

St. Louis, and)
)
STEVE BARNEY, in his Official capacity)
as Commissioner of the Civil Service)
Commission of the City of St. Louis,)
)
Defendants.)

VERIFIED PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, St. Louis Police Officers’ Association (hereinafter “SLPOA”), Ethical Society of Police (hereinafter “ESOP”), and St. Louis Police Leadership Organization (hereinafter “SLPLO”) (jointly referred to hereafter as “Plaintiffs”), by and through counsel, pursuant to §527.010 and §536.050 RSMo., and for its Petition for Declaratory Judgment and Injunctive Relief, states as follows:

INTRODUCTION

On August 3, 2022, City of St. Louis Ordinance _____ (hereinafter “COB Ordinance”) was signed into law. A genuine and authentic copy of the COB Ordinance is attached hereto as **Exhibit A**. The COB Ordinance gives broad, sweeping powers to the Civilian Oversight Board (hereinafter “COB”) over internal investigations of complaints against St. Louis Metropolitan Police Department (hereinafter “SLMPD”) officers as well as final authority over discipline resulting therefrom. Plaintiffs seek declaratory and injunctive relief against The City of St. Louis’ enforcement of the COB Ordinance contending it violates numerous Missouri statutes, specifically §590.653, §590.502, and §84.344.

PARTIES, JURISDICTION AND VENUE

1. SLPOA is a labor organization and is incorporated as a Missouri non-profit corporation. SLPOA maintains its office in St. Louis, Missouri.

2. SLPOA, by and through its representatives and legal counsel, represents SLMPD police officers in disciplinary proceedings and therefore has standing to bring this action on its own behalf.

3. ESOP is a Missouri nonprofit corporation. ESOP maintains its office in St. Louis, Missouri.

4. ESOP, by and through its representatives and legal counsel, represents the interests of minority officers and civilian employees of the SLMPD, in disciplinary proceedings and therefore has standing to bring this action on its own behalf.

5. SLPLO is a Missouri nonprofit corporation. SLPLO maintains its office in St. Louis, Missouri.

6. SLPLO, by and through its representatives and legal counsel, represents the interests of supervisors and commanders of the SLMPD, in disciplinary proceedings and therefore has standing to bring this action on its own behalf.

7. Plaintiffs also have associational standing to bring these claims on behalf of their members to enforce their interests and rights in that their members have standing to sue in their own right, the interests they seek to protect are germane to their purposes, and neither the claims asserted nor relief requested requires the participation of individual members.

8. The City of St. Louis (hereinafter “The City”) is a charter city established by and organized pursuant to the Missouri Constitution. Mo. Const. Art. VI. §§19, 31-33. The City operates under the Charter of the City of St. Louis, adopted June 30, 1914, as amended (hereinafter the “Charter”). The City is responsible for and operates the SLMPD and the COB.

9. Tishaura Jones is the Mayor of The City of St. Louis.

10. The COB is a division of the City of St. Louis.

11. Matthew Brummund is the Commissioner of the COB.

12. The Civil Service Commission of the City of St. Louis is a duly constituted administrative body created pursuant to the Charter of the City of St. Louis.

13. Bettye Battle-Turner is the Chairman of the Commission, Dean Kpere-Daibo is the Vice-Chairman of the Commission, and Steve Barney is a member of the Commission.

14. This Court has jurisdiction over the parties to this civil action under §527.010 and §536.050 RSMo, which authorize this Court to grant declaratory judgments.

15. Pursuant to §508.050 RSMo, this Court is the proper venue for this action in that the dispute arises out of the legality of provisions of the COB Ordinance.

PRELIMINARY STATEMENT OF LAW

16. The purpose of a preliminary injunction is to preserve the status quo pending the final disposition of the merits of an action. *State ex rel. Myers Mem. Airport Comm. v. City of Carthage*, 951 S.W.2d 347, 352 (Mo. App. S.D. 1997). An injunction should issue when necessary to protect against a substantial interference with a right. *RFS, Inc. v. Cohen*, 772 S.W.2d 713, 718.

