



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: February 3, 2021

Subject: Targeted Residential Picketing Ordinance

Mayor Nelson requested that staff research an ordinance regulating targeted picketing in residential neighborhoods.

This issue has come back to the forefront due to a protest that occurred in a residential neighborhood in the City of Hugo.

White Bear Township was one of the first to adopt a targeted residential picketing ordinance in the early 1990s after continued protests in front of the home of the Executive Director of Planned Parenthood. The ordinance was challenged and, in 1993, was determined to be constitutional by the Minnesota Court of Appeals as “a constitutionally valid time, place, or manner regulation of expression in a public forum.”

Since the protest in Hugo, a number of north metro cities have adopted, or are in the process of adopting, the ordinance, including Hugo, Lino Lakes, Centerville and Blaine.

While Minnesota State Law 609.748, subd. 1 already outlaws targeted residential picketing, it requires the picketing to happen more than once. A City ordinance could outlaw if on the first offense.

It is appropriate for the City Council to discuss the benefits and risks of this proposed ordinance and provide staff direction on how to proceed.

If you have any questions, please don't hesitate to contact me at 763-784-6491.

ORDINANCE NO. ____

**AN ORDINANCE RELATING TO AND REGULATING TARGETED PICKETING IN
RESIDENTIAL NEIGHBORHOODS IN THE CITY OF SPRING LAKE PARK**

WHEREAS, the City Council finds that targeted residential picketing in front of or about a residential dwelling causes emotional distress to the dwelling's occupants, obstructs and interferes with the free use of public rights-of-way and has as its object the harassment of the dwelling occupants; and

WHEREAS, the City Council further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression; and

WHEREAS, the protection and preservation of the home is the keystone of democratic government; the public health, safety and welfare and the good order of the community require that members of the community enjoy, in their homes and dwellings, a feeling of wellbeing, tranquility and privacy and, when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants, obstructs and interferes with the free use of public sidewalks and public ways of travel; such practice has as its object the harassing of such occupants and, without resort to such practice, full opportunity exists, and under the terms and provisions of this section, will continue to exist for the exercise of freedom of speech and their constitutional rights; and that the provisions hereinafter enacted are necessary for the public interest to avoid the detrimental results herein set forth.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SPRING LAKE PARK,
MINNESOTA, HEREBY ORDAINS AS FOLLOWS:**

Section 1. Purpose

The City has an interest in the protection of residential privacy, the wellbeing and tranquility of the home, and protecting citizens from unwanted speech when they are a captive audience within their homes. The city council finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise conditionally protected freedoms of speech and expression.

Section 2. Definitions

For the purposes of this section, the following definition shall apply.

TARGETED RESIDENTIAL PICKETING means:

- (1) Marching, standing or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security or privacy of an occupant of the building; or
- (2) Marching, standing or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which a residential building is located; or
- (3) Standing, marching, patrolling or picketing by one or more persons focused in front of or adjacent to a particular residential dwelling without the consent of the dwelling's occupants.

Section 3. Prohibited Activity

No person shall engage in targeted residential picketing within the City.

Section 4. Violation/Penalty

Every person convicted of a violation of any provision of this Ordinance shall be guilty of a misdemeanor.

Section 5. Severability

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

Section 6. Effective date

This ordinance shall have full force and effect upon its passage and publication.

Passed by the Council of the City of Spring Lake Park, Anoka County, Minnesota, this _____ day of _____, 2021.

APPROVED BY:

Robert Nelson, Mayor

ATTEST:

Daniel Buchholtz, City Administrator

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506 N.W.2d 641
STATE of Minnesota, Respondent,
v.
Leo CASTELLANO, Appellant.
No. C4-93-356.
Court of Appeals of Minnesota.
Sept. 28, 1993.

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Syllabus by the Court

1. A municipal targeted residential picketing ordinance is a constitutionally valid time, place, or manner regulation of expression in a public forum if the ordinance is content-neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels of communication.

