

ORDINANCE NO. 120925

Enacting a new Section 50-162, Code of Ordinances, entitled "Funeral protests prohibited" to restrict protests within 300 feet of, and within one hour before and one hour after, a funeral or burial service.

WHEREAS, the City first adopted restrictions on protests at funerals on March 25, 1993, by the enactment of Ordinance No. 930270, As Amended; and

WHEREAS, following the commencement of armed conflict in Iraq and Afghanistan and then the decision of a small group of people known as the Westboro Baptist Church of Topeka, Kansas, to expand their protests to the services held for fallen members of the armed forces, many cities and states enacted funeral picketing restrictions; and

WHEREAS, in response to those new restrictions litigation was conducted in other cities in Missouri, as well as in other states, that placed the City's ordinance in legal jeopardy; and

WHEREAS, although at least one other federal Circuit Court of Appeals had approved funeral picketing restrictions, the Court of Appeals controlling the State of Missouri held a divergent view of the weight that should be given to grieving families and friends when compared to a largely unregulated exercise of the First Amendment; and

WHEREAS, to avoid the loss of litigation and payment of fees to members of the Westboro Baptist Church of Topeka, Kansas, the City repealed its ordinance on August 27, 2009, by Committee Substitute for Ordinance No. 090639; and

WHEREAS, the Council instructed the City Attorney to monitor litigation challenging the Missouri funeral picketing law with the understanding that any changes in the legal environment should be brought to the attention of the City Council; and

WHEREAS, the United States Court of Appeals for the Eighth Circuit on October 16, 2012, reversed its prior holdings that caused the invalidation of funeral picketing regulations and thus approved the restrictions enacted by the City of Manchester, Missouri by its *en banc* decision in the case of *Phelps-Roper v. City of Manchester*, 2012 U.S.App. LEXIS 21359 (8th Cir. 2012) (*en banc*), wherein the Court said: "We therefore overrule the rulings in *Nixon* and *Olmer* which limited the government's interest in protecting unwilling listeners to residential settings. . . .It is unreasonable to expect a family or friend of the deceased to reschedule or forgo attending the funeral so as to avoid offensive picketing"; and

WHEREAS, it is the intent of the City Council to promptly re-enact restrictions on any protests conducted at or near the sites of funerals to protect the grieving of friends and loved ones of a deceased person; and

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WHEREAS, to settle the scope and authorization of the restrictions imposed by the City Council the exact terms of the ordinance addressed by the Court of Appeals are enacted; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That there is a new Section 50-162, Code of Ordinances, enacted to read as follows:

**Sec. 50-162. Funeral Protests Prohibited.**

(a) Every citizen may freely speak, write and publish the person's sentiments on all subjects, being responsible for the abuse of the right, but no person shall picket or engage in other protest activities, nor shall any association or corporation cause picketing or other protest activities to occur within three hundred (300) feet of any residence, cemetery, funeral home, church, synagogue, or other establishment during or within one (1) hour before or one (1) hour after the conducting of any actual funeral or burial service at that place.

(b) As used in this section, "other protest activities" means any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.

(c) As used in this section, "funeral" and "burial service" mean the ceremonies and memorial services held in conjunction with the burial or cremation of the dead, but this section does not apply to processions while they are in transit beyond any three hundred (300) foot zone that is established under subsection (a) above.

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Approved as to form and legality:

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William Geary  
City Attorney