



NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY



FLORIDA LEGAL SERVICES, INC.



August 30, 2018

Via E-mail & U.S. Mail

Mayor Josh Levy &
Hollywood City Commission
2600 Hollywood Boulevard
Hollywood, FL 33020-4807

RE: Sections 122.50—122.54 (Panhandling, Begging or Solicitation), City of Hollywood Code of Ordinances.

Dear Mayor Levy & Hollywood City Commission,

We write with respect to Sections 122.50—122.54 (Panhandling, Begging, or Solicitation), City of Hollywood Code of Ordinances (the “Ordinance”). Since the landmark Supreme Court *Reed v. Gilbert* case in 2015, every panhandling ordinance challenged in federal court – at 25 of 25 to date – including many with features similar to the ones in the City of Hollywood (“the City”), has been found constitutionally deficient. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015); *see, e.g. Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 144 F. Supp. 3d 218, 238 (D. Mass. 2015). In Florida, the U.S. District Court for the Middle District declared a Tampa panhandling ordinance unconstitutional. *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882, at *6 (M.D. Fla. Aug. 5, 2016). Florida state courts have also followed this precedent in striking

down panhandling ordinances. *Toombs v. State of Florida*, 25 Fla. L. Weekly Supp. 505a, Case No. 15-220 AC (Fla. 11th Jud. Cir. 2017) (holding City of Miami ordinance unconstitutional).

Other cities in Florida, such as the City of Gainesville, have stopped enforcement or repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights. After a lawsuit was filed against it, the City of Pensacola repealed its ordinance almost immediately after passing it. As was the case with these other Florida cities, the City of Hollywood's ordinance almost certainly violates the constitutional right to free speech protected by the First Amendment to the United States Constitution. We call on the City to repeal the Ordinance and instead consider more constructive alternatives.

The First Amendment protects peaceful requests for charity in a public place. *See, e.g., United States v. Kokinda*, 497 U.S. 720, 725 (1990) ("Solicitation is a recognized form of speech protected by the First Amendment."). The government's authority to regulate such public speech is exceedingly restricted, "[c]onsistent with the traditionally open character of public streets and sidewalks...." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). As discussed below, the Ordinance is outside the scope of permissible government regulation.

The Ordinance overtly distinguishes between types of speech based on "subject matter ... function or purpose." *See Reed*, 135 S.Ct. at 2227 (internal citations, quotations, and alterations omitted; *see, e.g., Norton*, 806 F.3d at 412-13 ("Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.")). The Ordinance specifically singles out any request for an immediate donation of money as prohibited speech. A police officer would have to examine what a person is saying to determine whether the Ordinance is being violated. If the speaker is seeking a donation, the ordinance is violated. In contrast, if the person requests a signature on a petition, or requests support for a candidate or cause in an upcoming election, the Ordinance does not apply.

As a result, a court will likely hold the Ordinance is a "content-based" restriction on speech that is presumptively unconstitutional. *See Reed*, 135 S. Ct. at 2226; *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Courts use the most stringent standard – strict scrutiny – to review such restrictions. *See, e.g., Reed*, 135 S. Ct. at 2226 (holding that content-based laws may only survive strict scrutiny if "the government proves that they are narrowly tailored to serve a compelling state interest"); *McCullen*, 134 S. Ct. at 2534. The Ordinance cannot survive strict scrutiny because neither does it serve any compelling state interest, nor is it narrowly tailored.

First, the Ordinance serves no compelling state interest. Distaste for a certain type of speech, or a certain type of speaker, is not even a *legitimate* state interest, let alone a *compelling* one. Shielding unwilling listeners from messages disfavored by the state is likewise not a permissible state interest. As the Supreme Court explained, the fact that a listener on a sidewalk cannot "turn the page, change the channel, or leave the Web site" to avoid hearing an uncomfortable message is "a virtue, not a vice." *McCullen*, 134 S. Ct. at 2529; *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992) ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.").