17. In determining Plaintiffs' right to a preliminary injunction, the court should weigh "the movant's probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest. *State ex rel. Director of Revenue v. Gabbert*, 952 S.W. 2d 838, 839 (Mo. banc 1996).

18. Irreparable harm is established if monetary remedies cannot provide adequate compensation for improper conduct. *Glenn v. City of Grant City*, 69 S.W.3d 126, 130 (Mo. App. W.D. 2002). An injunction to prohibit violation of a statute requires only a showing that the

parties were “adversely affected” instead of showing irreparable harm. *Mertzlufft v. Bunker Res. Recycling & Reclamation, Inc.*, 760 S.W.2d 592, 597 (Mo. App. S.D. 1988).

The balance of the harm weighs heavily in favor of Plaintiffs.

COMMON FACTUAL ALLEGATIONS

19. On November 6, 2012, §84.344 RSMo (commonly known as the “Enabling Statute”) became effective enabling The City to take control of the SLMPD from the State of Missouri.

20. On September 1, 2013, control of the SLMPD officially transferred to The City.

21. On June 5, 2015, The City, pursuant to §590.653 RSMo, which empowers cities to create civilian review boards, enacted Ordinance 69984 establishing the Civilian Oversight Board. This Ordinance allowed the COB to review specific investigations of complaints against members of the SLMPD, including allegations of excessive use of force, abusive of authority, sexual harassment and assault, discourtesy, racial profiling, or use of offensive language including, but not limited to, slurs relating race, ethnicity, religion, gender, sexual orientation, gender identity, immigrant status, and disability. This language mirrored the types of allegations §590.653 allows city civilian review boards to review and make disciplinary recommendations on.

22. Ordinance 69984 did not grant subpoena power to the COB, nor did it vest final authority over discipline in it.

23. On or about July 15, 2022, the City of St. Louis Board of Aldermen (hereinafter the “BOA”) passed Board Bill 47.

24. On or about August 3, 2022, Board Bill 47 was signed by Mayor Jones.

25. Pursuant to Charter Art. IV. §19, the Ordinance shall take effect thirty days after its approval by the Mayor, on or about September 2, 2022.

26. The new COB Ordinance repeals and replaces Ordinance 69984, and among other things, grants the COB subpoena power, complete control over investigations into any and all complaints against SLMPD officers, and final authority over discipline.

27. As Plaintiffs demonstrate herein, their members will be irreparably harmed and adversely affected if the injunctive relief requested herein is not granted and monetary remedies cannot provide adequate compensation for these harms.

28. Neither the The City nor the public will be harmed by a preliminary injunction. This action raises purely legal issues that can be resolved expeditiously.

29. §12 of the COB Ordinance provides for a transition period of twelve months for the COB to be fully operational. Granting a preliminary injunction will merely preserve the status quo pending the final disposition of the merits. A final disposition should be entered prior to the expiration of the twelve-month transition period.

30. Not only will The City and public not be harmed by a preliminary injunction, but The City and public interest will be best served by ensuring that the COB operates in a lawful, fair and equitable manner.

31. Violating Missouri state law does not promote the goals of fairness, equity and transparency that the ordinance purportedly seeks, and could result in less cooperation from police officers who lack faith and trust in the COB Ordinance and process.

COUNT I
THE COB ORDINANCE EXCEEDS THE CHARTER AUTHORITY
UNDER MO. CONST. ART. VI, §19(a)

32. Plaintiffs hereby incorporate by reference each and every allegation contained

in paragraphs 1 through 31, as if fully set forth herein.

33. Mo. Const. Art. VI, §19(a) applies to and limits the powers of The City. Section 19(a) provides that:

Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provide such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such city shall, in addition to its home rule powers, have all powers conferred by law.

Mo. Const. Art. VI, §19(a)

34. Pursuant to Mo. Const. Art. VI, §19(a), a charter city's ordinances must be "consistent with the constitution and not limited or denied by statutes." *City of Springfield v. Goff*, 918 S.W. 2d 786, 789 (Mo. Banc 1996) (internal quotations omitted).

