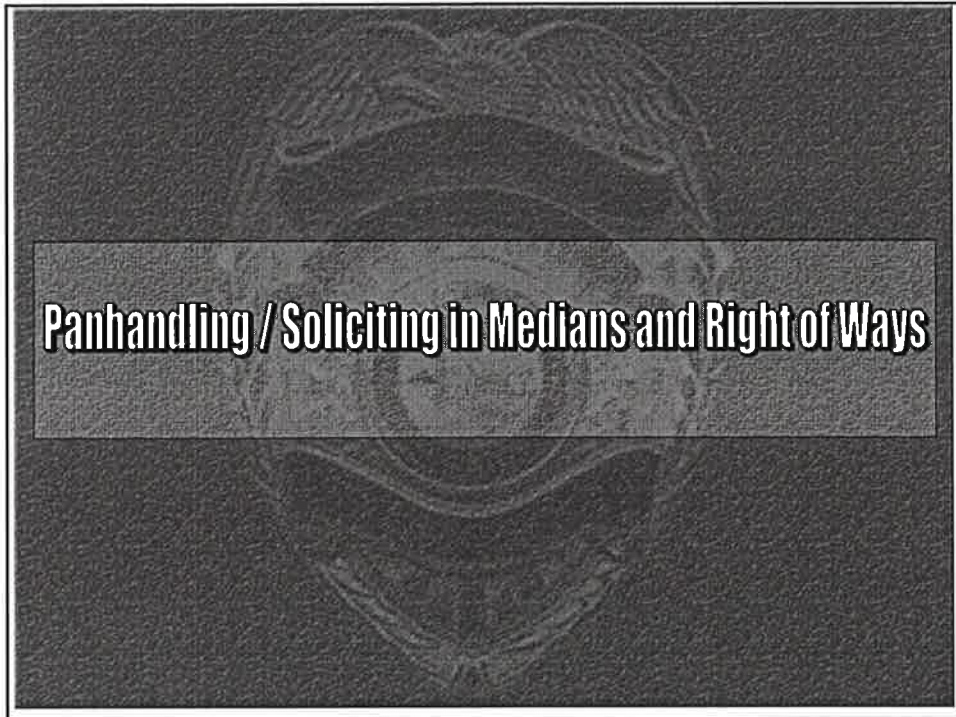


# 061107  
4/23/07



## Panhandling / Solicitation in Medians & Right of Ways

- GPD will update City Commission on issues related to solicitation of funds and panhandling from City medians and right of ways.



- CC - Feb 26<sup>th</sup> - Expressed concern regarding this behavior and referenced numerous solicitors and panhandlers which have seemed to recently increase greatly
- CC- April 23<sup>rd</sup> - Discuss
  - Panhandling / Solicitation
  - Who solicits & citizen concerns
  - Legal changes & current legal restrictions
    - Leading to escalation of this behavior
  - Options

## Definitions - Article III Chapter 19 City Ordinance

Solicitation - All non-profit organizations who solicit need a permit. Permit NOT required for those who are doing so for their own benefit.

Panhandling - Means to ask for money, gifts, donations, either by words, bodily gestures, signs or other means.

“Obstruct pedestrian or vehicular traffic” means to walk, stand, sit, lie or place an object in such a manner as to block passage of another person or a vehicle

A person standing on public property holding a sign requesting funds for him or herself while not violating any lawful statute or ordinance is engaged in protected First Amendment activity. May not be prohibited from doing so.

## Who Solicits ?

- March of Dimes
  - SpringHill Suites by Marriot
  - Wachovia Bank
- Schools
  - Car Washes
- Children's Miracle Network
  - UF Dance Marathon
- Boys and Girls Clubs
- Faith Based Organizations & Churches
  - New Life Church of Louisville
  - Deeper Life Christian Church of Tampa
- Muscular Dystrophy Association
  - City of Gainesville Firefighters
- Individuals
  - Groups Need Permits - Individuals Do Not



## Median Solicitation - Recent Events

- Feb 28<sup>th</sup> - All permitted groups were sent written notice and asked for feedback related to median solicitation. None responded.
- March 9<sup>th</sup> - Domestic Battery Arrest. Two intoxicated (2) solicitors at I-75 and Newberry Road get into argument resulting in minor injuries to the victim. Incident called in by witnessing driver waiting at light.
- March 26<sup>th</sup> - CC approves pilot "donation" meter program
- April 7<sup>th</sup> - Aggravated Assault Arrest. One (1) frequent solicitor at the median in front of Burger King, SW Archer Road confronts several juveniles soliciting for a car wash. Suspect tries to push child into traffic, threatens children, and tells them to get off her corner / median. One adult intervened and several witnessing drivers called. Suspect fought with and threatened police.
- April 19<sup>th</sup> - Aggravated Assault. Panhandler in median on SW Archer Road approaches vehicle that is blocking traffic. Driver threatens panhandler with a pipe and drives off. Another driver witnesses. Driver is located later and charged.

