

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

ROGER LUEBKE, KIMBERLY
BURNHAM, WILLIAM ANTHONY
TAYLOR, VICTOR HOYT COX,
DUSTIN DAMICO, AND PATRICK
MCARDLE,

Plaintiffs,

v.

CITY OF OCALA, FL

Defendant.

Case No.: 5:21-cv-00219

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

INTRODUCTION

1. Plaintiffs Roger Luebke, Kimberly Burnham, William Anthony Taylor, Victor Hoyt Cox, Dustin Damico, and Patrick McArdle, all individuals experiencing poverty, bring this suit to challenge two municipal ordinances enacted by Defendant City of Ocala (City) that restrict their ability to request charity from fellow residents of the City of Ocala, landing them in jail for the content of their speech. Sections 22-361 and 58-171 of the Code of Ordinances, City of Ocala, Florida (“Ocala City Code”) violate their right to free speech and due process guaranteed by the First and Fourteenth Amendments of the U.S. Constitution. Plaintiffs challenge the constitutionality of a former version of § 58-171, which was amended in November of 2018, and seek declaratory judgment and damages for past injury caused by

Defendant's enforcement of the ordinance against them. Plaintiffs also challenge the current versions of §§ 22-361 and 58-171 and seek declaratory judgment, damages, and prospective injunctive relief to stop future enforcement of the ordinances.

JURISDICTION

2. This action seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. §1983 for past and ongoing injury to Plaintiffs' First and Fourteenth Amendment rights.

3. This Court has jurisdiction pursuant to 28 U.S.C. §1331, 1343(a)(3) & (4) and the Declaratory Judgment Act, 28 U.S.C. §2201 & 2202.

VENUE

4. Venue is proper in the Middle District of Florida, Ocala Division, pursuant to 28 U.S.C. §1391(b) and M.D. Loc. R. 1.04. The Plaintiffs reside, Defendant resides, and all of the acts and omissions complained of herein occurred and will continue to occur, in the Ocala Division of the Middle District of Florida.

PLAINTIFFS

5. Plaintiff ROGER LUEBKE was a resident of the City of Ocala for 16 years, though he currently lives outside the City. He experienced homelessness until July of 2020. He is a person with a disability who is unable to work. City police officers have repeatedly arrested Luebke for violating the challenged ordinances. He would like to ask fellow residents of the City for aid in the form of money or other charitable assistance but is afraid he will be arrested and prosecuted under the challenged ordinances because of his past arrests by the City.

6. Plaintiff KIMBERLY BURNHAM is a resident of the City of Ocala. She has lived in Ocala her whole life. She is currently experiencing homelessness and is a person with a disability. City police officers have arrested and warned Burnham multiple times for violating the challenged ordinances. She would like to ask fellow residents of the City for aid in the form of money or other charitable assistance but is afraid she will be arrested and prosecuted under the challenged ordinances because of her past arrests and warnings by the City.

7. Plaintiff WILLIAM TAYLOR is a resident of the City of Ocala. He has lived in Ocala for approximately 15 years. He is currently experiencing homelessness and is a person with a disability. City police officers have arrested and warned Taylor multiple times for violating the challenged ordinances. He would like to ask fellow residents of the City for aid in the form of money or other charitable assistance but is afraid he will be arrested and prosecuted under the challenged ordinances because of his past arrests and warnings by the City.

8. Plaintiff VICTOR HOYT COX is a resident of Marion County. He has lived in Marion County, outside of the city limits of Ocala, for 30 years. Although his residence is outside the City, he goes into the City at various times to access medical care or to take care of other needs. He has been hospitalized within the City of Ocala on multiple occasions over the past three years. While in the City, City police officers arrested Cox for violating one of the challenged ordinances. He would like to ask for aid in the form of money or other charitable assistance when in the City but is afraid

he will be arrested and prosecuted under the challenged ordinances because of his past arrest by the City.

9. Plaintiff DUSTIN DAMICO is a resident of the City of Ocala. He has lived in Ocala since May 2020. He is currently experiencing homelessness. City police officers have arrested and warned Damico for violating the challenged ordinances. He would like to ask fellow residents of the City for aid in the form of money or other charitable assistance but is afraid he will be arrested and prosecuted under the challenged ordinances because of his past arrest and warnings by the City.

10. Plaintiff PATRICK MCARDLE is a resident of the City of Ocala. He has lived in Ocala for 10 years. He is currently experiencing homelessness and is a person with a disability. City police officers have warned McArdle and told him to stop asking for charity and move along under penalty of arrest for violating the challenged ordinances. He would like to ask fellow residents of the City for aid in the form of money or other charitable assistance but is afraid he will be arrested and prosecuted under the challenged ordinances because of the warnings he has received and his knowledge of the City arresting other individuals he knows for asking for help.

DEFENDANT

11. Defendant City of Ocala, Florida (“City”) is a municipal entity organized under the laws of the State of Florida with the capacity to sue and be sued.

12. The City Council sets final policy on the creation and adoption of City ordinances.

13. City ordinances, including the challenged ordinances, are official policies of the City of Ocala.

14. The City is the legal entity responsible for the police department known as the City of Ocala Police Department (“OPD”).

15. The OPD Police Chief is appointed by the City Council and has supervision authority over police officers of the City.

16. The Mayor of the City has charge and control of OPD and is responsible for the enforcement of all City ordinances (not relating to operation of public utilities).

17. OPD has the traditional authority of police forces to enforce Florida statutes and City ordinances.

18. The City is the legal entity responsible for the department known as the City of Ocala Recreation and Parks Department, which oversees the operation and use of municipal recreation and park facilities.

19. The City has delegated authority to Park Rangers and Downtown Rangers, unsworn civilians under the supervision and control of the Recreation and Parks Department, to enforce City ordinances, rules, and failure to obey lawful orders in City parks.

20. The City delegated trespass authority to Park Rangers and Downtown Rangers, unsworn civilians, authorizing them to issue trespass warnings for City parks.

21. Pursuant to this authority, Park Rangers and Downtown Rangers are authorized to issue trespass warnings for violations of the challenged ordinances, banning individuals from returning to public parks under penalty of future arrest.

22. The City is sued for injunctive and declaratory relief and damages on the basis of acts of officers, agents, and employees of the City, including Park Rangers, Downtown Rangers, and OPD officers, taken pursuant to official City policy, practice, and/or custom.

23. At all times relevant herein, the officers, agents, and employees of the City were acting under color of state law.

STATEMENT OF FACTS

The Challenged Ordinances

24. Streets, sidewalks, medians, and parks are traditional public forums which are areas traditionally open for free speech and expression.

25. The City of Ocala has policies banning charitable solicitation on traditional public forums throughout the City. These policies are two ordinances, §§ 22-361 and 58-171 of Ocala City Code.

26. Plaintiffs challenge the current versions of §§ 22-361 and 58-171, as well as a former version of § 58-171 that was previously in effect from February 2008 until it was amended in November 2018 to the current version challenged here (collectively referred to as the “challenged ordinances”).

27. Plaintiffs challenge only those provisions of the challenged ordinances that apply to traditional public forums and do not challenge § 58-171(b)(2), which regulates private property.

