



CITY OF GAINESVILLE

Office of the City Attorney

06 1707
Marion J. Radson
City Attorney

Ronald D. Combs
Charles L. Hauck
Natalie D. McKellips
Stephanie M. Marchman
Daniel M. Nee
Nicolle M. Smith
Elizabeth A. Waratuke

July 23, 2007

Via Email and Facsimile

Kirsten Clanton
Neil Chonin
Southern Legal Counsel, Inc.
1229 NW 12th Avenue
Gainesville, FL 32601-4113
(352) 271-8890
(352) 271-8347 (Fax)
slc@southernlegal.org

Dear Ms. Clanton and Mr. Chonin,

I am writing in response to your July 13, 2007 and July 16, 2007 letters regarding the City's proposed ordinance amending Chapter 19 of the City's Code of Ordinances. While I do not wish to address your public policy concerns, as those concerns are more appropriately addressed by the elected officials who represent the City, a response is necessary as to your conclusory allegations that proposed restrictions in Ordinance Number 0-07-48, which in relevant part amends the City's Code with respect to peddling, canvassing, begging, panhandling and soliciting activities in the City, "do not pass constitutional muster as they are not narrowly tailored to serve a significant government interest and they do not leave open ample channels of communication" and that the ordinance is "overbroad" and "vague." Additionally, a response is necessary to your contention that the enactment of the City's proposed ordinance would put the City in contempt of the Court's order granting a permanent injunction in Chase v. City of Gainesville, Case No. 1:06-cv-044-SPM/AK.

Despite your assertions to the contrary, the City's proposed ordinance is in fact narrowly tailored and leaves open ample channels of communication. In particular, the proposed ordinance, in relevant part, prohibits peddling and soliciting transactions between persons and vehicles that are in traffic and it prohibits any person from standing on a traffic median, bicycle path, or public street to peddle, canvass, or solicit from a vehicle when in use by vehicular traffic. These restrictions are narrowly tailored so as to only address the City's significant governmental interests in traffic safety and flow, and such interests are clearly implicated when individuals are engaging in these type of activities with vehicles in traffic. Additionally, there are ample alternative channels of communication available to individuals engaging in these activities so as to not cause traffic safety or flow concerns. For example, the proposed ordinance does not prohibit a person from soliciting on a sidewalk and accepting a donation from a pedestrian, whether on a sidewalk or in a parking lot, or from a person in a vehicle which has pulled out of traffic; it does not prohibit individuals from standing on a sidewalk to hold campaign signs; and it does not prohibit peddling or solicitation activities on the public street when the streets are closed to vehicular traffic.

With respect to your argument that the City "does not need" the proposed ordinance because it already has at its disposal a "broad range of criminal and traffic statutes" to address its legitimate traffic safety concerns related to individuals panhandling and soliciting in or near traffic, such an argument is also without merit. The



SOUTHERN LEGAL COUNSEL, INC.

1229 N.W. 12th Avenue ♦ Gainesville, Florida 32601-4113 ♦ (352) 271-8890
 FAX (352) 271-8347 ♦ slc@southernlegal.org ♦ www.southernlegal.org

BOARD OF DIRECTORS

Richard A. Gilbert, Chair

Francisco R. Angones
 Alan B. Bookman
 Howard C. Coker
 Dr. Vivian L. Hobbs
 William Kalish
 Barbara Bolton Litton
 The Hon. K. H. "Buddy" MacKay
 Michael P. McMahon
 Edith G. Osman
 Bill Wagner
 Stephen N. Zack

ATTORNEYS

Jodi Siegel, Executive Director

Neil Chonin
 Kirsten Clanton
 Natalie N. Maxwell
 Alice K. Nelson
 Gabriela Ruiz

July 13, 2007

Via E-MAIL & U.S. MAIL

E-mail: CityComm@cityofgainesville.org

Mayor Pegeen Hanrahan

Rick Bryant, City Commissioner

Scherwin Henry, City Commissioner

Jeanna Mastrodicasa, City Commissioner

Ed Braddy, City Commissioner

Jack Donovan, City Commissioner

Craig Lowe, City Commissioner

P.O. Box 490, Station 19

Gainesville, FL 32601-0490

Re: Proposed Ordinance amending Ch. 19, City Code of Ordinances

Dear Mayor Hanrahan and City Commissioners,

We are writing to express our concerns about the proposed ordinance amending Chapter 19 of the City's Code of Ordinances, entitled "Peddlers, Solicitors and Canvassers", that came before the City Commission for first reading on July 9, 2007. This ordinance contains provisions that are constitutionally problematic and threatens the rights of homeless persons in the City of Gainesville. For the reasons addressed below, we urge you to vote against this ordinance.