2. A municipal targeted residential picketing ordinance that defines targeted residential picketing as an "activity focused on a single residential dwelling without the consent of the dwelling's occupant" is not unconstitutionally overbroad under the First Amendment or *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988), when activity is narrowly construed to mean solely "picketing activity."

3. A municipal targeted residential picketing ordinance is not void for vagueness where the ordinance provides sufficient notice that all targeted residential picketing is prohibited "without the consent of the dwelling's occupant." The ordinance's consent provision provides a defense to a municipality's prima facie case that focused residential picketing violated the ordinance. Under the ordinance, an "occupant" is a person with a legal right to control or to possess the single residential dwelling.

Hubert H. Humphrey, III, Atty. Gen., Martin J. Costello, Hughes & Costello, St. Paul, John G. Dillon, Minneapolis, for respondent.

Thomas W. Strahan, Minneapolis, for appellant.

Considered and decided by HUSPENI, P.J., and SCHUMACHER and KLAPHAKE, JJ.

OPINION

HUSPENI, Judge.

Appellant, convicted of violating a township ordinance that prohibits targeted residential picketing, facially challenges the constitutionality of the ordinance on the grounds of overbreadth and vagueness. We affirm.

FACTS

On August 24, 1991, approximately 20 men and women were picketing in the area of 5758 Meadowview Drive in the Town of White Bear. Several of the individuals carried graphic signs depicting aborted fetuses. Thomas Webber, Executive Director of Planned Parenthood of Minnesota, who resides at 5758 Meadowview Drive, called the Ramsey County Sheriff's Department to report the noise and disruption caused by the protestors.

A sheriff deputy arrived at 5758 Meadowview Drive and talked to Webber. Webber told the deputy that appellant Leo Castellano

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had stood directly in front of his residence for approximately 30 minutes and shouted "Tom Webber in his hour of death" and "Pray for us sinners now and in the hour of Tom Webber's hour of death" numerous times loudly enough to disrupt Webber and several other neighborhood residents.

The deputies informed the group that they would be arrested if they continued to picket in front of Webber's residence on Meadowview Drive. The protestors reluctantly dispersed after the deputy told them he would not debate the legal issues involved and took photographs of the

graphic signs. Appellant, however, refused to leave the area and stayed in front of Webber's residence. He stated "I am not a part of the group" and "[t]his is a public street." Appellant then commenced marching in one place as though he was walking but did not physically leave the street in the area in front of Webber's residence. Webber signed a certificate of arrest by private citizen, and a deputy took appellant into custody for violating the targeted residential picketing ordinance. See White Bear Township, Minn., Ordinance No. 63.

The trial court denied appellant's motion to dismiss and held that the ordinance was constitutional. Based on stipulated facts, the trial court adjudicated appellant guilty of violating Ordinance No. 63 and ordered him to pay a \$60 fine plus a surcharge.

ISSUES

1. Is the Town of White Bear, Minn., Ordinance No. 63 (1990), prohibiting targeted residential picketing, facially unconstitutional on the grounds of overbreadth?

2. Is the Town of White Bear, Minn., Ordinance No. 63 (1990), prohibiting targeted residential picketing, facially unconstitutional under the void for vagueness doctrine?

ANALYSIS

At issue in this case is a municipal ordinance prohibiting focused, or targeted residential picketing. ¹ The constitutionality of an ordinance is a question of law. See *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn.1985) (construction of a statute is clearly a question of law fully reviewable by an appellate court); *State v. Clarke Plumbing & Heating, Inc.*, 238 Minn. 192, 197, 56 N.W.2d 667, 671 (1952) (whether an ordinance is constitutionally valid is a question of law). Although ordinances are ordinarily afforded a presumption of constitutionality, ordinances restricting First Amendment rights are not so presumed. *Goward v. City of Minneapolis*, 456

N.W.2d 460, 464 (Minn.App.1990). The burden of proving the need of such a law rests with the government. *Id.* (citing *Meyer v. Grant*, 486 U.S. 414, 426, 108 S.Ct. 1886, 1894, 100 L.Ed.2d 425 (1988)).

