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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

PAUL ASCHERL,
Plaintiff,

vs.

CITY OF ISSAQUAH,
Defendants.

Case No. _____

**PLAINTIFF’S VERIFIED
COMPLAINT**

Plaintiff Paul Ascherl, by counsel, comes now and avers the following:

INTRODUCTION

1. This is a civil rights action brought under 42 U.S.C. § 1983 challenging a city ordinance that creates free speech “zones” and prohibits literature distribution on public ways during a festival in downtown Issaquah.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff Paul Ascherl seeks injunctive relief, declaratory relief, and nominal damages against the City of Issaquah.

3. This action is premised on the United States Constitution and concerns the deprivation of Plaintiff’s fundamental right to free speech and due process.

4. Defendant’s actions have deprived and will continue to deprive Plaintiff Paul Ascherl of his fundamental rights provided in the First and Fourteenth Amendments to the

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1 United States Constitution.

2 5. Each and every act of Defendant alleged herein was committed by Defendant
3 named herein, and each and every act was committed under the color of state law and authority.

4 **JURISDICTION AND VENUE**

5 6. This action raises federal questions under the United States Constitution,
6 particularly, the First and Fourteenth Amendments and 42 U.S.C. § 1983.

7
8 7. This Court has original jurisdiction over the federal claims by operation of 28
9 U.S.C. §§ 1331 and 1343.

10 8. This Court has authority to grant the requested injunctive relief under 28 U.S.C. §
11 1343; the requested declaratory relief under 28 U.S.C. §§ 2201-02; the requested damages under
12 28 U.S.C. § 1343; and costs and attorneys fees under 42 U.S.C. § 1988.

13
14 9. Venue is proper in the Western District of Washington under 28 U.S.C. §
15 1391(b), because a substantial part of the actions giving rise to this case occurred within the
16 district.

17 **IDENTIFICATION OF THE PARTIES**

18
19 10. Plaintiff Paul Ascherl (“Ascherl”) is and was at all times relevant to this
20 Complaint a resident of Snoqualmie, Washington.

21 11. Defendant City of Issaquah (“Issaquah”) is a municipal governmental authority, a
22 subdivision of the State of Washington

23 **STATEMENT OF FACTS**

24 **Ascherl’s Desired Expression**

25
26 12. Ascherl is an evangelical Christian. In conjunction with his faith, Ascherl shares
27 his religious beliefs with others in public.

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1 13. To do this, Ascherl often visits public venues, like public sidewalks and ways,
2 where he distributes literature about his faith. Ascherl passes out Gospel tracts either by himself
3 or as part of a small group of friends.

4 14. Being both inexpensive and effective, Ascherl views literature distribution as an
5 indispensable means for communicating his message.
6

7 15. Written literature allows Ascherl the ability to convey information to those unable
8 to carry on a conversation with him; a passerby can take a pamphlet and consider the information
9 later.

10 16. Ascherl cannot afford to send his literature through the mail. Ascherl cannot
11 afford advertisements for newspapers or billboards. He has no practical alternative to literature
12 distribution.
13

14 17. In conveying his message, Ascherl does not want to engage in any type of
15 demonstration. He does not ask for money or attempt to gather signatures. Nor does he seek to
16 draw a crowd.
17

18 18. Ascherl's message centers on the person and work of Jesus Christ. Specifically,
19 Ascherl communicates that all people need salvation and God graciously supplies salvation
20 through his son, Jesus Christ. Ascherl also likes to discuss how the Christian faith relates to
21 current issues of the day.
22

23 19. Ascherl only wants to express himself in a peaceful manner. He does not want to
24 force his literature on anyone.

25 20. Ascherl is always willing to step aside and let others pass by him, and Ascherl
26 never litters.

27 21. While passing out literature, Ascherl usually remains stationary. As individuals
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1 pass by him, he asks if they would like a Gospel tract. Should they refuse, Ascherl says “Have a
2 nice day,” and waits for someone else to approach. If they say yes, Ascherl hands that person a
3 tract to read some time later. On occasion, Ascherl will engage in one-on-one dialogue with
4 someone about Christianity provided that individual is willing to carry on a conversation with
5 him.