As the City is no doubt aware, the proposed ordinance severely restricts and limits charitable solicitation, which is protected speech under the First Amendment of the U.S. Constitution, on public sidewalks, streets, and other public areas. *See Riley v. Nat'l Federation for the Blind*, 487 U.S. 781, 788 (1988). It is well-settled that public sidewalks, streets, and parks are quintessential public fora and the City's ability to restrict speech in such places is very limited. *See U.S. v. Grace*, 461 U.S. 171, 177 (1983). Accordingly, the proposed restrictions do not pass constitutional muster as they are not narrowly tailored to serve a significant government interest and they do not leave open ample channels of communication. *Id.* Furthermore, this ordinance is overbroad and sweeps into its ambit a substantial amount of constitutionally protected speech such as prohibiting the firefighters' annual "Fill the Boot" drive, restricting political canvassers'



SOUTHERN LEGAL COUNSEL, INC.

1229 N.W. 12th Avenue ♦ Gainesville, Florida 32601-4113 ♦ (352) 271-8890
FAX (352) 271-8347 ♦ slc@southernlegal.org ♦ www.southernlegal.org

BOARD OF DIRECTORS
Richard A. Gilbert, Chair

Francisco R. Angones
Alan B. Bookman
Howard C. Coker
Dr. Vivian L. Hobbs
William Kalish
Barbara Bolton Litten
The Hon. K. H. "Buddy" MacKay
Michael P. McMahon
Edith G. Osman
Bill Wagner
Stephen N. Zack



ATTORNEYS
Jodi Siegel, Executive Director

Nell Chonin
Kirsten Clanton
Natalie N. Maxwell
Alice K. Nelson
Gabriela Ruiz

July 16, 2007

Marion Radson, Esq.
City Attorney
P.O. Box 490
Gainesville, FL 32602-0490

Re: *Chase, et al. v. City of Gainesville, et al.*
Case No.: 1:06 cv 44 SPM-AK

Dear Mr. Radson,

On January 26, 2007, the order dismissing the above case as to the City of Gainesville was filed with the U.S. District Court, Northern District of Florida, Gainesville Division (Dkt. #108). The Court retained jurisdiction to enforce the permanent injunction issued October 18, 2006 (Dkt. #83). Accordingly, the City of Gainesville is permanently enjoined from enacting "any ordinances which prohibit Plaintiffs or other persons from engaging in the protected First Amendment activity of standing on a public sidewalk, peacefully holding a sign soliciting charitable donations on behalf of or for their own personal benefit and not otherwise violating any lawful statute, ordinance, or order."

It is our contention that the proposed ordinance amending Ch. 19 of the City's Code of Ordinances, entitled "Peddlers, Solicitors, and Canvassers", contains provisions that, if enacted, would place the City in contempt of this court order. Specifically, Section 19-80(9)(f) contains a prohibition of begging, panhandling, or soliciting at various public places that would include portions of the sidewalk. If the City enacts an ordinance that does not comply with this court order, please be advised that we will take legal action to enforce its terms.

Sincerely,


Kirsten Clanton


Nell Chonin

Enclosures

3. All pending motions are denied as moot.
4. The clerk may administratively close this case.

DONE AND ORDERED this twenty-sixth day of January, 2007.

s/ Stephan P. Mickle

Stephan P. Mickle
United States District Judge

lawsuit against the City (Dkt. # 51), and Plaintiffs amended their motion for preliminary injunction against the City seeking only to enjoin enforcement of Article V, Chapter 19 of the City Code as it existed at the time of filing of this lawsuit (Dkt. # 61). On September 11, 2006, this Court granted plaintiffs' motion for preliminary injunction, finding that the Plaintiffs had provided ample authority to demonstrate support for their claims that all the challenged laws are facially unconstitutional (Dkt. # 72).

The Plaintiffs and the City have partially resolved this matter (Dkt. # 78). In the Settlement Agreement, the parties agreed to the Court issuing a permanent injunction prohibiting the enforcement of the laws challenged by Plaintiffs in this lawsuit, Fla. Stat. Section 316.2045 (2006) and Fla. Stat. Section 337.406 (2006) and any subsequent re-enactment of these statutes in precisely the same language as currently enacted, and Article V, Chapter 19 of the Gainesville City Code as it existed at the time of filing this lawsuit. The parties also agreed that the Defendant City will pay Plaintiffs agreed upon damages and reasonable attorneys fees and litigation costs, and upon payment of the same, the Plaintiffs will dismiss with prejudice all of their claims against Defendant City.

Having reviewed the Partial Settlement Agreement and finding it fair and just, the Motion is granted and the Partial Settlement Agreement is hereby ratified, approved, and adopted. Accordingly, it is ORDERED AND ADJUDGED as follows:

1. Plaintiffs and Defendant City of Gainesville's Motion (Dkt. # 79) is hereby granted.
2. The Partial Settlement Agreement (Dkt. # 78) entered into between the parties is ratified, approved, and adopted as an order of this Court.
3. The City of Gainesville, and all of its officers and employees, are hereby permanently enjoined from enforcing Fla. Stat. section 316.2045 (2006) or any subsequent enactment

final resolution.

9. The Court shall retain jurisdiction to enforce the terms of the Partial Settlement Agreement.

DONE AND ORDERED in chambers at Gainesville, Florida on this 18th day of October, 2006.

s/ Stephan P. Mickle

Stephan P. Mickle
United States District Judge