I. Overbreadth

In the area of freedom of expression, it is well-established that an overbroad

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regulation may be subject to facial review and invalidation even though the application in a particular case may be constitutionally unobjectionable. *Forsyth County, Ga. v. Nationalist Movement*, --- U.S. ---, ---, 112 S.Ct. 2395, 2400-01, 120 L.Ed.2d 101 (1992). Permitting a facial challenge to allegedly overbroad legislation is an exception to general standing principles. *Broadrick v. Oklahoma*, 413 U.S. 601, 615, 93 S.Ct. 2908, 2917, 37 L.Ed.2d 830 (1973). The exception is "based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court." *Forsyth County*, --- U.S. at ---, 112 S.Ct. at 2401.

In order to invalidate a statute or ordinance on its face, the overbreadth not only must be real, but "substantial." *Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574, 107 S.Ct. 2568, 2572, 96 L.Ed.2d 500 (1987). The requirement that the overbreadth be substantial arose from the Court's recognition that striking an ordinance on overbreadth grounds imposed "manifestly, strong medicine." *Id.* (quoting *Broadrick*, 413 U.S. at 613, 93 S.Ct. at 2916). The Court has required that there be a "realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court" to facially challenge legislation on overbreadth grounds. *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S.Ct. 2118, 2126, 80 L.Ed.2d 772 (1984).

The United States Supreme Court addressed the facial constitutionality of an ordinance restricting residential picketing in *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988). In *Frisby*, the Court found constitutional a Brookfield, Wisconsin, ordinance that provided:

It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.

Id. at 477, 108 S.Ct. at 2498. The Brookfield ordinance stated that its purpose was "the protection and preservation of the home" through assurance "that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy." *Id.* According to the Town of Brookfield, prohibiting residential picketing was necessary because such picketing "causes emotional disturbance and distress to the occupants * * * [and] has as its object the harassing of such occupants." *Id.*

An ordinance restricting targeted residential picketing "operates at the core of the First Amendment" because it prohibits picketing on issues of public concern. *Id.* at 479, 108 S.Ct. at 2499. In *Frisby*, the Court stated that restrictions on public issue picketing are typically subject to careful scrutiny because of the importance of "uninhibited, robust, and wide-open" debate on public issues. *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720-21, 11 L.Ed.2d 686 (1964)). The Court specifically held that picketing on public streets is "the archetype of a traditional public forum" and such status is not lost because a public street runs through a residential area. *Id.* 487 U.S. at 480, 108 S.Ct. at 2500. Although in a "quintessential public forum[]", the government may not prohibit all communicative activity," *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983), the government may

enforce regulations of the time, place, and manner of expression which are content-neutral,

are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Id.

Respondent argues that White Bear Ordinance No. 63 meets all the requirements of *Frisby*. Appellant, conversely, would have this court find the White Bear ordinance unconstitutional because it does not, in fact, satisfy the requirements of *Frisby*. We agree with respondent that White Bear Ordinance No. 63 is facially constitutional under *Frisby*. However, we believe that *Frisby* compels us to narrowly construe the White Bear Ordinance in order to avoid constitutional overbreadth. We address each of the *Frisby* factors in turn.

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A. Content Neutrality

In First Amendment time, place, or manner cases, the principal inquiry in determining whether legislation is content-neutral is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2754, 105 L.Ed.2d 661 (1989). An ordinance restricting expressive activity is content-neutral so long as it is "justified without reference to the content of the regulated speech." *Id.* (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984)).

The *Frisby* Court accepted the determination of the lower courts that the Brookfield ordinance was content-neutral. *Frisby*, 487 U.S. at 482, 108 S.Ct. at 2501. Appellant argues that *Carey v. Brown*, 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) compels a conclusion that the White Bear ordinance is not "content-neutral." We disagree and find *Carey* distinguishable. In *Carey* the regulation prohibited residential picketing except for peaceful picketing of a place of employment involved in a labor dispute. *Id.* at 457, 100 S.Ct. at 2288. Because the regulation in

Carey discriminated among speech-related activities in a public forum based upon content, the Court considered whether the statute was finely tailored to serve a substantial state interest. *Id.* at 462-63, 100 S.Ct. at 2291. The Court determined that exempting labor picketing did not advance the state's asserted interest in protecting residential privacy, *id.* at 465, 100 S.Ct. at 2293, and struck the regulation as unconstitutional.