35. A charter city is not required to exercise delegated powers in "precisely the same manner as prescribed by the general law of the state", but local legislation cannot create an inconsistent or irreconcilable conflict with state law. *Cooperative Home Care, Inc. v. City of St. Louis*, citation (Mo. 2017) (quoting *Missouri Banker's Association, Inc. v. St. Louis County*, 448 S.W.3d 267, 272 (Mo. banc 2014)). If this Court finds such a conflict exists, state statutes preempt the local ordinances. *Id.*

36. The authority of the municipality is not without meaningful limits: notably, municipal legislation may not "invade the province of general legislation involving the public policy of the state as a whole". *Missouri Bankers Association Inc. v. St. Louis County*, 448 S.W. 3d 267, 271 (Mo. banc 2014) (quoting *Flower Valley Shopping Center, Inc. v. St. Louis County*, 528 S.W. 2d 749, 754 (Mo. Banc 1975)); *Yellow Freight Systems, Inc. v. Mayor's Commission on Human Rights*, 791 S.W. 2d 386 (Mo. banc 1990). "The Constitution and general laws of the state shall continue in force with the municipalities which have framed their own charters, and

that the power of the municipality to legislate shall be confined to municipal affairs.” *Kansas City v. J.I. Case Threshing Mach. Co.*, 87 S.W. 2d 185, 200 (Mo. banc 1935).

37. The scope of this issue extends beyond purely local considerations, to state and federal concerns. Crime is not restricted to local jurisdictional boundary lines. The stability of a police agency in one jurisdiction can have a dramatic impact on the crime rates and stability of public safety in neighboring jurisdictions and in the state as a whole. For instance, high crime rates in the City of St. Louis will impact the crime rates of neighboring jurisdictions. Additionally, high crime rates in the City of St. Louis will impact the economies and tax revenues of neighboring jurisdictions as well as the State as a whole.

38. Law enforcement agencies have a direct impact on crime. Consequently, the stability and health of a law enforcement agency and the professionals the agency employs have a direct impact on crime. Where an agency struggles to recruit and retain quality police officers, the crime rates are negatively impacted in that jurisdiction and in the surrounding jurisdictions as well.

39. An unlawful civilian review board in one jurisdiction whose provisions violate the due process rights of the police officers who are critical to public safety directly impacts the public safety and revenues of the entire state. Therefore, the COB Ordinance and the negative impact it will have on public safety is not purely a local concern such that the City is authorized to legislate the same outside the scope of the authority granted by state law, specifically Mo. Const. Art. VI, §19(a) and §590.653 RSMo.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants

from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;

B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;

C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;

D. Make the preliminary injunction permanent;

E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and

F. Grant such other and further relief that this Court deems just and proper.

COUNT II
THE COB ORDINANCE CONFLICTS WITH
MO. REV. STAT. §§71.010 AND 590.653

40. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 39, as if fully set forth herein.

41. §71.010 RSMo. provides that any municipality "having authority to pass ordinances regulating subjects, matters and things upon which there is general law of the

state...shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject”.

42. §590.653 RSMo. provides each city, county, and city not within a county the authority to establish a civilian review board and sets out the specific powers and duties afforded to them. The City recognized the authority granted by §590.653 in the body of the COB Ordinance.

43. §590.653.1 authorizes civilian review boards to “investigate allegations of misconduct by local law enforcement officers towards members of the public.”

44. §590.653.2 provides that the board shall have the power to receive, investigate, make findings and recommend disciplinary action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation, gender identity, immigrant status, and disability. The findings and recommendations shall be submitted to the chief law enforcement officer and no finding or recommendation shall be based solely upon an unsworn complaint or statement. (Emphasis added).

45. The COB Ordinance conflicts with §590.653 in the following respects:

a. §1 and §3(C) require COB investigators to investigate all complaints.