## Median Solicitation - Citizen Concerns

- "The streets are inundated with panhandlers, freeloaders, junkies, and the idle from all over the country, looking for handouts. You try to ignore them, but they brazenly come up to your car and tap on the window to get attention..."  
Gainesville Sun Editorial 3/29
- "Panhandling in Gainesville has reached epidemic proportions... No where in my travels do I encounter/observe the numbers of persons at intersections or interstate exchanges soliciting donations as I do in the Gainesville, FL area....  
...Panhandling further impedes traffic flow and is potentially dangerous.-I'm waiting for my wife to get rear ended as drivers either gawk at, or stop to talk/give donations to panhandlers. Frankly, I don't think even bona-fide civic organizations or church-affiliated groups .. should be allowed to solicit donations on/along public roadways." Email to City Commission 3/20
- "It is getting bad and dangerous to stop at red lights. The church group with buckets on the weekends... They now tap on windows and cross in front of cars. ... It is not safe anymore." Gainesville Sun Sound Off 3/19
- "...the proliferation of fundraising groups, aggressively waving posters on medians, weaving in and out of traffic lines, and collecting buckets of money at busy intersections is far more distracting and dangerous." Gainesville Sun Editorial 2/26
- "Dr. \_\_\_ spoke to GPD recently regarding panhandlers in the medians around 13<sup>th</sup> Street, 34<sup>th</sup> Street, Newberry Road and including off ramps of I-75.... As an ER Doctor, he has treated some of these folks. This is a dangerous situation.. These panhandlers pose a tremendous hazard to themselves and they do obstruct the flow of traffic." Referral to GPD from City Commission Staff 2/12.  
Also TV 20 broadcast segment - March.

## Department Position



- GPD's position on violations of law has been and remains the same. When a violation of the law or of an ordinance occurs, department members *will take the appropriate enforcement action.* The violation and circumstances will dictate that action not the individual's status or classification.
- GPD has no enforcement policy related to a specific faction of our community. *Consistent fair enforcement is the key.*
- No one enjoys more or less freedom from enforcement action. Everyone is subject to the law.

## Legal Changes

Occasionally a law (or laws) is challenged and a legal finding by our advisor or a court may make a law defunct for future enforcement.

Those findings apply to everyone, not any specific individual or classification of individuals.



In the beginning of 2006 two statutes and a local ordinance were challenged via legal suit against the city of Gainesville and ASO. Suit was filed on behalf of three homeless individuals.

# Laws Under Scrutiny

- FL SS 316.2045 Obstruction of public streets, highways, and roads
- FL SS 337.406 Unlawful use of state transportation facility right-of-way; penalties.
- Gainesville City Ordinance Article V (Reference soliciting funds)



## Panhandling Lawsuit Timeline

March 14<sup>th</sup>, 2006 Southern Legal Counsel INC files a civil lawsuit against the City of Gainesville and Alachua County Sheriff's Office on behalf of three clients. The Plaintiff's challenged the constitutional validity of 316.2045 and 337.406 both of which were used to either arrest or verbally remand them while soliciting donations along public roads. The suit also argued aspects of City Ordinance V Chapter 19 was unconstitutional and a violation of their right to free speech. All clients were homeless.



On review by the Legal Office, it was determined that the provisions had been declared unconstitutional in Federal Court and on May 1st, 2006, GPD Legal Advisor issued a notice to officers directing them to cease enforcement of 316.2045 (Obstruction of public streets), and 337.406 (Unlawful use of State Transportation Right-of-Way) until further notice.



June 12<sup>th</sup>, 2006 City Commission authorizes City Attorney to work with City Manager to draft amendments to CO Article V Chapter 19.



July 13<sup>th</sup>, 2006 the City consults with a First Amendment Specialist who reviews Article V Chapter 19 of our CO and recommends minor modifications.



On September 13, 2006 the United States District Court, Northern District of Florida, Gainesville Division granted a request for a preliminary injunction and ordered officers and employees of GPD not to enforce CO Article V Chapter 19 as well as FI SS 316.2045 and 337.406. The court agreed that based upon prior case law, aspects of the statutes and ordinance were unconstitutional. Violations of the order can result in disciplinary action against GPD and the officers involved and sanctions by the court.