The Roadway Solicitation Ordinance

28. The Ocala City Council adopted Ordinance 5797 amending § 22-361 of the Ocala City Code on February 5, 2008 (“roadway solicitation ordinance”). The ordinance makes it unlawful for “any person” to “stand in a street, highway, median or bicycle path” and “solicit from, or attempt to solicit from, the occupants of any vehicle” or to “walk into a street, highway, median or bicycle path to deliver goods to, or pick-up money from, the occupants of any vehicle.” City of Ocala Ordinance 5797 (Certified Copy attached as Ex. 1).

29. For the purposes of the roadway solicitation ordinance, “solicit” means “to seek to obtain by persuasion, entreaty, or formal application, to petition persistently, or to engage in or undertake the activities of a solicitor, regardless of whether funds are requested or goods or services sought to be sold or delivered.” “Vehicle” means “any wheeled device by which any person or goods may be transported or drawn upon any public road.” § 22-342, Ocala City Code.

30. To enforce section 22-361 of the Ocala City Code, a police officer must examine the content of a person’s speech to determine if they are soliciting.

The Former Panhandling Ordinance

31. The Ocala City Council adopted an ordinance “Begging, panhandling, and soliciting within the public roadways prohibited” on June 19, 2012 (“former panhandling ordinance”). City of Ocala Ordinance 2012-31 (Certified Copy attached as Ex. 2). This ordinance amended §§ 58-170 and 58-171 of the Ocala City Code.

32. The former panhandling ordinance defined “[b]eg, panhandle or solicit” as “in-person requests for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from another person.” Ex. 2, Ordinance No. 2012-31, § 58-171(a)(1), Ocala City Code. A “[b]eggar, panhandler or solicitor” was defined as “any person traveling either by foot, vehicle or other conveyance, from place to place, requesting in person a donation of money or some other article of value, either by words, bodily gestures, signs or any other means, from another person.” *Id.* at (a)(3).

33. In order to determine whether a person is begging, panhandling, or soliciting under the former panhandling ordinance, a police officer had to examine the content of that person’s speech. In order to determine whether a person can be considered a “beggar, panhandler or solicitor” for the purposes of the former panhandling ordinance, an officer had to examine the content of that person’s speech.

34. The former panhandling ordinance had location-based restrictions. It prohibited “[b]eggars, panhandlers or solicitors” from “begging, panhandling, or soliciting when either the beggar, panhandler, solicitor, or the person being solicited is located in, on, or at any of the following locations: bus stop, sidewalk café, area within 15 feet (in any direction) of an automatic teller machine or entrance to a bank, or private property, unless the beggar, panhandler, or solicitor has permission from the owner of such property.” *Id.* at (b)(3).

35. The former panhandling ordinance had restrictions based on the time of day. It prohibited “begging, panhandling or soliciting on any day after sunset or before sunrise.” *Id.* at (b)(4).

36. The former panhandling ordinance had traffic-based restrictions. It prohibited “beggars, panhandlers or solicitors” from “obstructing pedestrian or vehicular traffic.” *Id.* at (b)(1). “Acts authorized as an exercise of one’s constitutional right to picket or to legally protest” were excluded from the prohibition on obstructing traffic. *Id.* at (a)(4).

37. The former panhandling ordinance prohibited “beggars, panhandlers or solicitors” from “begging, panhandling or soliciting from any operator or occupant of a vehicle that is in traffic on a public street,” defined as “any request made in person for a donation of money or some other article of value, either by words, bodily gestures, signs or other means, from any operator or occupant of a vehicle, coupled with an actual exchange of money or some other article of value between the person begging, panhandling or soliciting and any operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.” *Id.* at (a)(2), (b)(2).

38. The former panhandling ordinance also had a restriction prohibiting any person from standing “on a traffic median, bicycle path or public street” to solicit “when in use by vehicular traffic.” *Id.* at (b)(7).

39. The former panhandling ordinance prohibited “aggressive panhandling,” *id.* at (b)(5), defined as “to approach or speak to a person in such a manner as would

cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession, or to persist in panhandling after the person solicited has given a negative response, or to touch a solicited person, or to engage in conduct that would reasonably be construed as intended to intimidate, compel, or force a solicited person to accede to demands." *Id* at (a)(5).

The Current Panhandling Ordinance

40. On November 6, 2018, the Ocala City Council adopted an amended ordinance "Begging, Panhandling and Soliciting" ("current panhandling ordinance"). City of Ocala Ordinance 2019-2 (Certified Copy attached as Ex. 3).

41. The November 2018 amendments to the panhandling ordinance revised §§ 58-170 and 58-171 of the City of Ocala Code of Ordinances.

42. The ordinance was approved by Mayor Kent Guinn on November 7, 2018, and took effect as of that date.

43. For purposes of the current panhandling ordinance, "beg" or "panhandle" is defined in Section 58-171(a)(2) to mean:

[A]ny demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this division, the word "solicit" and all its forms is included in this definition. A solicitation is considered as having taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. The term "panhandle" shall not include

the act of passively standing or sitting, performing music or singing with a sign or other indication that a donation is being sought but without any vocal request other than a response to an inquiry by another person.

44. The current panhandling ordinance requires an individual OPD officer to examine the content of a person's speech to determine if they have made a "demand or request" that is prohibited.

45. It is up to an individual OPD officer to decide whether a person is requesting money or an article of value for a purpose that is prohibited or for a purpose that is not prohibited.

46. There is no definition of "sponsor" or "sponsor purpose," leaving ordinary persons to guess at the meanings of key terms and phrases in the current panhandling ordinance.

47. The current panhandling ordinance excludes "passively standing or sitting, performing music or singing . . . with a sign." Ex. 3, § 58-171(a)(2), Ocala City Code.

48. The phrase "passively standing or sitting" is not defined, and it is entirely up to the OPD officer's discretion to determine whether someone who is waving a sign while standing or sitting is acting in violation of the current panhandling ordinance.

49. The current panhandling ordinance creates four basic categories of restrictions on panhandling: restrictions based on location (§ 58-171(b)(4),(5),(6) & (12)), restrictions based on time of day (§ 58-171(b)(10)), traffic-related restrictions (§ 58-171(b)(3) & (11)), and conduct-related restrictions (§ 58-171(a)(1); 58-171(b)(1), (7), (8) & (9)).

50. Certain provisions of the current panhandling ordinance are substantially similar or identical to provisions in the former panhandling ordinance: restrictions based on location (compare Ex. 2, at (b)(3) with Ex. 3, § 58-171(b)(4),(5) & (12)); restrictions based on time of day (compare Ex. 2, at (b)(4) with Ex. 3, § 58-171(a)(4), (b)(10)); traffic-related restrictions (compare Ex. 2, at (b)(1),(2) & (6) with Ex. 3, § 58-171(b)(3) & (11)); conduct-related restrictions (compare Ex. 2, at (a)(5) & (b)(5) with Ex. 3, § 58-171(a)(1) & (b)(1)-(2)).

51. The current version of the panhandling ordinance deleted a provision in the former panhandling ordinance that prohibits standing on a median, bicycle path, or public street to “beg, panhandle or solicit.” This same speech continues to be prohibited in these same locations by the roadway solicitation ordinance. Ex. 1, § 22-361, Ocala City Code.