Complaints are defined as “a request, written, online or oral, by any person to review and investigate allegations of a Police Incident, Police Professional Misconduct, a Detention Incident or Corrections Professional Misconduct, as defined herein.” §3(C) provides that investigators shall be “broadly authorized to independently investigate, conduct and oversee investigatory matters defined as Professional Standards

Inquiries.” “The scope and particulars of the matters out of which such inquiries may arise shall include but not be limited to the matters stated in the definitions of Police Incidents, Detention Incidents, Police Professional Misconduct and Detention of Police Incidents.” This expressly includes *any* accidental injury during police custody requiring medical treatment, and *any* police pursuit resulting in property damage (which would include the use of a tire deflation device). Basically, there are no limits on what investigators are required to investigate. This broad, unlimited scope violates the narrowly defined scope of incidents that can be investigated in §590.653(2) as set out above.

b. §1 requires COB investigators to respond to the scene of Police Incidents, defined broadly as misconduct, property damage, critical incidents, domestic disturbances, injuries in custody, use of force resulting in injury, and vehicle pursuits. This constitutes a violation of §590.653(1) allowing civilian review boards to receive and investigate “allegations of misconduct by local law enforcement officers towards members of the public.” The statute does not contemplate or authorize the type of first-instance, proactive investigations of police encounters with the public regardless of whether a complaint has been made alleging misconduct.

c. §3(A) grants the Civilian Oversight Commissioner “the authority to take disciplinary action against employees of the Police Division”. This power is not authorized or contemplated by §590.653(2) which specifically only allows civilian review boards to make recommendations on discipline to the chief law enforcement official.

d. §4(A)(4) grants the Civilian Oversight Commissioner original subpoena power. This power is not contemplated by §590.653 and is outside the scope of the authority granted therein.

e. §3(c) requires the Civilian Oversight Commission and staff must conduct “reasonable inquiry” into all Police Incidents, Detention Incidents, Police Professional Misconduct and Detention of Police Incidents even those that are clearly frivolous on their face.

f. The COB Ordinance authorizes the hiring of full-time investigators and staff. §590.653 prohibits members of the civilian review board from receiving compensation beyond reasonable and necessary expenses.

g. § 7 creates the Public Integrity Unit (hereinafter “PIU”) to replace the Force Investigations Unit (hereinafter “FIU”), which (among other things) reviews police officer-involved shootings. The PIU is under the control of the Circuit Attorney. Currently, the Circuit Attorney’s Office independently reviews police officer-involved shootings after the FIU. The new PIU creates an untenable conflict of interest in which police officers are required to provide detailed incident statements to the City’s prosecutorial arm. Again, §590.653 does not contemplate the creation of such a unit.

46. Preemption of a local law by a statute may be express or implied. Express preemption occurs when the General Assembly has explicitly proscribed local regulation in a specific area. *Cooperative Home Care, Inc.* citing *Stegall v. Peoples Bank of Cuba*, 270 S.W.3d 500, 503 (Mo. App. 2008).

47. Implied preemption can occur in either of two ways – through “conflict” preemption or through “field” preemption. *Id.* Conflict preemption occurs when a local ordinance conflicts with a specific state statute either because it “prohibits what the statute permits” or because it “permits what the statute prohibits”. *Id.* citing *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986). In such cases, the conflict is resolved by giving effect to the state statute rather than the conflicting local law. *Id.* citing *City of St. Peters v. Roeder*, 466 S.W.3d 538, 543 (Mo. banc 2015).

48. By contrast, field preemption occurs when the General Assembly has created a state regulatory scheme that is so comprehensive that it reasonably can be inferred that the General Assembly intended to occupy the legislative field, leaving no room for local supplementation. *Id.* citing *Connelly v. Iolab Corp.*, 927 S.W.2d 848, 851 (Mo. banc 1996).