6
7 22. Ascherl desires to distribute his literature on the public ways of downtown
8 Issaquah during Salmon Days Festival. The festival affords him a unique opportunity to address
9 a large number of people that he would not otherwise be able to reach with his message.

10 **Salmon Days Festival**

11
12 23. Salmon Days Festival is an annual two-day festival that takes place on the first
13 full weekend of October, and celebrates the return of salmon to the lakes, streams and hatcheries
14 in Issaquah and surrounding areas. This festival has been in Issaquah for approximately 40 years.
15 It is presented by the Greater Issaquah Chamber of Commerce with support from the City of
16 Issaquah and the Issaquah Arts Commission.

17
18 24. To conduct this event, the City of Issaquah issues a special event/special use
19 permit to the Greater Issaquah Chamber of Commerce.

20
21 25. The rules and regulations applicable during Salmon Days Festival, as well as the
22 location of Salmon Days Festival, is codified in Chapter 5.40 of the Issaquah Code of
23 Ordinances.

24
25 26. Pursuant to this ordinance, Salmon Days Festival occurs in a large portion of
26 downtown Issaquah, including the areas where East Sunset Way intersects Front Street, Veterans
27 Memorial Park, the Issaquah Hatchery, and other nearby spaces. During the festival these areas
28 remain free and open to the general public, allowing pedestrians to enter at various points. There

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1 are no specific gates or points of entry into the festival area.

2 27. During Salmon Days Festival, a large variety of events and activities occur both
3 within and outside the festival area. There are exhibits, booths, a parade, a “Foods of the World”
4 exhibition where vendors sell a variety of different types of cuisine, 5K and 10K runs, and a
5 “Field of Fun event” where children can participate in pony rides, inflatables, trampoline
6 jumping, and train rides. There is also live entertainment that takes place on numerous stages.
7

8 28. The booths at the festival are open to food vendors, arts and crafts vendors, and
9 non-profit organizations. Anyone renting a booth must pay an application fee, plus a fee to rent a
10 booth, and provide proof of insurance. For 2011, food vendors are required to pay a \$20
11 application fee and a fee ranging from \$325 to \$700, depending on the size of their booth. Non-
12 profit organizations are required to pay a flat fee of \$75 and a 10% commission of anything sold
13 at their booth.
14

15 29. Not all non-profits are eligible to apply for a booth at Salmon Days Festival.
16 According to festival rules, only those non-profit organizations “located in Issaquah and/or are
17 significant providers to the Issaquah community” can secure a booth.
18

19 30. During Salmon Days Festival, parts of East Sunset Way and Front Street are
20 closed to vehicular traffic. The streets stay open to pedestrian traffic, permitting pedestrians free
21 access to these streets and adjoining sidewalks. At all times during Salmon Days Festival, East
22 Sunset Way and Front Street remain public thoroughfares and part of the city’s transportation
23 grid. Citizens commonly use these public ways during Salmon Days Festival to reach various
24 parts of the city, including a variety of businesses located in the vicinity.
25

26 31. The 2011 Salmon Days Festival is scheduled to take place on October 1 and 2.

27 **Suppression of Ascherl’s Expression during 2010 Salmon Days Festival**

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1 32. On Saturday October 2, 2010, Ascherl and two of his friends decided to go to
2 downtown Issaquah to express their Christian beliefs via literature distribution and dialogue.

3 33. They chose this particular location and date because they knew the 2010 Salmon
4 Days Festival was taking place in downtown Issaquah at that time. Ascherl and his friends
5 wanted to reach the audience that would be in that area for the festival.
6

7 34. Ascherl and his friends did not want - nor did they attempt - to obtain a booth at
8 Salmon Days Festival. They could not afford the expense of a booth, nor did they want their
9 expression to be limited to a booth.