Location Restrictions in the Current Panhandling Ordinance

52. The current panhandling ordinance prohibits requests for immediate donations of money or some other article of value in certain geographic areas of the city without adequately defining or identifying locations where such speech is prohibited.

53. The ordinance prohibits “panhandling, soliciting or begging” at the following locations: any lawfully permitted outdoor dining area or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time (§ 58-171(b)(4)), at any transit stop, valet stand or in a public transit vehicle (§ 58-171(b)(5)),

or while the person being solicited is standing in line waiting to be admitted to a commercial establishment (§ 58-171(b)(6)).

54. To enforce §§ 58-171(b)(4), (5) or (6) of the ordinance, an officer must examine the content of a person's speech to determine if they are requesting an immediate donation of money for a charitable purpose while in any of the prohibited locations. The prohibited locations are generally located in traditional public forums such as sidewalks.

55. The ordinance restricts "begging or panhandling" as defined in § 58-171(a)(2) when "either the beggar, panhandler, solicitor, or the person being solicited is located in, on, or at any of the following locations":

- a. Within twenty (20) feet, in any direction, from any entrance or exit of a building located on commercially zoned property or the entrance or exit of a building located on property located along Core, Standard, or Thoroughfare streets within the Form-based Code district (City Core), except when given permission from the building occupant;
- b. Within twenty (20) feet, in any direction, of any bus stop or any public transportation facility;
- c. Within twenty (20) feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;
- d. Within twenty (20) feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City;
- e. Within twenty (20) feet, in any direction, of any public restroom owned and operated by a governmental agency;
- f. Within twenty (20) feet, in any direction, of a pump used to fuel a motor vehicle.

Ex. 3, § 58-171(b)(12), Ocala City Code.

56. To enforce section 58-171(b)(12) of the ordinance, a police officer must examine the content of a person's speech and determine whether they or the person to whom their speech is directed is located in these prohibited zones. Individuals are otherwise permitted to be physically present in these same locations so long as they refrain from uttering prohibited speech.

57. An ordinary person does not have adequate notice of the current panhandling ordinance's location restrictions.

58. To determine whether speech is authorized or prohibited in a particular place under the current panhandling ordinance requires examining zoning maps, identifying locations of all bus stops, parking meters, garages, lots, public restrooms, and ATMs and then measuring 20 feet in any direction.

59. This ambiguity causes ordinary persons to self-censor in an effort to comply with the provisions because of the difficulty in ascertaining prohibited or available locations for a particular subject matter of speech.

60. Section 58-171(b)(12) fails to define key terms and phrases to provide an ordinary person with adequate notice of the prohibited locations. For example, § 58-171(b)(12)(a) fails to define "commercially zoned property" for purposes of determining if a person is within a geographic zone where "begging, panhandling or soliciting" is prohibited, nor is "commercially zoned" defined in elsewhere in the city code, leaving it entirely to the officer's discretion to determine whether property is "commercially zoned."

61. Section 58-171(b)(12)(a) is overbroad in geographic scope by sweeping into its ambit traditional public forums located in the City Core.

62. The City Core is a “High Intensity Area” that has a mix of residential, retail, office, and institutional uses, high pedestrian activity, and plazas and civic areas.

63. The City Core covers most of what is referred to as “Downtown” and “Midtown” Ocala. The vast majority of streets in the City Core are Core, Standard, or Thoroughfare streets: the area encompasses approximately 231 city blocks, of which approximately 31 blocks are located on Core streets, approximately 152 blocks are located on Standard streets, and approximately 16 blocks are located on Thoroughfare streets. Only 32 city blocks within the City Core are exempted from the current panhandling ordinance’s prohibitions.

64. The City Core is an area frequented by pedestrians and other passersby. The inability to request charitable assistance in the City Core, where Plaintiffs frequent, impedes their ability to communicate their message.

65. Section 58-171(b)(12) fails to define the geographic scope of these restrictions in a way that allows an ordinary person to understand the requirements. For example, the current panhandling ordinance provides no information that would enable a person to determine with any certainty where an “automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution” is located, nor is any such information made available to the public by the City.

66. The current panhandling ordinance provides no information that would enable a person to determine with any certainty where “a bus or public transportation facility,” “parking lot, parking garage, parking meter or parking pay station owned or operated by the City,” “public restroom owned and operated by a governmental agency,” or “pump used to fuel a motor vehicle” are located within the City, nor is any such information made available to the public by the City.

67. The geographic scope of these provisions makes it unlawful for persons to engage in peaceful requests for charity in traditional public forums in the City of Ocala, including sidewalks, medians, roadways, and public parks.

Restrictions Based on Time of Day in the Current Panhandling Ordinance

68. The current panhandling ordinance restricts “begging” or “panhandling” as defined in section 58-171(a)(2) on any day after dark. § 58-171(b)(10), Ocala City Code. “After dark” is defined in the ordinance as “one half hour after sunset until one half hour before sunrise” as established “by the times listed in any local publication of general distribution.” § 58-171(a)(4), Ocala City Code.

69. Section 58-171(a)(4) prohibits all requests for charity, throughout the entire city, for an average of approximately eleven hours a day throughout the year. On shorter days during November to January, requests for charity are prohibited throughout the City for twelve and a half hours per day.

70. There is not otherwise a curfew for individuals after dark or any prohibitions on other types of speech after dark. To enforce section 58-171(b)(10) of

the current panhandling ordinance, a police officer must examine the content of a person's speech to determine if it is a request or demand for charitable assistance.

71. There is nothing inherently unsafe or dangerous about protected speech that takes place after dark.

Traffic-Related Restrictions in the Current Panhandling Ordinance

72. The current panhandling ordinance prohibits “[a]pproaching an operator or other occupant of a motor vehicle on a public street currently in use by vehicular traffic for the purpose of panhandling, soliciting or begging, or offering to perform a service in connection with such vehicle or otherwise soliciting the sale of goods or services.” § 58-171(b)(3), Ocala City Code.

73. The current panhandling ordinance fails to define “approaching,” leaving it to the officer to determine what conduct violates this provision.

74. It is ambiguous as to whether waving a sign while walking along the roadway would be considered “approaching” for the “purpose of panhandling,” leaving ordinary people to guess at whether their conduct is prohibited.

75. This vagueness is further compounded by the fact that no contribution is required to be received by an individual. The ordinance casts a broad net to catch people engaged in specific speech disfavored by the City, leading to arbitrary and discriminatory enforcement.

76. To enforce section 58-171(b)(3) of the ordinance, a police officer must examine the content of a person's speech.

77. The current panhandling ordinance also restricts “obstructing pedestrian or vehicular traffic,” § 58-171(b)(11), which is defined as “to walk, stand, sit, lie or place an object in such a manner as to block passage or another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact.” § 58-171(a)(3), Ocala City Code. The definition of obstruction explicitly excludes from the definition of this term “[a]cts authorized as an exercise of one’s constitutional right to picket or legally protest.” *Id.*

78. The City’s current panhandling ordinance does not define the term “picket” or “legally protest” as used in section 58-171(a)(3) of the ordinance.

79. To enforce section 58-171(b)(11) of the current panhandling ordinance, an officer must examine the content of a person’s speech to determine if they are obstructing traffic while requesting an immediate donation of money for a charitable purpose (which is prohibited) versus obstructing traffic while “legally protesting” or “picketing” (which is allowed).