49. In this case, both conflict preemption and field preemption exist. The COB Ordinance conflicts with §590.653 as it completely ignores the limitations set out therein. The legislature expressly restricted a civilian review board’s review and investigation to a specific category of complaints. Had the legislature’s intention been to allow the review and investigation of any and all complaints, it would not have identified any specific categories in the statute. Moreover, granting authority to discipline to the COB is clearly prohibited by the statute which unambiguously restricts civilian review boards to making recommendations on discipline to the chief law enforcement officer. Finally, had the legislature intended to give civilian review boards the power of subpoena, it certainly would have expressly provided the authority in the statute. The COB Ordinance doesn’t just enhance state law, it renders the statute meaningless.

50. Field preemption applies because §590.653 creates a comprehensive regulatory scheme setting out specific authority to local civilian review boards. Accordingly, it reasonably

can be inferred that the General Assembly intended to occupy this particular legislative field, leaving no room for The City to supplement it.

51. Plaintiffs will be adversely affected and irreparably harmed by the COB Ordinance. As discussed above, §590.653 only empowers civilian review boards to give recommendations to police chiefs. Allowing COB investigators to compel police officers to submit to interviews prior to the Court determining whether the COB Commissioner has legal authority to discipline, could render immunity rights afforded under *Garrity v. New Jersey*, 385 U.S. 493 (1967) meaningless. For *Garrity* protections to apply, the officer has to be compelled, under threat of additional discipline, up to and including termination, to answer questions. If the Court ultimately finds the COB Commissioner, and by extension his/her investigators, did not have the legal authority to discipline, any and all statements given by officers in the interim could be used against them in subsequent criminal proceedings. Surrendering the basic constitutional right to remain silent certainly constitutes irreparable harm as no monetary remedy could provide adequate compensation.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the

COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;

B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;

C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;

D. Make the preliminary injunction permanent;

E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and

F. Grant such other and further relief that this Court deems just and proper.

COUNT III
THE COB ORDINANCE CONFLICTS WITH
MO. REV. STAT. § 590.502

52. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 51, as if fully set forth herein.

53. Law enforcement officers are heavily scrutinized, and they face layers of review and oversight at the local, state and federal levels of government. To help stabilize the law enforcement profession and to promote public safety, the Missouri Legislature passed the Law Enforcement Bill of Rights (§590.502) in 2021. It provides, among other things, law enforcement officers due process rights during investigations of internal complaints.

54. §590.502 defines "Law Enforcement Officers" as any commissioned peace officer with the power to arrest for a violation of the criminal code, who is employed by any unit of the state or any county, charter county, city, charter city, municipality, district, college, university, or

any other political subdivision or is employed by the board of police commissioners as defined in Chapter 84.” The City of St. Louis is a charter city and therefore the police officers employed by it are law enforcement officers within the meaning of the statute.

55. The COB Ordinance conflicts with §590.502 in the following respects:

a. §4(A)(2) provides “City employees involved in or witness to police correctional incidents or misconduct shall provide a statement to civilian oversight investigators immediately upon request. §590.502(1) provides: “The law enforcement officer who is the subject of the investigation shall be informed, in writing, of the existence and nature of the alleged violation and the individuals who will be conducting the investigation. Notice shall be provided to the officer along with a copy of the complaint at least twenty-four hours prior to any interrogation or interview of the officer” Moreover, §590.502(9) provides in part: “Law enforcement officers under investigation are entitled to an attorney or any duly authorized representative present during any questioning that the law enforcement officer reasonably believes may result in disciplinary action.....The questioning shall be suspended for a period of up to twenty-four hours if the officer requests representation. Finally, §590.502(10) provides law enforcement officers or his/her attorney or representative shall have the opportunity to review the complaint. Requiring an officer to provide a statement immediately to COB investigators upon request, without providing twenty-four hour notice, without allowing twenty-four hours to secure an attorney if requested, and without affording him/her the opportunity to review the complaint is a clear violation of §590.502(1), (9) and (10).

b. §6(C) prohibits the COB’s office space from being situated in SLMPD Headquarters. On the other hand, §590.502(4) provides: “Any interviews or questioning

shall be conducted at a secure location at the agency that is conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.” Consequently, officers cannot be compelled to give statements away from SLMPD Headquarters or from the place where they report to work.