10 35. Ascherl and friends did not seek to participate in Salmon Days Festival or in any
11 of the festival activities because they did not want their message confused with – or blurred by –
12 the message of Salmon Days Festival.
13

14 36. During the 2010 event, Ascherl and his friends did not seek to use any sound
15 amplification devices. Nor did they desire to engage in any other activity that could disrupt any
16 Salmon Days Festival event. Ascherl and his friends only wanted to walk through and stand on
17 the sidewalks and streets on East Sunset Way and Front Street and other public ways in
18 downtown Issaquah while distributing literature.
19

20 37. Ascherl and his friends arrived at downtown Issaquah on October 2 between
21 11:00 a.m. and noon. Upon arrival, Ascherl began walking on Front Street, near where Front
22 Street intersected NE Dogwood St. As Ascherl was walking, he peacefully distributed religious
23 literature and occasionally dialogued with individuals. Per custom, Ascherl did not block nor
24 create any congestion nor harass anyone nor force his literature on anyone nor draw any type of
25 crowd.
26

27 38. In the same area, Ascherl observed many other people walking around and
28

1 standing as they ate food, watched festival activities, talked to each other, and waited in line.
2 Ascherl's literature distribution was far less prone to create congestion than these other activities.

3 39. About five minutes into this activity, Ascherl was approached by an unidentified
4 female who instructed him to stop handing out literature. Wearing an official name tag around
5 her neck, she presented herself as a festival official. Ascherl advised that he was well within his
6 constitutional rights in distributing literature on public ways. Deflecting this assertion, the
7 festival official ordered Ascherl to stop his literature distribution. Ascherl politely refused.
8

9 40. The festival official advised Ascherl that she would go get the police, and left.
10 Ascherl continued with his literature distribution.

11 41. Approximately thirty minutes later, Ascherl was approached by two police
12 officers with the Issaquah Police Department. The police officers wore police uniforms and
13 badges and presented themselves as police officers to Ascherl.
14

15 42. The police officers pulled Ascherl aside and inquired about his literature. Ascherl
16 showed the officers a copy of his literature and explained the purpose behind his message. The
17 police officers voiced a concern about Ascherl harassing or pushing his literature on people.
18 Upon receiving Ascherl's assurance that he would not harass anyone, the police officers allowed
19 him to continue with his literature distribution.
20

21 43. Five minutes later, the police officers approached Ascherl again, but this time
22 they were accompanied by the same female festival organizer who stopped Ascherl previously.
23 The police officers asked Ascherl and his friends to stop their literature distribution. Ascherl
24 stressed that he and his friends had a constitutional right to distribute literature since they were
25 handing out literature on a public sidewalk open to the public. Ascherl also inquired about any
26 law prohibiting his literature distribution.
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1 44. The police officers left to obtain a copy of the ordinance precluding literature
2 distribution. In the meantime, Ascherl and his friends continued with their literature distribution.

3 45. The police officers returned twenty minutes later and showed Ascherl a copy of
4 Issaquah City Code § 5.40.040. This ordinance prohibits all literature distribution within the
5 boundaries of Salmon Days Festival except for two isolated free speech zones.
6

7 46. The police officers explained to Ascherl that the ordinance limits all literature
8 distribution to the two specific free speech zones, precluding Ascherl from distributing any
9 literature outside of these zones. The police officers elaborated to Ascherl that he would be guilty
10 of a misdemeanor and cited or arrested if he attempted to distribute literature outside of these
11 zones.
12

13 47. Ascherl did not want to be arrested or cited. If not for the orders from the police
14 officers, Ascherl would have continued with his expressive activities on the sidewalks and public
15 ways. But upon receiving this directive, Ascherl and his friends made their way to one of the free
16 speech zones.
17

18 48. The first free speech zone that Ascherl found was located near the intersection of
19 Front St. and Sunset Way. This free speech zone was approximately as wide as a city street and
20 200 feet long. This area was also very close to the Front St. Stage where various musicians were
21 playing. Ascherl observed that there was no one in that area and hardly anyone was walking by
22 the area. It was so out of the way that Ascherl could not possibly reach a meaningful audience
23 with his literature there.
24

25 49. The free speech zone was so close in proximity to the Front St. Stage that it was
26 also too loud to engage in conversation. Ascherl found it practically impossible to engage in any
27 effective expression in this free speech zone and started walking toward the second free speech
28

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1 zone.