Appellant has presented no evidence that the Town of White Bear discriminatorily enacted the ordinance specifically to suppress expression espousing opposition to abortion. To the contrary, the White Bear ordinance unequivocally prohibits all targeted residential picketing regardless of the content of speech and is, therefore, content neutral. See *Ward*, 491 U.S. at 791, 109 S.Ct. at 2754.

B. Valid Governmental Interest

In Ordinance No. 63, the Town of White Bear specifically states that it has an interest in protecting residential privacy. A similar significant governmental interest was acknowledged in *Frisby*, 487 U.S. at 484, 108 S.Ct. at 2502. The Court has long recognized that:

Preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value. * * * The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.

Carey, 447 U.S. at 471, 100 S.Ct. at 2295-96. Because the home is "the last citadel of the tired, the weary and the sick," *Gregory v. City of Chicago*, 394 U.S. 111, 125, 89 S.Ct. 946, 954, 22 L.Ed.2d 134 (1969) (Black, J., concurring), and is "one retreat to which men and women can repair to escape from the tribulations of their daily pursuits," *Carey*, 447 U.S. at 471, 100 S.Ct. at 2295, the government may legislate to protect intrusion into the privacy of the home of unwilling listeners. *Frisby*, 487 U.S. at 484, 108

S.Ct. at 2502. The Town of White Bear, in stating its substantial interest "in the protection of residential privacy * * * and [in] protecting the well-being, tranquility, and privacy of the home which is * * * of the highest order in a free and civilized society," see *Town of White Bear, Minn., Ordinance No. 63*, § 2, parallels language of the Court in *Carey*, 447 U.S. at 471, 100 S.Ct. at 2296 (the "State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society"). Thus, the language of the White Bear Ordinance meets fully the requirement that a valid government interest be served by the regulation of expression.

C. Narrow in Scope

In arguing that Ordinance No. 63 unconstitutionally sweeps too broadly, appellant essentially claims that the ordinance is not narrow in scope. He raises two concerns: (1) the ordinance, in using the word "activity" in describing targeted residential picketing,

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includes within the sweep of regulation activity that is clearly protected by the First Amendment; and (2) the ordinance, in prohibiting expression unless the dwelling's "occupant" consents, extends beyond the protection of the unwilling listener. We believe each of these challenges must fail.

"A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby*, 487 U.S. at 485, 108 S.Ct. at 2503 (citing *Taxpayers for Vincent*, 466 U.S. at 808-810, 104 S.Ct. at 2130-32). Even a complete ban can be narrowly tailored if each activity within the proscription's scope is an appropriately targeted evil. *Id.*

Frisby held that the Brookfield ordinance was narrowly tailored despite its complete ban on focused residential picketing. The "evil" of targeted residential picketing, the presence of an unwelcome visitor at the home, which the

ordinance sought to eliminate was "created by the medium of expression itself." *Id.* at 487, 108 S.Ct. at 2504. Frisby noted that the Brookfield ordinance was narrowly directed at the household, not the public, and thus distinguished cases which had struck down complete bans of communication such as handbilling, solicitation, and marching, which communications were directed at broader residential areas.

The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way.

Id. at 486, 108 S.Ct. at 2503.

The White Bear ordinance, like the Brookfield ordinance in *Frisby*, is "readily subject to a narrowing construction that avoids constitutional difficulties." See *id.* at 482, 108 S.Ct. at 2501. In construing the Brookfield ordinance, the Court stated:

[T]he use of the singular form of the words "residence" and "dwelling" suggests that the ordinance is intended to prohibit only picketing focused on, and taking place in front of, a particular residence. * * * "Picketing," after all, is defined as posting at a particular place, a characterization in line with viewing the ordinance as limited to activity focused on a singular residence.

Id. (emphasis added) (citing Webster's Third New International Dictionary 1710 (1981) to define picketing as "posting at a particular place").