c. §590.502(3) provides interviews are to be conducted while the officer is on duty unless reasonable circumstances exist that necessitate questioning the officer while he or she is off duty. The COB Ordinance does not distinguish between on-duty and off-duty. It merely allows investigators to compel immediate statements from officers. Compelling an off-duty officer to submit to an interview, is in most circumstances, prohibited under state law.

d. §1 (definition of “Complaints”) defines complaints as “a request, written, online or oral, by any person to review and investigate allegations of a Police Incident, Police Professional Misconduct, a Detention Incident or Corrections Professional Misconduct, as defined herein”. §590.502(2) provides in part: “Any person, including members of the same agency or department as the officer under investigation, filing a complaint against a law enforcement officer shall have the complaint supported by a written statement outlining the complaint that includes the personal identifying information of the person filing the complaint.” The COB Ordinance violates this section in that it allows for oral complaints and does not require the person filing the complaint to provide a written statement or their personal identifying information.

56. The due process rights granted in §590.502 are essential to ensure the fair treatment of police officers in internal investigations, who unlike civilians can be compelled to submit to interrogation. The COB Ordinance violates and completely ignores and tramples on

many of the rights enumerated in the statute. Plaintiffs and their members would suffer irreparable harm and would certainly be adversely affected if they are compelled to give statements to COB investigators without these basic due process rights. These harms cannot be adequately compensated by monetary remedies.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;

B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;

C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;

D. Make the preliminary injunction permanent;

E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and

F. Grant such other and further relief that this Court deems just and proper.

COUNT IV
THE COB ORDINANCE CONFLICTS WITH
MO. REV. STAT. §§84.344.(8), 590.502(14) and §610.021(3)

57. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 56, as if fully set forth herein.

58. §84.344.(8) RSMo. provides that “records prepared for disciplinary purposes are confidential, closed records available solely to the Civil Service Commission and to those who possess authority to conduct investigations regarding disciplinary matters pursuant to the Civil Service Commission’s rules and regulations.” §590.502(14) RSMo. makes “all records compiled as a result of any investigation subject to the provisions of this section shall be held confidential and shall not be subject to disclosure under Chapter 610, except by lawful subpoena or court order, by release approved by the officer, or as provided in section 590.070.” §610.021(3) RSMo. authorizes a public governmental body to close meetings and records to the extent that they relate to the hiring, firing, disciplining, or promoting of particular employees. Civil Service Rule XIX makes disciplinary records closed records and allows the records to be provided to the COB, its members, the Executive Director, and legal counsel. It does not allow production of these closed records to any other person or entity. When viewed together, there is no question that records generated in connection with an internal investigation and/or discipline of a police officer are closed records and cannot be disseminated absent a lawful subpoena or court order.

59. Contrary to the clearly established law, the COB Ordinance requires the illegal sharing of information from closed personnel records with persons and entities who are not part of the investigatory or disciplinary process. Examples are as follows:

a. §5(A) directs the COB to, in consultation with the Circuit Attorney and others, “adopt or develop a case management system for complaints and matters that are the subject of investigations, which shall include a system for classifying different types of complaints, protocols for investigating complaints and incidents, monitoring investigations, and ensuring the information is timely and appropriately shared between the Public Integrity Unit and Professional Standards Unit, as well as processes to ensure compliance with all relevant local, state and federal laws including the protections accorded under *Garrity v. New Jersey*, 385 U.S. 493 (1967) and other applicable Constitutional rights and responsibilities.” This directive requires the COB to consult with the Circuit Attorneys’ Office in the development of a case management system which would facilitate the illegal sharing of information from COB investigators to the Circuit Attorneys’ Public Integrity Unit.

b. §5(E)(1) and (F)(1) of the COB Ordinance requires quarterly and annual reports be submitted to the Mayor, Board of Aldermen, Chairman of the Public Safety Committee and must be posted on-line for public viewing. The report must contain a summary, description and statistical profile, with individually identifiable employee information omitted or redacted, of all investigations and related activities. Omitting or redacting individual, identifiable employee information from closed records does not make them open records. They are still closed records, and the information contained therein should only be produced if compelled by a lawful subpoena or court order.