2 50. The second free speech zone was located on West Sunset Way on a bridge near
3 the Issaquah Hatchery and the intersection of West Sunset Way and Newport Way. Because
4 there was no stage located near this zone, Ascherl attempted to stay within this zone and
5 distribute literature.

6
7 51. Ascherl soon realized that his attempts to distribute literature in the second free
8 speech zone were similarly futile and practically useless. Few people traversed by this zone,
9 causing Ascherl to miss 99% of the people attending the festival.

10 52. After trying to distribute literature in both of the so-called free speech zones,
11 Ascherl discerned that neither space provided an effective means for him to reach his intended
12 audience. Ascherl discontinued his activities and left Salmon Days Festival.

13
14 53. If not for the requirements imposed by the Issaquah ordinance – and the police
15 enforcement of this ordinance – regulating expression in Salmon Days Festival, Ascherl would
16 have continued to engage in his desired expression outside the so-called free speech zones that
17 day.

18
19 **Anti-Leafleting Ordinance**

20 54. The city ordinance that the police officers supplied Ascherl on October 2 is
21 located in the Issaquah City Code § 5.40, entitled “Salmon Days.” Section 5.40.040 of this
22 chapter is entitled “Designated areas for leafleting, entertaining, and nonprofit distribution” and
23 reads as follows:

24
25 **5.40.040 Designated areas for leafleting, entertaining, and nonprofit
26 distribution.**

27 A. The City of Issaquah hereby establishes designated “expression areas” within
28 the festival area for leafleting, organized protesting, nonscheduled entertainment,

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1 and nonprofit distribution. These designated expression areas shall be located by
2 the Festival Events Division of the Greater Issaquah Chamber of Commerce in
3 such a way as to minimize interference with the orderly flow of pedestrian traffic
4 through the festival area while still providing an area for members of the public to
freely express themselves. The locations of the designated expression areas shall
be subject to approval by the City Council prior to Salmon Days.

5 B. The Festival Events Division of the Greater Issaquah Chamber of Commerce
6 shall ensure that adequate trash receptacles are located in these designated areas.

7 C. The designated expression areas shall be marked by at least one sign
8 containing the words "expression area" so that police officers and Salmon Days
9 volunteers are able to direct persons wishing to partake of these activities to that
area.

10 D. No person shall erect a table, easel, soapbox, stand, or similar structure which
11 could interfere with pedestrian traffic within the festival area, including the
12 designated expression areas, without the written permission of the Festival Events
Division of the Greater Issaquah Chamber of Commerce.

13 E. No leafleting, organized protesting, non-scheduled entertainment, or nonprofit
14 distribution shall be allowed outside of a booth or the above-established,
designated expression areas.

15 F. Violation of this section shall constitute a misdemeanor. Before enforcing this
16 section, police officers shall give a verbal warning informing the violator of this
17 chapter and of the location of the designated expression areas where such
18 activities are allowed. If the violator continues the activity after this warning the
police may arrest the violator.

19 G. Nothing in this section should be read to prevent attendees from expressing
20 themselves through purely oral communication at any location within the festival
21 area. Nothing in this section should be read to prevent attendees from carrying
signs at any location within the festival area so long as the sign conforms with
IMC 5.40.050.

22 **Continuing Impact of Anti-Leafleting Ordinance on Ascherl**

23 55. The anti-leafleting ordinance serves to chill and deter Ascherl's religious
24 expression.

25 56. According to the anti-leafleting ordinance, no one may distribute literature
26 anywhere during Salmon Days Festival outside of two remote areas. In addition, no one may
27

1 stand on any type of box in the free speech zone in order to attract people outside the zone to
2 him.