Conduct-Related Restrictions in the Current Panhandling Ordinance

80. The current panhandling ordinance prohibits “begging or panhandling” as defined in section 58-171(a)(2) while “under the influence of alcohol or having illegally used any controlled substance.” § 58-171(b)(9), Ocala City Code.

81. The current panhandling ordinance fails to define “under the influence of alcohol” for purposes of enforcement of § 58-171(b)(9), leaving it entirely to an officer’s discretion to determine how much alcohol a person must have consumed to qualify as a violation of this provision.

82. There are laws prohibiting “disorderly intoxication” that already cover behavior that is disruptive and harmful to the public.

83. To enforce § 58-171(b)(9) of the ordinance, an officer must examine the content of a person’s speech to determine if they are requesting an immediate donation of money for a charitable purpose while “under the influence or having illegally used any controlled substance” (which is prohibited) or if they are talking about any other subject matter while “under the influence or having illegally used any controlled substance” (which is allowed).

84. The current panhandling ordinance also prohibits activities defined as “aggressive panhandling or begging” in public forums, including on any “sidewalk, highway, street, roadway, right-of-way, parking lot, park or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Ocala.” § 58-171(b)(1), Ocala City Code.

85. The current panhandling ordinance defines “aggressive panhandling or begging” as follows:

- a. To approach or speak to a person and demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within two feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or

- b. To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request for money or a donation (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money from that person after that person has refused to donate or give money); or
- c. To obstruct, block or impede, either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, laying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or
- d. To touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent; or
- e. To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

86. Other provisions of the current panhandling ordinance prohibit “[p]anhandling, soliciting or begging with the use of profane or abusive language,” §58-171(b)(8), and “[p]anhandling, soliciting or begging by touching the person or persons being solicited without that person's consent” throughout the City of Ocala. §58-171(b)(7), Ocala City Code.

87. The current panhandling ordinance’s definition of “aggressive panhandling or begging” includes descriptions of behavior that are not inherently

aggressive; for example, standing in close proximity (within 2 feet) to a person while requesting money or a donation of valuable property (§ 58-171(a)(1)(a)), making an additional request for money or a donation after receiving a negative response (§ 58-171(a)(1)(b)), or obstructing, blocking, or impeding the path of another so as to require “evasive action to avoid physical contact” (§ 58-171(a)(1)(c)).

88. The current panhandling ordinance’s “aggressive panhandling or begging” provisions prohibit the person from making a request for money from explaining why they need the money, trying to convey a longer message to the person being solicited, or attempting to make their request a second time. § 58-171(a)(1)(b), Ocala City Code.

89. The current panhandling ordinance’s “aggressive panhandling or begging” provisions prohibit requests for money or a donation of valuable property in public forums when engaging in another form of protected speech, the use of profane language. §§ 58-171(a)(1)(a), (b)(8), Ocala City Code.

90. The current panhandling ordinance’s “aggressive panhandling or begging” provisions prohibit solicitation when accompanied by conduct that would otherwise be a crime under Florida statutes; for example, touching a solicited person without consent, which constitutes battery under § 784.03, Fla. Stat, or using threatening or coercive language or conduct, which could be charged as assault under § 784.011, Fla. Stat. (2019), or disorderly conduct/breach of the peace under § 877.03, Fla Stat. (2019). §§ 58-171(a)(1)(a), (a)(1)(d)-(e), (b)(7), Ocala City Code.

The City's Enforcement of the Challenged Ordinances against Plaintiffs

91. Violations of City ordinances are punishable by warnings, citation, arrest, a jail term not to exceed 60 days, a fine of up to \$500, assessment of court fees and costs. § 1-9, Ocala City Code.

92. Collectively, Plaintiffs have spent 209 days in the Marion County Jail and have been assessed more than \$7,750 as a result of the City's enforcement of the challenged ordinances.

Roger Luebke

93. Roger Luebke has lived in Ocala for approximately 16 years. He was experiencing homelessness for most of that time, but he recently obtained housing in a donated trailer in Marion County, outside of the City limits.

94. Due to a disability, Luebke cannot work at a traditional job. He recently began receiving disability benefits that he will use for food and similar necessities. These benefits do not cover all of his living expenses.

95. Luebke used to ask for charity through verbal and non-verbal requests on public sidewalks, or on the medians or shoulders of public streets, near intersections located around downtown Ocala.

96. By asking for help, Luebke communicates his need for food, money, and other necessities. He received donations of money or other items in response to his requests.

97. Luebke does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. He only walks in the road if traffic is stopped.

98. OPD has arrested Luebke five times for engaging in prohibited solicitation in the City of Ocala. Two of these arrests have occurred since City Code § 58-171 was amended in 2018 (Ex. 3).

99. Luebke has spent a total of 158 nights in the Marion County Jail and been assessed a total of \$3,889.50 in court costs, fees, and fines for arrests by OPD under the challenged ordinances for engaging in charitable solicitation.

100. On October 18, 2017, OPD arrested Luebke for “Soliciting within the public roadways” in violation of City Code § 22-361 after he was observed soliciting from vehicles by an officer. He pled guilty to the violation and was sentenced to 30 days in jail and assessed \$296 in court costs, fees, and fines.

101. On March 28, 2018, OPD arrested Luebke for “Aggressive Panhandling” in violation of City Code § 58-171 after he was observed requesting cash from vehicles in the roadway by an officer. Luebke pled guilty to the violation and was sentenced to forty days in jail and assessed \$2,348.50 in court costs, fees, and fines.

102. On May 9, 2018, OPD arrested Luebke for “Panhandling in a public street” after he was observed asking for money from vehicles in the roadway. Luebke pled guilty to the violation and was sentenced to 14 days in jail and assessed \$296 in court costs, fees, and fines.

103. Though Luebke's March 28, 2018 and May 9, 2018 arrests occurred under the former panhandling ordinance, his requests for charity continue to be prohibited under the current panhandling ordinance and the roadway solicitation ordinance.

104. On August 26, 2019, OPD arrested Luebke for "Aggressive Panhandling" in violation of City Code §58-171 after he was observed asking for "anything to help him out" from vehicles in the roadway. Luebke pled guilty to the violation and was sentenced to 14 days in jail and assessed \$818 in court costs, fees, and fines.

105. On October 25, 2019, OPD arrested Luebke for "Panhandling" under one of the challenged ordinances after asking a man in the parking lot of Marathon Gas Station for money. Luebke pled guilty to the violation and was sentenced to 14 days in jail and assessed \$131 in court costs, fees, and fines.

106. Luebke would like to continue making verbal requests for charity from the drivers and passengers of vehicles stopped in the roadway within the City of Ocala but is prohibited from doing so by the challenged ordinances.

Kimberly Burnham

107. Kimberly Burnham has lived in Ocala her entire life.

108. Burnham does not have a fixed address, and when she cannot find a place to sleep inside, she sleeps in the woods, on public sidewalks or in other public places.

109. Due to a disability, Burnham cannot work at a traditional job. She receives monthly disability benefits which she uses for food and similar necessities; however, her monthly disability benefits do not cover all of her necessities.