c. §7(C)(3) authorizes the Director of Public Safety for the City of St. Louis to enter into a Memorandum of Understanding (MOU) with the Circuit Attorney to develop protocols “governing the documentation of public integrity and professional

standards inquiries. Such protocols shall be designed to ensure the development of a complete record, including but not limited to a detailed camera recording of the scene and incident report. Such protocols shall be designed to enable information sharing to the fullest possible extent and consistent with the requirements of criminal investigation and prosecution, including the protections accorded under *Garrity v. New Jersey*, 385 U.S. 493 (1967) and other applicable Constitutional rights and responsibilities.” Internal investigators, whether they be COB investigators or SLMPD Internal Affairs investigators cannot, absent compulsion by a lawful subpoena or court order, share information from an internal investigation with criminal investigators.

60. In addition to the cited statutes and Civil Service Rule, Missouri courts recognize a right of privacy in personnel records that should not be lightly disregarded or dismissed. *State ex rel Delmar Gardens North Operating, LLC v. Gaertner*, 239 S.W. 3d 608, 611 (Mo. banc. 2007). The Court in *State ex rel St. Louis County v. Block*, 622 S.W. 2d 367 (Mo. App. E.D. 1981) stated “there’s a strong need to maintain the confidentiality of the Bureau of the Internal Affairs’ investigatory files and confidential personnel files. This confidentiality is essential to protect the integrity of the police department and to maintain an effective disciplinary system. The files contain hearsay and unverified information, some of that obtained from confidential sources. Witnesses have been told their interviews are confidential. Systematic disclosure would inhibit officers and citizens from divulging information in the future.” *Id at 370*.

61. Disseminating confidential, closed records generated in connection with a disciplinary investigation to persons who are not authorized by law to be in possession of such information, and who may or may not be punished for violating the COB’s confidentiality provisions, would irreparably harm Plaintiffs’ members in the following ways:

- a. Members' privacy rights in their personnel records, long recognized by Missouri courts, will be destroyed and/or diminished;
- b. Members will experience stress, anxiety and emotional distress under the threat that their personnel records will be disseminated to the Circuit Attorneys' Office, the Mayor, the Board of Aldermen, members of the media and the public;
- c. In the current climate, Members will experience further stress, anxiety and emotional distress under the threat that they could become the targets of threats and violence from individuals with anti-police agendas;
- d. Members will experience further stress, anxiety and emotional distress under the threat that the City's executive and legislative branches will interfere with the COB's investigations and disciplinary decisions; and
- e. Members will experience further stress, anxiety and emotional distress under the threat that future promotions and transfers will be affected by political influence by the City's executive and legislative branches of government.

These harms cannot be adequately compensated by monetary remedies.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against

SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;

B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;

C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;

D. Make the preliminary injunction permanent;

E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and

F. Grant such other and further relief that this Court deems just and proper.

COUNT V
THE COB ORDINANCE IS VAGUE AND AMBIGUOUS

62. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 61, as if fully set forth herein.

63. To be valid, an ordinance must be clear, concise, and certain in its terms and expressions. *Diemer v. Weiss*, 122 S.W. 2d 922, 924 (Mo. banc 1938). If the terms and expressions in the ordinance are so vague that the precise meaning is not ascertainable, the ordinance is invalid even though the subject matter is otherwise a valid exercise of municipal power. *City of St. Louis v. Bell Place Realty Co.*, 168 S.W. 721, 723-724 (Mo. 1914). The necessity for definiteness and certainty of ordinances that forbid or require the doing of certain

acts must be so clear and certain that people of ordinary intelligence will not differ as to their meaning. *Olympic Drive In Theatre, Inc. v. City of Pagedale*, 441 S.W. 2d 5, 8-9 (Mo. 1969); *Browning Ferris Industries of Kansas City, Inc. v. Dance*, 671 S.W. 2d 801, (Mo.App. W.D. 1984). This is especially true when an ordinance is penal in nature. *Id.* Thus, an ordinance must be so formed that its terms and expression clearly define that which it intends to require or prohibit, and that the execution of the ordinance by the persons charged with the duty to enforce them will not be left to discretionary judgment. *Id.*

64. To the extent the provisions of the COB Ordinance requiring the establishment of rules and protocols for investigations and information sharing and access aren't in conflict with state law, they are vague, ambiguous and lack certainty. This lack of clear, concise and certain terms renders the COB Ordinance invalid.