Similarly, Ordinance No. 63 was not intended to circumscribe all "activity," ² but only activity constituting picketing in the focused sense. We interpret the White Bear ordinance in a limited fashion to proscribe only "picketing activity" focused on or taking place in front of a particular single residential dwelling. See *id.* ³ So narrowed, the ordinance would not prohibit constitutional

distribution of materials to neighborhood residents, or solicitation by mail or in person.

Appellant also argues that the White Bear ordinance is not tailored narrowly enough to protect only unwilling ⁴ listeners in

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their homes, and that by extending protection to "occupants" rather than to "residents" the ordinance is unconstitutionally overbroad and vitiates any possibility of narrow construction. We disagree. We believe the word "occupant," as used in the ordinance, has a narrower definition than appellant urges, ⁵ and makes the White Bear ordinance no broader than the one held constitutional in *Frisby*.

An "occupant" is a person "having possessory rights, who can control what goes on on premises." Black's Law Dictionary 1078 (6th ed. 1990). Black's Law Dictionary also defines "occupant" as "[o]ne who has actual use, possession or control of a thing." *Id.* Webster's defines "occupant" as

one who takes possession of something that has no other owner and thereby acquires title by occupancy * * * one who takes possession under title, lease, or tenancy at will * * * one who occupies a particular place or premises [such as a] tenant [or a] resident.

Webster's Third New International Dictionary 1560 (1961). Similarly, an "occupant" is

one that occupies a position or place * * * one who has certain legal rights to or control over the premises occupied.

American Heritage Dictionary of the English Language 1251 (3d ed. 1992).

"Resident," on the other hand, means a "dweller, habitant or occupant." Black's Law Dictionary 1309 (6th ed. 1990). Webster's defines "resident" as "having an abode for a continued

length of time" or "one who resides in a place, one who dwells in a place for a period of some duration." Webster's Third New International Dictionary 1931 (1961). "Resident" is also defined as "one who resides in a particular place permanently or for an extended period." American Heritage Dictionary of the English Language 1535 (3d ed. 1992).

In view of the recognized definitions of "resident" and "occupant," we believe that "occupant," as used in the White Bear ordinance, means an individual with a legal right to possess or to control the single residential dwelling. A guest, visitor, or contractor would not come within the definition of "occupant" because those persons would not have some legal right to possess or control the residence. Whether the ordinance used "resident" or "occupant," its protection would extend to those other than a fee owner and would cover those who had some legal right to possess or control the residence.

Our interpretation of "occupant" as one who has some legal right to possess or control the premises answers, we believe, appellant's concerns that the White Bear ordinance is not narrowly enough drafted to protect only "unwilling" listeners. The words "unless the occupant consents" inform the potential defendant that one not having the status of an "occupant," even though that one be a "willing" listener, has no power to consent.

We also reject appellant's argument that the ordinance is overbroad because it would be violated regardless of whether the occupant was home. Whether or not an occupant is home, the government has an interest in prohibiting targeted residential picketing that invades the sanctity of the home. To somehow justify the intrusion simply because the resident is not home would be to say that the "evil" of targeted residential picketing only results if someone is home. Although we recognize that the ordinance is intended to protect residential privacy and recipients unwilling to receive the communication, an occupant returning home to find picketers focused on his or her home might

be persuaded to stay away. Such an individual would be just as much captive as if in the home when the focused picketing commenced. See *Frisby*, 487 U.S. at 488, 108 S.Ct. at 2504.

The targeted picketing ordinance of the Town of White Bear is narrowly tailored to protect unwilling occupants of a single residential dwelling. The ordinance eliminates no more than the exact source of the "evil" it

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seeks to remedy. See *id.* at 485, 108 S.Ct. at 2503.

D. Alternative Means of Expression

The *Frisby* Court, after narrowly construing the Brookfield, Wisconsin, ordinance "to prohibit only picketing focused on, or taking place in front of, a particular residence," *id.* at 482, 108 S.Ct. at 2501, had no difficulty in determining that the ordinance left open alternative channels of communication. The Court held that the ordinance did not prohibit general marching through neighborhoods, walking a route in front of an entire block of houses, or distributing literature door-to-door or through the mail. *Id.* at 483, 108 S.Ct. at 2502.