110. Burnham engages in charitable solicitation on public sidewalks, or on the medians or shoulders of public streets in the city of Ocala, holding a sign that usually says “Hungry, Anything Helps” or “The Struggle is Real.”

111. Burnham intends her sign to convey to passersby that others are having a hard time in life, that some people are really struggling, and that this could be them one day.

112. Burnham sometimes makes verbal requests for charity in downtown Ocala. When she approaches someone, she asks them for change or if they can help her get something to eat or drink. No matter how they respond, Burnham tells them, “Thank you, God Bless, have a nice day.”

113. By asking for help, Burnham communicates her need for food, money, and other necessities while raising awareness about the existence of homelessness and poverty in Ocala.

114. Burnham sometimes receives cash or other donated items in response to her requests. On other occasions, people will talk to her about her life.

115. Burnham does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. She only walks in the road if traffic is stopped.

116. OPD has warned Burnham warned multiple times not to panhandle since the current panhandling ordinance was passed in 2018. On one occasion, a police officer took her sign and made her leave the area under penalty of arrest.

117. OPD has arrested Burnham on two occasions for violating Ocala City Code § 58-171.

118. Burnham has spent a total of 11 nights in the Marion County Jail and been assessed a total of \$1,347 in court costs, fees, and fines for arrests by OPD under the challenged ordinances for engaging in charitable solicitation.

119. On February 26, 2018, OPD arrested Burnham for “Panhandling” in violation of City Code § 58-171. According to the arrest affidavit, Burnham was with two other individuals, one of whom was holding a sign. Burnham entered the roadway and retrieved money from the driver of a vehicle. Burnham pled guilty to the violation and was sentenced to one day in jail and assessed \$335.50 in court costs, fees, and fines.

120. On April 24, 2018, OPD arrested Burnham for “Panhandling” in violation of City Code § 58-171. According to the arrest affidavit, she was walking south on an interstate off ramp, carrying a cardboard sign that read “I lost everything but my faith. Anything helps.” Burnham pled guilty to the violation and was sentenced to 10 days in jail and assessed \$1011.50 in court costs, fees, and fines.

121. Though Burnham’s arrests occurred under the former panhandling ordinance, her requests for charity continue to be prohibited under the current panhandling ordinance and the roadside solicitation ordinance.

122. Burnham would like to continue holding a sign to make requests for charity from the drivers and passengers of vehicles stopped in the roadway within the City of Ocala but is prohibited from doing so under penalty of arrest by the challenged ordinances.

William Taylor

123. William Anthony Taylor has lived in Ocala for approximately 15 years.

124. Taylor does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps in the woods, on public sidewalks or in other public places.

125. Due to a disability, Taylor is not currently able to work at a traditional job. He intends to apply for disability benefits but currently his only income is food stamps.

126. Taylor engages in charitable solicitation on public sidewalks, or on the medians or shoulders of public streets, holding a sign that usually reads “Homeless, Hungry, God Bless” or “Homeless, Hungry, Will Work.” He used to hold his sign within the City, but he now travels outside of city limits to do so due to multiple arrests and repeated warnings by OPD.

127. By asking for help, Taylor communicates his need for food, money, and other necessities.

128. Taylor receives donations of money, food, water, shoes, hygiene kits, or other items in response to his requests.

129. Taylor does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. He only walks in the road if traffic is stopped.

130. OPD has warned Taylor many times since City Code § 58-171 was amended in 2018. OPD has told him to leave multiple intersections near the Wal-Mart shopping center on East Silver Springs Boulevard in Ocala.

131. OPD has arrested Taylor three times under the challenged ordinances for engaging in prohibited solicitation in the City of Ocala.

132. Taylor has spent a total of 20 nights in the Marion County Jail and been assessed a total of \$1,754.25 in court costs, fees, and fines for arrests by OPD under the challenged ordinances for engaging in charitable solicitation.

133. On May 7, 2018, OPD arrested Taylor for “Panhandling from roadway” in violation of City Code § 58-171 after he was observed holding a sign that read “Homeless Hungry God Bless” and soliciting from vehicles by an officer. He pled guilty to the violation and was sentenced to 3 days in jail and assessed \$286 in court costs, fees, and fines.

134. On May 28, 2018, OPD arrested Taylor for “Panhandling” in violation of City Code § 58-171 after he was observed holding a sign that read “Homeless, Hungry, God Bless” and soliciting from vehicles by an officer. He pled guilty to the violation and was sentenced to 15 days in jail and assessed \$1,096 in court costs, fees, and fines.

135. On July 3, 2018, OPD arrested Taylor “Panhandling in a public street” under one of the challenged ordinances after he was observed asking for money from vehicles in the roadway. Taylor pled guilty to the violation. He was sentenced to 2 days in jail and assessed \$372.25 in court costs, fees, and fines.

136. Though Taylor’s arrests occurred under the former panhandling ordinance, his requests for charity continue to be prohibited under the current panhandling ordinance and the roadside solicitation ordinance.

137. Taylor would like to continue holding a sign to make requests for charity from the drivers and passengers of vehicles stopped in the roadway within the City of Ocala but is prohibited from doing so under penalty of arrest by the challenged ordinances.

Victor Hoyt Cox

138. Victor Hoyt Cox has lived in in Marion County outside of Ocala for approximately 30 years.

139. Due to various medical conditions, Cox is not currently able to work at a traditional job. He plans to apply for disability benefits but currently the only monetary assistance he receives from the government is food stamps.

140. Cox engages in charitable solicitation on public sidewalks, or on the medians or shoulders of public streets, holding a sign that reads “Homeless American, Anything Helps.” He usually holds his sign near an interstate on ramp in Marion County.

141. Cox has been hospitalized multiple times over the past three years. When he is hospitalized, he is taken to the Ocala Regional Medical Center in the City of Ocala. When Cox is released from the hospital, he has no transportation to return to his home in Marion County. On these occasions, Cox remains in the City and makes requests for charity to assist him with taking care of basic needs until he is able to return to his residence.

142. By asking for help, Cox communicates his need for food, medications, money, and other necessities.

143. OPD has arrested Cox for engaging in prohibited solicitation in the City of Ocala under the challenged ordinances.

144. Cox has spent a total of 10 days in the Marion County Jail and been assessed a total of \$694 in court costs, fees, and fines for arrests by OPD under the challenged ordinances for engaging in charitable solicitation.

145. On September 28, 2019, OPD arrested Cox for “Aggressive Panhandling” in violation of City Code § 58-171 after he approached a plainclothes police officer and asked for a few dollars to buy a sandwich. He pled guilty to the violation and was sentenced to 10 days in jail and assessed \$694 in court costs, fees, and fines.

146. Cox would like to continue making verbal requests for charity and holding a sign to make requests for charity from the drivers and passengers of vehicles stopped in the roadway within the City but is prohibited from doing so under penalty of arrest by the challenged ordinances.

Dustin Damico

147. Dustin Damico has lived in Ocala for approximately 10 months.

148. Damico does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps in the woods, on public sidewalks or in other public places.

149. Damico currently works at a restaurant in downtown Ocala. He makes \$11 per hour and uses his paycheck to pay for a hotel room to sleep in and for other necessities.