Second, even if the City could identify a compelling state interest, there is no evidence to demonstrate that the Ordinance is "narrowly tailored" to such an interest. Theoretical discussion is not enough: "the burden of proving narrow tailoring requires the County to *prove* that it actually *tried* other

methods to address the problem.” *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015). The City may not “[take] a sledgehammer to a problem that can and should be solved with a scalpel.” *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1294 (D. Colo. 2015) (holding ordinance restricting time, place, and manner of panhandling was unconstitutional). The ordinance bans more speech than necessary by, for example, banning simple requests for money 15 feet from any commercial or government building.

Though “public safety” is an important state interest, the Ordinance is not narrowly tailored to serve it. *Browne*, 136 F. Supp. 3d at 1292-94 (rejecting claims that the ordinance served public safety); *Cutting v. City of Portland, Maine*, 802 F.3d 79, 91-92 (1st Cir. 2015) (requiring evidence to substantiate claims of public safety). The Ordinance restricts solicitation in the right-of-way, including up to 200 feet from curbs or boundary lines of intersections located on prohibited roadways. While traffic safety may be an important interest, the City has not justified why this interest is served by making these types of content-based distinctions on speech. *Solantic, LLC v. City of Neptune Bch.*, 410 F.3d 1250, 1267-68 (11th Cir. 2005).

Unsurprisingly, every court to consider a regulation that, like the Ordinance, bans requests for charity within an identified geographic area has stricken the regulation. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 237 (D. Mass. 2015) (“[M]unicipalities must go back to the drafting board and craft solutions which recognize an individuals... rights under the First Amendment...); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015); *Browne*, 136 F.Supp.3d at 1293-94.

The ordinance also bans “aggressive panhandling” which includes a wide range of conduct that is only prohibited if also coupled with speech asking for money. Courts have not hesitated to strike regulations that regulate the manner in which a person can ask for a charitable donation, even where the regulation was supposedly justified by a state interest in public safety. And for good reason: restricting people’s behavior on account of their speech is almost always too over-reaching to be narrowly tailored to any compelling governmental interest. *See, e.g., Clatterbuck v. City of Charlottesville*, 92 F. Supp. 3d 478, 489 (W.D. Va. 2015); *Thayer*, 144 F. Supp. 3d at 233 (striking down provisions against blocking path and following a person after they gave a negative response); *McLaughlin*, 140 F. Supp. 3d at 189; *Browne*, 136 F.Supp.3d at 1293 (“[T]he Court does not believe[] that a repeated request for money or other thing of value necessarily threatens public safety.”).

For these reasons, among others, the Ordinance cannot pass constitutional muster. Further, unlawful anti-panhandling ordinances such as the ones in Sections 122.50—122.54 (Panhandling, Begging, or Solicitation) are costly to enforce and only exacerbate problems associated with homelessness and poverty.

In Central Florida, a study found that communities were spending more than \$30,000 per year in jail and hospital costs alone for every chronically homeless person. The study projected that by investing in permanent supportive housing, the region would save hundreds of millions of dollars over the course of a decade. *See THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA* (2014), <https://www.cfchomelessness.org/wp-content/uploads/2018/04/Eco-Impact-Report-LOW-RES-2.pdf>. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run. *See National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE*

CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. See Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station*, WHYY (Jan. 30, 2018) <https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/>. In opening the Center, Philadelphia Mayor Jim Kenny emphasized “We are not going to arrest people for being homeless,” stressing that the new space “gives our homeless outreach workers and the police a place to actually bring people instead of just scooting them along.” These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

We can all agree that we would like to see a City of Hollywood where homeless people are not forced to beg on the streets. But whether examined from a legal, policy, or fiscal standpoint, criminalizing any aspect of panhandling is not the best way to get to this goal. We request that the City cease enforcement, repeal this ordinance, and develop constructive approaches that will lead to the best outcomes for all the residents of the City of Hollywood, housed and unhoused alike.

We look forward to further discussing this matter with you, and we are hopeful to receive your response on or before October 1, 2018.

Sincerely,

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