August 30, 2018

Via Email & U.S. Mail

Mayor Kent Guinn &
Ocala City Councilmembers
110 SE Watula Ave.
Ocala, FL 34471

RE: Ocala City Ordinance Section 58-171 (Begging, panhandling, or soliciting within the public roadways prohibited)

Dear Mayor Guinn and Ocala City Council Members:

We write with respect to Ocala City Ordinance Section 58-171 (the "Ordinance"), enacted on June 19, 2012. 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 Ocala ("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Florida, such as the City of Gainesville (which was nearly identical to Ocala's ordinance), have stopped enforcement or repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights. After a lawsuit was filed against it, the City of Pensacola repealed its ordinance almost immediately after passing it.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 Ocala ordinance almost certainly violates the constitutional right to free speech protected by the First Amendment to the United States Constitution. We call on Ocala 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."). Whether the City's ordinance is violated turns solely on the subject matter, function or purpose of the solicitor's speech: it prohibits solicitations that request an immediate donation of money or other thing of value. A police officer must examine the nature or content of the person's speech to determine if a violation of the ordinance has occurred.

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 states that its purpose is to ensure that "begging, panhandling or soliciting . . . activities will not interfere with vehicular traffic and cause traffic safety and traffic flow concerns or when such activities will not otherwise cause any public health, welfare and safety concerns." 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*, 802 F.3d 79, 91-92 (1st Cir. 2015) (requiring evidence to substantiate claims of public safety). The Ordinance bans more speech than is necessary to address traffic or other safety concerns, such as restricting activity at bus stops, sidewalk cafes, and private property. As a result, the Ordinance cannot be said to further public safety.

The place restrictions of the activities prohibited by the Ordinance include bus stops, sidewalk cafes, 15 feet within any direction of an ATM or bank entrance and private property, regardless of the locations proximity to traditional public forums, such as sidewalks and parks. 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 exempts from its list of prohibited "begging, panhandling or soliciting" activities, "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." 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.").

The Ordinance prohibits covered activity from sunset to sunrise. Here, there is no evidence suggesting that the Ordinance's time-based restriction on requests for charitable donations hews closely to a compelling interest. Courts regularly strike down such restrictions. *See, e.g.*, *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 580 (6th Cir. 2012) (striking down 6 pm curfew for door-to-door solicitation).

For these reasons, among others, the Ordinance cannot pass constitutional muster. Further, unlawful anti-panhandling ordinances such as Ocala's 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 an Ocala 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 Ocala cease enforcement, repeal this ordinance, and develop constructive approaches that will lead to the best outcomes for all the residents of Ocala, housed and unhoused alike.

We look forward to your response before October 1, 2018.

Sincerely,

/s/ Kirsten Anderson
Director of Litigation
Southern Legal Counsel

/s/ Carey Haughwout
President
Florida Public Defender Association

/s/ Jacqueline Azis
Staff Attorney
ACLU of Florida

/s/ Eric Tars
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