26 of the Missouri Constitution;

7 E. Enter a judgment declaring that §§ 89.020 and 89.040, RSMo., do not
8 authorize the Defendant's adoption or enforcement of the Turf Grass
9 Mandate contained in St. Peters Code § 405.390(A)(4);

10 F. Enter preliminary and permanent injunctions prohibiting the Defendant
11 from enforcing the Turf Grass Mandate contained in St. Peters Code §
12 405.390(A)(4) against the Plaintiffs or any other owner of residential
13 property in St. Peters;

14 G. Enter preliminary and permanent injunctions prohibiting the Defendant
15 from imposing or enforcing against the Duffners the Penalty Provisions
16 contained in St. Peters Code § 405.815 on account of their noncompliance
17 with the Turf Grass Mandate;

18 H. Award nominal damages;

19 I. Award costs of this lawsuit, including reasonable attorneys' fees, pursuant
20 to 42 U.S.C. § 1988; and

21 J. Enter all further legal and equitable relief that the Court may deem just
22 and proper.
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Dated this 19th day of December, 2016.

Respectfully submitted,



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