150. Damico asks for charity through verbal requests to people in downtown Ocala.

151. Damico also sometimes engages in charitable solicitation on public sidewalks, or on the shoulders of public streets, holding a sign that usually reads “Homeless, Please Help.”

152. By asking for help, Damico communicates his need for food, money, and other necessities.

153. Damico receives donations of money, food, water, clothing, or other items in response to his requests.

154. Damico does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. He only walks in the road if traffic is stopped.

155. OPD has warned Damico not to solicit charity. A uniformed police officer approached him near the Starbucks in downtown Ocala and told him he could not panhandle.

156. OPD has arrested Damico for engaging in prohibited solicitation in the City of Ocala under the challenged ordinances.

157. Damico spent 10 nights in the Marion County Jail and was assessed a total of \$68 in court costs, fees, and fines for arrests by OPD under the challenged ordinances for engaging in charitable solicitation.

158. On October 20, 2020, OPD arrested Damico for “Panhandling” in violation of City Code § 58-171(b)(12)(a) after he approached a plainclothes officer and asked for \$1 to buy a sandwich from Jimmy John’s, a nearby business. He pled guilty to the violation and was sentenced to 10 days in jail and assessed \$68 in court costs, fees, and fines.

159. Damico would like to be able to hold a sign and make verbal requests for charity from others within the City of Ocala but is prohibited from doing so by the challenged ordinances.

Patrick McArdle

160. Patrick McArdle has lived in Ocala for 10 years.

161. McArdle does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps in the woods, on public sidewalks or in other public places.

162. Due to a disability, McArdle is not currently able to work a traditional job. He recently began receiving monthly disability benefits which he uses for food and similar necessities; however, his monthly disability benefits do not always cover all of his necessities.

163. McArdle used to engage in charitable solicitation on public sidewalks, or on the medians or shoulders of public streets in the city of Ocala, holding a sign that usually read “Homeless and Hungry.”

164. McArdle intends his sign to convey to passersby that he is in need of assistance and to advise them of his plight.

165. By asking for help, McArdle communicates his need for food, money, and other necessities while raising awareness about the existence of homelessness and poverty in Ocala.

166. McArdle sometimes receives food, water, hygiene products, clothing or cash in response to his requests. People will talk to him about his life.

167. McArdle does not intend to obstruct or otherwise interfere with traffic on any road when engaging in such solicitation. He only walks in the road if traffic is stopped.

168. McArdle used to hold a sign at intersections, near grocery store parking lots and shopping centers. OPD has warned him multiple times not to panhandle. Officers have told him to “move along” and stop panhandling. OPD has told him he cannot stand on public streets, medians, or sidewalks and hold his sign under penalty of arrest under the challenged ordinances.

169. He was arrested once in 2013 by the Ocala Police for violating Ocala City Code § 58-171 after an officer observed him sitting on a curb, holding a sign that read “Homeless and Hungry.”

170. Before he began receiving disability, McArdle relied on the money he received from making requests for charitable solicitation to pay for food and necessities.

171. Due to the warnings he received and his knowledge of others who have been arrested for panhandling in the city of Ocala, he has refrained from making requests for charity to provide for his needs to avoid arrest and prosecution by the City under the challenged ordinances.

172. McArdle would like to continue holding a sign to make requests for charity from the drivers and passengers of vehicles stopped in the roadway within the City but is prohibited from doing so by the challenged ordinances.

The City's Enforcement of the Challenged Ordinances

173. When Plaintiffs and other homeless individuals stand on public sidewalks and streets and hold signs or make verbal requests for charitable donations, they raise public awareness about the plight of homeless individuals in and around the City of Ocala.

174. The challenged ordinances prohibit all requests for charity, whether they are verbal, non-verbal, or by holding a sign or engaging in expressive conduct throughout many parts of the City of Ocala during a significant portion of the day.

175. The City enforces the challenged ordinances by making custodial arrests, imposing sentences of up to sixty days in jail, assessing fines of up to \$500, issuing trespass warnings, and issuing verbal warnings telling individuals who are engaged in charitable solicitation that their conduct is prohibited and to move along.

176. The location restrictions of the challenged ordinances make it impossible for Plaintiffs and other individuals to request charity verbally or by non-verbal expressive conduct throughout most of downtown or mid-town Ocala without risking arrest.

177. The traffic-related restrictions of the challenged ordinances make it impossible for Plaintiffs and other individuals to request charity verbally, by holding signs, or through non-verbal expressive conduct along all public thoroughfares and at all intersections of public roads throughout the City of Ocala without risking arrest.

178. The conduct-related restrictions of the challenged ordinances expose Plaintiffs and other individuals to increased criminal sanctions for engaging in protected speech while committing an action that would separately subject them to arrest.

179. Since April 19, 2017, the City of Ocala has made 123 arrests for panhandling and solicitation violations under the challenged ordinances.

180. Of these 123 total arrests, 95 were of individuals who were homeless, used a homeless shelter as an address, or did not have a home address listed on their arrest report.

181. Starting in December of 2018, the City began implementing police operations targeted at “quality of life” violations, including panhandling. These operations, Operation Street Sweeper and Operation Innovation, lasted into 2019. As a part of these operations, plainclothes officers would patrol on foot in “Downtown” and “Midtown” Ocala to observe ordinance violations such as panhandling.

182. At times, the plainclothes officers would hang out in front of restaurants and smoke a cigarette, to see if people would approach them. One such detail resulted in an arrest for a violation of the current panhandling ordinance after the officer was asked for a cigarette. At least two other individuals have been arrested for a violation of the current panhandling ordinance for asking for a cigarette.

183. OPD tracked the locations of the arrests and specifically monitored where arrests for panhandling were concentrated.

184. OPD made 41 arrests for panhandling under Operation Street Sweeper and Operation Innovation.

185. In August of 2019, after Operations Street Sweeper and Innovation concluded, the City implemented the Downtown Panhandling Action Plan, another police operation to target panhandling. OPD conducted covert investigations with plainclothes officers in downtown areas of the City. Under this action plan, two plainclothes officers would walk together in the identified area, making themselves available to be panhandled, and then call for a marked unit to make contact with the violator.

186. During the implementation of these three operations, OPD arrested 38 individuals for violations of the current panhandling ordinance observed by plainclothes officers.

187. Even before implementing these operations, the City used plainclothes officers to locate and arrest individuals for violations of the challenged ordinances. Before these operations, OPD arrested at least five individuals for violations of the

challenged ordinances observed by plainclothes officers. Since these operations ended, the City has continued to use plainclothes officers to target panhandling violations.

188. Even before implementing these operations, the City tracked the locations of panhandling arrests. The City's enforcement of its panhandling ordinance is not limited to the Street Sweep area or the Central Business District.

189. The City's enforcement of this ordinance is not limited to OPD. Ocala Park Rangers and Downtown Rangers are also tasked with enforcing the ordinance.

190. Ocala Park Rangers and Downtown Rangers enforce City ordinances and park rules with verbal warnings, the issuance of trespass warnings for public parks and municipal property, and by calling law enforcement officers to make arrests.

191. These trespass warnings act as a lifetime ban excluding individuals from public places in the City, including public parks during times when those parks are otherwise open to the public.

192. Entering public property or a public park in violation of a trespass warning issued by the City of Ocala can result in an arrest for violation of Florida's trespass after warning statute, § 810.09, Florida Stat. (2019).