We agree with the Town of White Bear that Ordinance No. 63 permits general dissemination of ideas protected by the First Amendment. Because the prohibition is limited to targeted picketing focused on and taking place in front of a single residential dwelling, picketers may enter, alone or in groups, residential White Bear neighborhoods, march the public streets, distribute literature, and go door-to-door to proselytize their views. Sufficient alternative channels of communication remain open under Ordinance No. 63, as fully as they did under the Brookfield, Wisconsin, ordinance found to be constitutional in *Frisby*. See *id.*

In summary, the Town of White Bear has demonstrated the need for Ordinance No. 63. See *Goward*, 456 N.W.2d at 464. The ordinance is content-neutral, narrowly tailored to promote a

significant government interest, and leaves open alternative means of communication. See Perry, 460 U.S. at 45, 103 S.Ct. at 955. Neither the selection of the word "occupant" nor the concept of "activity" as narrowly construed here causes the ordinance to be substantively overbroad under Broadrick. Under Frisby, White Bear Ordinance No. 63 is a facially constitutional governmental regulation of the time, place or manner of speech.

II.

Finally, appellant contends that Town of White Bear Ordinance No. 63 is void for vagueness. We disagree. The void-for-vagueness doctrine, based upon due process,

requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). In the First Amendment context, the Court has "taken special care to insist on fair warning when a statute regulates expression." Marks v. United States, 430 U.S. 188, 196, 97 S.Ct. 990, 995, 51 L.Ed.2d 260 (1977).

Here, the ordinance prohibits all targeted residential picketing unless the occupant of a single residential dwelling has consented. Although appellant attempts to argue the ordinance is vague because a picketer will never know if an occupant will object to the content of the message, the language of the ordinance is clear and unambiguous. Because of the particular intrusiveness that results from targeted residential picketing, such picketing is presumed to be without the consent of the occupant and the ordinance sufficiently gives notice to picketers that focused picketing on a residence is prohibited under the law. See Kolender, 461 U.S. at 357, 103 S.Ct. at 1858. Should an occupant consent to the picketers' presence before his or her residence, the municipality will be unable to make a prima

facie showing of a violation of the ordinance. The ordinance, therefore, does not give the government unbridled discretion to arbitrarily or discriminatorily enforce the ordinance. See id. Ordinance No. 63 provides fair notice that all targeted residential picketing is prohibited. The ordinance is not void for vagueness.

DECISION

Town of White Bear, Minn., Ordinance No. 63 is facially constitutional.

Affirmed.

1 In 1990, the Town of White Bear enacted an ordinance regulating targeted residential picketing. The ordinance, in full, provided as follows:

SECTION 1. DEFINITION. For the purpose of this Ordinance, "targeted residential picketing" means an activity focused on a single residential dwelling without the consent of the dwelling's occupant.

SECTION 2. TARGETED RESIDENTIAL PICKETING. The Town of White Bear has an interest in the protection of residential privacy within the Town of White Bear and protecting the well-being, tranquility and privacy of the home which is certainly of the highest order in a free and civilized society. The Town Board of the Town of White Bear further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression.

SECTION 3. PROHIBITED. No person shall engage in targeted residential picketing within the Town of White Bear.

SECTION 4. PENALTY. Every person convicted of a violation of any provision of this Ordinance shall be punished as provided in Ordinance No. 26.

609.748 HARASSMENT; RESTRAINING ORDER.

Subdivision 1. **Definition.** For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(1) a single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

(3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

(b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:

(1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subd. 2. **Restraining order; court jurisdiction.** A person who is a victim of harassment or the victim's guardian or conservator may seek a restraining order from the district court in the manner provided in this section. The parent, guardian or conservator, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. An application for relief under this section may be filed in the county of residence of either party or in the county in which the alleged harassment occurred. There are no residency requirements that apply to a petition for a harassment restraining order.

