



NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY



FLORIDA LEGAL SERVICES, INC.



August 30, 2018

Via Email & U.S. Mail

Mayor Rick Kriseman &
St. Petersburg City Council
PO Box 2842
St. Petersburg, FL 33731

RE: Section 20-79, City of St. Petersburg Panhandling Ordinance

Dear Mayor Kriseman & St. Petersburg City Council members,

We write with respect to St. Petersburg City Ordinance Section 20-79 (the "Ordinance"), amended on April 20, 2017. Since the landmark Supreme Court case *Reed v. Gilbert* in 2015, every panhandling ordinance challenged in federal court – at 25 of 25 to date – including many with features similar to the ones enacted by the City of St. Petersburg ("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Other cities in Florida, such as the City of Gainesville, have stopped enforcement or repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights. After a lawsuit was filed against it, the City of Pensacola repealed its ordinance almost immediately after passing it.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 St. Petersburg'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 immediately 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.")). If the speaker is soliciting a donation or payment, they are in violation of the ordinance. In contrast, if the speaker asks about a political issue, offers a brochure, or asks a person to sign a petition, the ordinance does not apply.

Indeed, it is quite clear that burdening this type of speech was not an accident; to the contrary, the City's officials made plain their intent to discourage people experiencing homelessness from asking their neighbors for help in this manner.

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).

Though “public safety” is an important state interest, the Ordinance is not narrowly tailored to serve it. *Browne v. City of Grand Junction*, 136 F. Supp. 3d at 1292-94 (rejecting claims that the ordinance served public safety); *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015) (requiring evidence to substantiate claims of public safety). The ordinance bans more speech than necessary by prohibiting all panhandling in downtown, near sidewalk cafes, ATMs or bank entrances, bus stops, and on public transportation.

Unsurprisingly, every court to consider a regulation that, like the City’s 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.

The Ordinance bans any solicitation made in person requesting a donation or selling an item for more than its value. Courts have not hesitated to strike regulations that, like the City’s Ordinance, 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 (D. Mass. 2015) (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 makes it unlawful for a person to engage in panhandling on any day after sunset or before 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 Section 20-79 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 St. Petersburg 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 St. Petersburg, housed and unhoused alike.

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

Sincerely,

/s/ Bob Dillinger
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Sixth Judicial Circuit

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