193. A trespass warning that excludes an individual from a public park or other public space allows officers to arrest individuals for mere physical presence in a public place under circumstances when members of the general public are otherwise allowed to be there.

194. The City has issued trespass warnings to individuals other than Plaintiffs as a penalty for violating the challenged ordinances.

195. Plaintiffs have been warned by police officers, ordered to stop engaging in protected speech, arrested, jailed, and assessed fines and court costs violations of the challenged ordinances.

196. Plaintiffs can no longer engage in charitable solicitation without fear of arrest and other enforcement actions due to the challenged ordinances.

197. Plaintiffs have suffered injury including loss of protected First Amendment and Fourteenth Amendment freedoms, loss of opportunity to speak, emotional distress, fear, humiliation, assessment of financial penalties, and loss of liberty due to the City's enforcement of the challenged ordinances.

198. As a direct and proximate result of the City's enforcement of the challenged ordinances, plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

199. Plaintiffs intend to hold signs and engage in verbal requests for charitable solicitation in public places in the City of Ocala as a means of communicating with fellow citizens. They fear that they will suffer the same violations of their rights when they do so and that they will be prevented from doing so by being arrested, cited, trespassed, and threatened with arrest by OPD.

200. Plaintiffs have suffered harm and, absent relief from this Court, Plaintiffs will continue to suffer irreparable harm by unwarranted violations of their constitutional rights.

201. Damages alone are not an adequate remedy at law. Injunctive relief is required as damages alone cannot adequately compensate Plaintiffs for the continuing loss of their constitutional rights.

FIRST CLAIM FOR RELIEF

FIRST AMENDMENT

202. Plaintiffs incorporate and re-allege paragraphs 1 through 201 as if fully set forth here.

203. The City's challenged ordinances, on their face and as-applied to Plaintiffs, are unconstitutional infringements of Plaintiffs' right to freedom of speech guaranteed by the First Amendment of the U.S. Constitution.

204. "Begging," "panhandling," or "solicitation" as defined by the challenged ordinances are forms of charitable solicitation and are protected speech under the First Amendment of the U.S. Constitution.

205. The challenged ordinances restrict protected speech on traditional public forums throughout the City including public streets, sidewalks, medians, and parks.

206. The challenged ordinances are content-based restrictions on speech. The challenged ordinances single a single subject matter of speech for regulation—charitable solicitations, begging, or panhandling—and applies their regulatory scheme only to that subject matter.

207. Whether a person is violating the challenged ordinances requires a police officer to examine the content of the person's speech to determine what a person is requesting and for what purpose.

208. The City's current and former panhandling ordinances make additional content-based distinctions on subject matters of speech by explicitly exempting certain categories of speech from the list of otherwise prohibited conduct. Obstruction of pedestrian or vehicular traffic is prohibited unless a person is exercising their right to "picket" or "legally protest." Officers have to examine what a person is saying to determine whether they are engaged in lawful or unlawful obstruction of traffic under the provisions of the ordinance.

209. Content-based restrictions on speech must survive strict scrutiny and must be narrowly tailored to meet a compelling governmental interest.

210. Because the ordinances apply a regulatory scheme based on the topic that is discussed (vocal and non-vocal requests for donations of money for charitable purposes), it is content based and must pass strict scrutiny.

211. The City has no compelling interest to justify a content-based restriction on speech.

212. The City's interests in traffic safety and aesthetics are not compelling and are not sufficient justifications for a content-based restriction on speech.

213. The only interest identified by the City that it has claimed is "compelling" for purposes of the current panhandling ordinance is its "interest in preserving and protecting the lives of its citizens which can be imperiled by, inter alia, traffic and pedestrian congestion which among other things can delay deployment of life saving fire and police vehicles and personnel." (Whereas Clauses in Preamble to Ordinance 2019-2).

214. The City's interest in preventing "congestion" is not furthered by restricting peaceful requests for money by as few as one individual on a public street. The City's interest is undermined by explicitly allowing individuals engaged in protest to obstruct vehicular traffic, making it underinclusive to meet the City's asserted compelling interest. Charitable solicitation has not imperiled these interests, and the City has not tried other, less intrusive means to address these interests.

215. Even assuming the City's interests were compelling, the challenged ordinances sweep too broadly, do not further the City's interests, and are not the least restrictive means of achieving those interests. For example, the restriction on the specific speech of asking for money within certain prohibited zones in the City sweeps too broadly in its geographic scope, covering large portions of the City.

216. The roadway solicitation ordinance prohibits requests for funds on a street, highway, median or bicycle path anywhere in the City of Ocala without any attempt to narrowly tailor the scope of the ordinance to meet the City's alleged interests in traffic safety. Instead, the ordinance sweeps broadly, covering most of the public forums in the City.

217. The former and current panhandling ordinances likewise sweep broad geographic areas of the City into their ambit, revealing the lack of narrow tailoring.

218. Peaceful requests for money do not inherently threaten public safety.

219. The challenged ordinances are over inclusive, in that they sweep into their ambit protected speech that poses no threat to public safety such as asking for

money after dark, while on a median, or while standing within 20 feet of an exit or entrance to a commercially zoned building.

220. The challenged ordinances are also under inclusive, in that they single out solicitation from other types of speech, such as protest, that would be equally dangerous if it were to create a traffic hazard.

221. There is nothing inherently dangerous about initiating a conversation with a citizen on a public street to ask for assistance.

222. The City has other mechanisms by which it prohibits violent or threatening conduct that are not related to protected speech. Laws prohibiting battery, assault, disorderly conduct/breach of the peace, trespassing, and disorderly intoxication already cover behavior that is disruptive and harmful to the public without intruding on protected speech interests.

223. Plaintiffs challenge the facial validity of the challenged ordinances on behalf of themselves and on behalf of third parties not before the court due to the substantial overbreadth of these ordinances that sweep into their ambit a substantial amount of constitutionally protected speech. The overbreadth of the challenged ordinances is substantial when judged in relation to their legitimate sweep. The manner in which the challenged ordinances are being applied to Plaintiffs violates their rights to free speech guaranteed by the First Amendment of the U.S. Constitution

224. The challenged ordinances are the direct and proximate cause of the constitutional violations complained of herein.

225. Violations of the challenged ordinances have subjected Plaintiffs to penalties for engaging in protected speech in traditional public forums. Plaintiffs have suffered damages for injuries caused by Defendant's enforcement of the challenged ordinances.

226. Plaintiffs have suffered harm, for which there is no adequate remedy at law, and will continue to suffer harm if the City is not enjoined from future enforcement of City Code §§ 22-361 and 58-171.

**SECOND CLAIM FOR RELIEF
FOURTEENTH AMENDMENT - VAGUENESS**

227. Plaintiffs incorporate and re-allege paragraphs 1 through 201 as if fully set forth here.

228. Plaintiffs challenge the current panhandling ordinance on the grounds of vagueness.

229. The City's current panhandling ordinance, on its face and as-applied to Plaintiffs, is unlawfully vague and is an unconstitutional infringement of Plaintiffs' right to due process guaranteed by the Fourteenth Amendment of the U.S. Constitution.