Subd. 3. **Contents of petition; hearing; notice.** (a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent

may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a peace officer was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 20 days of service of the petition.

Subd. 3a. Filing fee; cost of service. The filing fees for a restraining order under this section are waived for the petitioner and the respondent if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5, or sections 609.342 to 609.3451. The court administrator and any peace officer in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when a peace officer is unavailable or if service is made by publication.

Subd. 4. Temporary restraining order; relief by court. (a) The court may issue a temporary restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of another person; or

(2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(c) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

(d) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

(e) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

(f) A request for a hearing under this subdivision must be made within 20 days of the date of completed service of the petition.

Subd. 5. Restraining order. (a) The court may issue a restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of another person; or

(2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if all of the following occur:

(1) the petitioner has filed a petition under subdivision 3;

(2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and

(3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years. In all other cases, relief granted by the restraining order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

(c) An order issued under this subdivision must be personally served upon the respondent.

(d) If the court orders relief for a period of up to 50 years under paragraph (a), the respondent named in the restraining order may request to have the restraining order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order. Application for relief under this paragraph must be made in the county in which the restraining order was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the restraining

order not less than 30 days before the date of the hearing. At the hearing, the respondent named in the restraining order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting the restraining order no longer apply and are unlikely to occur. If the court finds that the respondent named in the restraining order has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the restraining order has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the restraining order until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the restraining order.

Subd. 5a. Short-form notification. (a) In lieu of personal service of a harassment restraining order, a peace officer may serve a person with a short-form notification. The short-form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the temporary restraining order or restraining order was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short-form notification must be in bold print in the following form:

"The restraining order is now enforceable. You must report to your nearest sheriff's office or county court to obtain a copy of the restraining order. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the restraining order or this short-form notification."

(b) Upon verification of the identity of the respondent and the existence of an unserved harassment restraining order against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short-form notification.

(c) When service is made by short-form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

[See Note.]

Subd. 5b. Service by others. In addition to peace officers, corrections officers, including but not limited to probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve a temporary restraining order or restraining order.

Subd. 6. Violation of restraining order. (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates the order:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A person who commits violations in two or more counties may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(f) A person may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

(g) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(h) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(i) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

Subd. 7. Copy to law enforcement agency. An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

Subd. 8. Notice. (a) An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

(b) If the court grants relief for a period of up to 50 years under subdivision 5, the order must also contain a conspicuous notice to the respondent that the respondent must wait five years to seek a modification of the order.

Subd. 9. Effect on local ordinances. Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

Subd. 10. Prohibition against employer retaliation. (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

History: 1990 c 461 s 5; 1991 c 170 s 1,2; 1992 c 571 art 6 s 15-17; 1993 c 326 art 2 s 14-21; 1Sp1993 c 5 s 4; 1994 c 636 art 2 s 48; 1995 c 226 art 6 s 13; 1995 c 259 art 3 s 17; 1997 c 96 s 5; 1997 c 239 art 11 s 5; 1998 c 367 art 5 s 8,9; 2000 c 476 s 1-3; 1Sp2001 c 8 art 10 s 13,14; 1Sp2003 c 2 art 8 s 14-16; 2004 c 145 s 2; 2004 c 228 art 1 s 72; 2005 c 136 art 8 s 21; art 17 s 44-45; 2006 c 260 art 1 s 28; 2008 c 316 s 6-8; 2012 c 218 s 2-4; 2012 c 223 s 1,2; 2013 c 47 s 4; 2014 c 204 s 10; 2016 c 126 s 6; 2017 c 95 art 2 s 16; art 3 s 20-24; art 4 s 2; 1Sp2019 c 5 art 2 s 29; 2020 c 86 art 1 s 39

NOTE: Subdivision 5a, as added by Laws 2017, chapter 95, article 3, section 23, is effective 30 days following publication of a notice on the Bureau of Criminal Apprehension's website that a computer system is available to send harassment restraining order data from the Minnesota judicial branch to law enforcement. Laws 2017, chapter 95, article 3, section 23, the effective date.