65. Plaintiffs and their members will suffer irreparable harm if The City is allowed to enforce vague and ambiguous provisions of the COB Ordinance and this harm cannot be adequately compensated by monetary remedies.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the

COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;

B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;

C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;

D. Make the preliminary injunction permanent;

E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and

F. Grant such other and further relief that this Court deems just and proper.

COUNT VI
THE COB ORDINANCE CONFLICTS WITH
MO. REV. STAT §84.344(8)

66. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 65, as if fully set forth herein.

67. §84.344(8) RSMo, the Enabling Statute, provides the Civil Service Commission has exclusive authority over the disciplinary process and procedures and that it may adopt rules and regulations appropriate for the unique operation of the police department. As of this filing, the Civil Service Commission has not promulgated a rule transferring the authority to determine discipline from the Police Division to the COB.

68. Plaintiffs and their members will suffer irreparable harm if The City is allowed to enforce the COB Ordinance without the Civil Service Commission's promulgation of a rule

transferring the authority to investigate and discipline its members and this harm cannot be adequately compensated by monetary remedies.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Enter a preliminary injunction enjoining The City from enforcing the COB Ordinance. Specifically: 1) enjoining the COB, its investigators, employees, agents and servants from compelling SLMPD officers to interview or give statements to COB investigators; 2) enjoining the Civil Service Commission from promulgating any rules delegating the authority to discipline from the SLMPD to the COB; 3) enjoining the COB Commissioner from making any disciplinary decisions in connection with internal investigations of complaints lodged against SLMPD officers; 4) enjoining the COB commissioner from issuing subpoenas in connection with internal investigations of complaints lodged against SLMPD officers; and 5) enjoining the COB from disseminating information obtained from confidential closed records until such time as the court rules on Plaintiffs' Petition for Permanent Injunctive Relief;
- B. That the Court set this matter for hearing and require the City of St. Louis to show cause why a preliminary injunction should not be granted, restraining and enjoining it in the matters set forth in paragraph A above;
- C. Issue a declaratory judgment holding that the COB Ordinance violates state law and is invalid;
- D. Make the preliminary injunction permanent;
- E. Award Plaintiffs' costs and fees incurred herein as required by §536.050.3 and as authorized by §527.100; and
- F. Grant such other and further relief that this Court deems just and proper.

Respectfully submitted,

MILLIKAN LAW OFFICE, LLC

By: /s/ Brian P. Millikan

BRIAN P. MILLIKAN, MO BAR #50900

12180 Old Big Bend, Rd

Kirkwood, Missouri 63122

(314) 621-0622

(866) 640-0289 FACSIMILE

bmilikan@millikanlaw.com

ATTORNEYS FOR SLPOA

WORKERS RIGHTS LAW FIRM

By: /s/ Sherrie A. Hall

SHERRIE A. HALL, MO BAR #40949

2258 Grissom Drive

St. Louis, Missouri 63146

Phone: (314) 824-0348

Fax: (314) 828-1029

sherrieworkersrights@gmail.com

ATTORNEY FOR ESOP

LAW OFFICES OF RICK BARRY, P.C.

By: /s/ Rick Barry

RICK BERRY, MO BAR #58772

1034 S. Brentwood Blvd., Ste 1301

St. Louis, MO 63117

Phone: (314) 918-8900

Fax: (314) 918-8901

rickbarry@rickbarrypc.com

ATTORNEY FOR SLPLO