August 30, 2018

Via E-mail & U.S. Mail

Alain Boileau, Interim City Attorney
City of Fort Lauderdale, City Attorney's Office
100 North Andrews Avenue, Fort Lauderdale, FL 33301

RE: Section 16-82 (Panhandling, begging or solicitation) & Section 25-267 ("Right-of-way solicitors and canvassers"), City of Fort Lauderdale Code of Ordinances

Dear Mr. Boileau,

We write with respect to two provisions of the Fort Lauderdale Code of Ordinances: Section 16-82, captioned "Panhandling, begging or solicitation," enacted on May 1, 2012 (the "Panhandling Ordinance"), and Section 25-267, captioned "Right-of-way solicitors and canvassers," enacted on September 16, 2014 (the "Solicitors 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 Fort Lauderdale ("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Other cities in Florida, such as the City of Gainesville, have stopped enforcement or repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights. After a lawsuit was filed against it, the City of Pensacola repealed its ordinance almost immediately after passing it.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 Fort Lauderdale ordinances almost certainly violate the constitutional right to free speech protected by the First Amendment to the United States Constitution. We call on Fort Lauderdale to repeal the Panhandling and Solicitors Ordinances 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 Ordinances are outside the scope of permissible government regulation.

The Ordinances overtly distinguish 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 Panhandling and Solicitors Ordinances both prohibit solicitations that request an immediate donation of money or another thing of value, and thus whether the Ordinances are violated turns on the subject matter, purpose, or function of the speech.

As a result, a court will likely hold the Ordinances are "content-based" restrictions on speech that are 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 Ordinances cannot survive strict scrutiny because neither do they serve any compelling state interest, nor are they narrowly tailored.

First, the Ordinances serve 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 Ordinances are "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).

Unsurprisingly, every court to consider regulations that, like the Ordinances, ban 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.

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 Ordinances cannot pass constitutional muster. Further, unlawful anti-panhandling ordinances such as Section 16-82 and Section 25-67 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 Fort Lauderdale 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 Fort Lauderdale cease enforcement, repeal this ordinance, and develop constructive approaches that will lead to the best outcomes for all the residents of Fort Lauderdale, housed and unhoused alike.

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

Sincerely,

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