3 57. The ordinance imposes an intolerable burden on Ascherl's expression. If limited
4 to particular zones, Ascherl cannot reach the vast majority of people who attend the festival. The
5 zones are not located in areas that allow Ascherl to practically convey his message. Because of
6 the location of these zones and their proximity to noise, few festival attendees walk by these
7 areas. Ascherl is not even permitted to stand on a box in these zones to attract people to come to
8 him in these zones.
9

10 58. For fear of arrest, Ascherl is effectively deterred from returning to public ways of
11 downtown Issaquah during Salmon Days Festival and expressing his viewpoints. If not for the
12 anti-leafleting ordinance, and the actions of Defendants in enforcing this ordinance, Ascherl
13 would return to the 2011 Salmon Days Festival and subsequent festivals to share his message via
14 literature distribution and conversation.
15

16 59. The fear of arrest severely limits Ascherl's constitutionally-protected expression
17 on the sidewalks and public ways of downtown Issaquah during Salmon Days Festival.
18

19 60. Being chilled and deterred from exercising his constitutional rights on the
20 sidewalks and public ways of downtown Issaquah constitutes irreparable harm for Ascherl.
21

22 61. Ascherl does not have an adequate remedy at law for the loss of his constitutional
23 rights.
24

25 **FIRST CAUSE OF ACTION**

26 **Violation of Freedom of Speech**

27 62. Ascherl re-alleges and incorporates herein by reference all preceding paragraphs.

28 63. Ascherl's religious speech is protected speech under the First Amendment.

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1 64. Ascherl challenges Defendant's policies and practices including, but not limited
2 to the anti-leafleting ordinance, on their face and as applied.

3 65. Defendant's policies and practices, and the enforcement thereof, violate the Free
4 Speech Clause of the First Amendment to the United States Constitution, made applicable to the
5 states through the Fourteenth Amendment.
6

7 WHEREFORE, Ascherl respectfully prays the Court grant the equitable and legal relief
8 set forth in the prayer for relief.

9 **SECOND CAUSE OF ACTION**

10 **Violation of the Due Process**

11 66. Ascherl re-alleges and incorporates herein by reference all preceding paragraphs.
12

13 67. Defendant's policies are vague and lack sufficient objective standards to curtail
14 the discretion of officials. They allow Defendant ample opportunity to enforce the policies in an
15 *ad hoc*, arbitrary, and discriminatory manner.

16 68. As a result of these vague restrictions, Plaintiff has been deprived of his right to
17 due process of law.
18

19 WHEREFORE, Ascherl respectfully prays the Court grant the equitable and legal relief
20 set forth in the prayer for relief.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Ascherl respectfully prays for relief in that this Court:

24 A. Assume jurisdiction over this action;

25 B. Enter a judgment and decree declaring that the anti-leafleting ordinance is
26 unconstitutional on its face and as applied to Ascherl's religious expression (literature
27 distribution on public ways in Salmon Days Festival) because it violates Ascherl's rights and the

1 rights of third parties not before the Court, as guaranteed under the First and Fourteenth
2 Amendments to the United States Constitution;

3 C. Enter a preliminary and permanent injunction enjoining Defendant, its agents,
4 officials, servants, employees, and all persons in active concert or participation with them, or any
5 of them, from applying the anti-leafleting ordinance so as to restrict constitutionally-protected
6 speech of speakers, including Ascherl and other third parties, on the on public ways in downtown
7 Issaquah during Salmon Days Festival;

8
9 D. Adjudge, decree, and declare the rights and other legal relations with the subject
10 matter here in controversy, in order that such declaration shall have the force and effect of final
11 judgment;

12
13 E. Award Ascherl nominal damages arising from the acts of the Defendants as an
14 important vindication of the constitutional rights;

15 F. Award Ascherl his costs and expenses of this action, including reasonable
16 attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

17
18 G. Grant such other and further relief as appears to this Court to be equitable and
19 just.

20 Respectfully submitted this 5th day of August, 2011.

21 By: s/Nathan M. Manni
22 Nathan M. Manni
23 WSBN 35373
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VERIFICATION

I, the undersigned, a citizen of the United States and resident of the State of Washington,
have read the foregoing Verified Complaint and declare under penalty of perjury, under the laws
of the State of Washington, that the foregoing is true and correct.

Dated this 5th day of July, 2011.



PAUL ASCHERL

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