October 9<sup>th</sup>, 2006 the City enters into an agreement with the Plaintiff's designed to end the lawsuit.

### Where We Stand Now

On August 14, 2006, the City Commission approved the Public Safety Committee's recommendation to authorize the City Attorney to prepare the necessary ordinance amendments to Chapter 19. The amendments are derivative of Chase, et al. v. City of Gainesville and Alachua County Sheriff's Office. The parties negotiated a Partial Settlement Agreement in this case.

The Partial Settlement Agreement acknowledges that the City will continue its non-enforcement of Sections 316.2045 and 337.406 Fla. Stats 2006, which have been declared unconstitutional.

The Partial Settlement Agreement acknowledges that standing on a public sidewalk holding a sign requesting funds while not violating any lawful statute or ordinance, is a protected first amendment activity and that the City will not enact or amend ordinances to prohibit the protected activity.

The Partial Settlement Agreement acknowledges that the City will amend portions of its solicitation ordinance, which may have been construed to regulate the protected activity.

## Options & Alternatives

- Legislative
  - ▷ • Ban all median solicitation
    - Current CC Agenda Item
    - Ban solicitation from any motor vehicle occupant
    - More extensive permitting process
    - Still allows activity on sidewalks
- Enforcement
  - Special Details
  - Cost Ineffective - Time Consuming - Few Tangible Results
  - Pedestrian Citations
- Partners
  - Work with existing community groups to discourage behavior
  - Schools - Prohibit student groups from soliciting on roadways
  - No consensus on whether "begging" should be allowed
- Education & Prevention
  - Media
  - Concrete alternatives to give: Example: Meters
  - Electronic Billboards
  - Flyers



## Questions / Comments



## Back Up Median Solicitation



### **316.2045 Obstruction of public streets, highways, and roads.--**

(1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or *approaching motor vehicles thereon*, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this subsection is *guilty of a misdemeanor* of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.



**337.406 Unlawful use of state transportation facility right-of-way; penalties.-**

(1) Except when leased as provided in s. 337.25(5) or otherwise authorized by the rules of the department, it is unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. Failure to prohibit the use of right-of-way in this manner will endanger the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities. Such prohibited uses include, but are not limited to, the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; *the solicitation for charitable purposes....*

Nothing in this subsection shall be construed to authorize such activities on any limited access highway. Local governmental entities may, within their respective jurisdictions, initiate enforcement action by the appropriate code enforcement authority or law enforcement authority for a violation of this section.

(4) The violation of any provision of this section or any rule promulgated by the department pursuant to this section constitutes a *misdemeanor of the second degree*, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist constitutes a separate offense.

**Gainesville City Ordinance**

**Article V Sec. 19-111.**

**Purpose and intent.**

It is the purpose and intent of this article to preserve public safety, human life and convenience; to secure the comfort, health, welfare and prosperity of all city inhabitants; to ensure that the use of streets and sidewalks in the city does not become dangerous and that the free flow of traffic thereon is not impeded; to protect city inhabitants against crime and undue annoyance; and to protect those on the streets against abusive behavior by solicitors.

**Sec. 19-112. Restrictions.**

**It shall be unlawful for any person to raise funds, or seek financial assistance of any kind or nature, on any street or right-of-way within the city without first acquiring a permit.**

**Sec. 19-113. Requirements.**

(a) A permit for solicitation on city, county, or state rights-of-way within the boundaries of the city may be obtained from the city manager or designee under the following conditions: .....

## Resources / Research

- Florida League of Cities - Charitable solicitations on public roads
  - [www.flcities.com](http://www.flcities.com)
- Las Vegas Review Journal - Curbside donations
  - [www.reviewjournal.com](http://www.reviewjournal.com)
- Problem-Oriented Guides for Police Series No. 13 Panhandling
  - [www.cops.usdoj.com](http://www.cops.usdoj.com)
- School Boards - Prohibiting Median solicitation for students & staff
  - Miami-Dade County Public Schools
  - Palm Beach Public Schools
- Other Cities / Counties
  - Arizona - Phoenix
  - California - Millbrae, San Francisco, Sunnyvale
  - Florida - Manatee County, Orlando
  - Georgia - Athens, Atlanta, Bartow
  - Kansas - Wichita
  - Maryland - Baltimore
  - New York - Rochester
  - North Carolina - Durham