230. The City's current panhandling ordinance fails to define necessary terms and contains vague and ambiguous provisions that do not provide adequate notice of the prohibited conduct and lead to arbitrary and discriminatory enforcement.

231. The current panhandling ordinance's definition of "panhandle" or "beg" is not specific enough to provide adequate notice of the prohibited conduct. The

ordinance authorizes police officers to examine the content of a person's speech and make arbitrary and discriminatory decisions to determine whether a person is engaged in prohibited conduct.

232. The current panhandling ordinance prohibits speech for certain purposes, including "charitable or sponsor purposes[s]" but fails to define these terms or to give an exhaustive list of what these purposes are. It is left to an officer's discretion to determine whether a person's request for charity is for a prohibited purpose, and persons of ordinary intelligence must guess at whether their conduct is lawful or prohibited under the ordinance.

233. The current panhandling ordinance fails to define key terms, including "picket or legally protest," "approaching," "passively holding a sign," "under the influence of alcohol," and "commercially zoned property." It is left to an officer's discretion to determine whether a person's request for charity is contained within these definitions, and persons of ordinary intelligence must guess at whether their conduct is lawful or prohibited under the ordinance.

234. This vagueness is further compounded by the fact that no contribution is required to be received by an individual. The current panhandling ordinance casts a broad net to catch people engaged in specific speech disfavored by the City, leading to arbitrary and discriminatory enforcement.

235. The current panhandling ordinance prohibits "begging, panhandling or soliciting" when either the beggar, panhandler, or solicitor or person being solicited is located within 20 feet in any direction of locations that include: any entrance or exit

of a building on commercially zoned property anywhere in the City or property within the City Core; bus stop; ATMs; parking lots, parking garages or parking meters; public restrooms owned and operated by a governmental agency; and gas pumps.

236. The fact that these zones radiate in 20 feet in any direction authorizes and encourages arbitrary and discriminatory enforcement and fails to provide adequate notice of the prohibited conduct.

237. To determine whether speech is authorized or prohibited requires examining zoning maps, identifying locations of all bus stops, parking meters, garages, lots, public restrooms, and ATMs and then measuring 20 feet in any direction.

238. A person of ordinary intelligence must necessarily guess whether they are standing in a prohibited zone or not or refrain from engaging in protected speech for fear they will be arrested.

239. The manner in which the current panhandling ordinance is being applied to Plaintiffs demonstrates the vagueness of the ordinance. OPD arrested Luebke in the parking lot of a gas station for making a verbal request for charity to someone in a vehicle. Based on the face of the arrest affidavit, is not clear which subsection of the ordinance Luebke violated. OPD arrested Burnham for passively holding a cardboard sign, walking along the roadway and looking at people in vehicles stopped on the off ramp.

240. The current panhandling ordinance is the direct and proximate cause of the constitutional violations complained of herein.

241. Due to the City's arbitrary and discriminatory enforcement, Plaintiffs have suffered harm by being penalized for engaging in protected speech. Plaintiffs have been warned, cited, arrested, jailed, and assessed fines and fees for their speech. Plaintiffs have suffered damages for injuries caused by Defendant's enforcement of the challenged ordinances.

242. Plaintiffs have suffered harm, for which there is no adequate remedy at law, and continue to suffer harm if the City is not enjoined from future enforcement of this unconstitutional ordinance.

**THIRD CLAIM FOR RELIEF
EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

243. The allegations of paragraphs 1 through 201 are incorporated into the Third Claim for Relief as though fully set forth here.

244. The challenged ordinances are an unconstitutional infringement, on their face, of Plaintiff's affirmative rights to Equal Protection under the Fourteenth Amendment to the U.S. Constitution.

245. The City's ordinances infringe on Plaintiffs' free speech rights, which are fundamental rights guaranteed by the Equal Protection clause of the U.S. Constitution.

246. There is equality in the field of ideas. The government may not favor or disfavor certain categories of speech when it regulates access to traditional public forums unless the restriction can survive strict scrutiny.

247. The challenged ordinances prefer political speech and the speech of picketers and protesters, while placing significant restrictions on the speech and expressive activities of those engaged in charitable solicitation. In doing so, they impermissibly burden those who are requesting donations.

248. The City's challenged ordinances single out for regulation requests for charitable donations while allowing other speech to continue in the same times, places, or manners. This differential treatment targets a specific subject matter for regulation, while allowing other ideas and subjects to be discussed in traditional public forums.

249. The challenged ordinances are not narrowly drawn to further any compelling state interest.

250. There is no legitimate government interest in prohibiting charitable solicitation while allowing other viewpoints and messages to be expressed under identical circumstances.

251. As a direct and proximate result of Defendants' actions, Plaintiffs have been deprived of their right to equal protection under the law. Plaintiffs have suffered, and will continue to suffer, irreparable harm and have been damaged as a direct result of Defendants' enforcement of these statutes.

252. Violations of the challenged ordinances have subjected Plaintiffs to penalties for engaging in constitutionally protected speech in traditional public forums. Plaintiffs have suffered damages for injuries caused by Defendant's enforcement of the challenged ordinances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

I. Declare that

a. The roadway solicitation ordinance, § 22-361 of the Ocala City Code is unconstitutional, both facially and as-applied, in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

b. The former panhandling ordinance, Ordinance No. 2012-31 of the Ocala City Code, is unconstitutional, both facially and as-applied, in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

c. The current panhandling ordinance, § 58-171 of the Ocala City Code, is unconstitutional, both facially and as-applied, in violation of the First Amendment, and on grounds of vagueness and equal protection under the Fourteenth Amendment of the U.S. Constitution;

II. Enter a permanent injunction preventing the City from enforcing §§ 22-361 and 58-171;

III. Award compensatory damages for Plaintiffs against the City, including loss of protected First and Fourteenth Amendment freedoms, emotional distress, fear, humiliation, assessment of financial penalties, loss of opportunity to speak, loss of liberty, and any other damages as permitted by law for past injury caused by enforcement of the challenged ordinances;

- IV. Award nominal damages for Plaintiffs against the City;
- V. Award Plaintiffs their reasonable attorneys' fees, expenses and costs;
- and
- VI. Award such other relief as this Court deems just and proper.

Dated: April 19, 2021

Respectfully submitted,

/s/Chelsea Dunn

Chelsea Dunn, Fla. Bar No. 1013541

LEAD COUNSEL

Chelsea.dunn@southernlegal.org

Kirsten Anderson, Fla. Bar No. 17179

Kirsten.anderson@southernlegal.org

Jodi Siegel, Fla. Bar No. 511617

jodi.siegel@southernlegal.org

Southern Legal Counsel, Inc.

1229 NW 12th Avenue

Gainesville, FL 32601-4113

(352) 271-8890

Fax: (352) 271-8347

Jacqueline Nicole Azis, Fla. Bar No.101057

ACLU Foundation of Florida

4023 N. Armenia, Suite 450

Tampa, FL 33607

(786) 363-2708

Fax: (786) 363-2708

jazis@aclufl.org

Daniel Tilley, Fla. Bar No. 102882

ACLU Foundation of Florida

4343 W. Flagler St., Suite 400

Miami, FL 33134

(786) 363-2714

dtalley@aclufl.org

ATTORNEYS FOR PLAINTIFFS