UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No. 9:21-cv-81537-DMM

ROSA WILLIAMS, GARY FRASHAW,
and THOMAS HYLAND,

Plaintiffs,

v.

CITY OF WEST PALM BEACH, FLA.,

Defendant.
_____/

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs ROSA WILLIAMS, GARY FRASHAW, and THOMAS HYLAND move this Court for entry of a preliminary injunction to temporarily restrain Defendant City of West Palm Beach (the "City" or "Defendant") from enforcing provisions of its ordinance regulating panhandling and soliciting charitable assistance on traditional public fora during the pendency of this litigation. As grounds therefor, Plaintiffs state:

1. Plaintiffs are individuals experiencing poverty who need charitable assistance from others to help meet their basic needs, including access to food, clothing, shelter, and housing. (Exs. 1-3.)

2. Plaintiffs reside (or resided at all pertinent times) in the City of West Palm Beach. They either hold signs with messages conveying their need for assistance from vehicles on public roadways or orally ask for help from pedestrians in the City's downtown or Northwood areas. (*Id*.)

3. The City Council adopted a City ordinance regulating panhandling and soliciting, codified at Sections 54-126 to 54-148 of the West Palm Beach Code of Ordinances (City Code), in 1979. (ECF 1-3.) The ordinance was amended on December 28, 2020, to add additional prohibited conduct and new penalties to Sections 54-146, 54-147, and 54-148. (ECF 1-4.)

4. Plaintiffs challenge portions of that ordinance codified in § 54-147(a)(1) and § 54-127(2), (3) & (5) of the City Code ("Challenged Provisions"). Plaintiffs do not challenge the portion of the ordinance prohibiting "aggressive panhandling" as defined by § 54-126, "public indecency" as defined in § 54-146, or the regulations that pertain to panhandling or soliciting on private property set forth in § 54-127(4) and § 54-147(a)(2).

5. Plaintiffs have been warned by City police, or by private security patrolling downtown and Northwood areas, that they are in violation of the City ordinance when holding signs soliciting charity on public roadways or orally ask for help from pedestrians in the City's downtown or Northwood areas. When asking others for money, each Plaintiff has been regularly warned by West Palm Beach Police that if they do not stop or move along, they will be arrested for violating the City's panhandling ordinance. (Exs. 1-3.) Plaintiffs Williams and Frashaw have been warned by private security that police will be called if they do not stop soliciting. (Ex. 1, at 2; Ex. 2, at 3.)

6. The Challenged Provisions are an unconstitutional content-based regulation of speech in traditional public fora. Police, and private security working in

coordination with or at the direction of the City, have warned Plaintiffs and others that they will be arrested for their speech requesting help in the form of money or other aid in these public fora.

7. West Palm Beach Police Department "Event Reports" identify 603 incidents in 2019, 803 in 2020, and 97 in the first two months of 2021, all involving panhandling for a total of 1503 events involved panhandling. These incidents resulted in various actions, including trespasses, formal warnings and "move along" orders. (Ex. 4.)

8. Prior to adoption of the 2020 amendments to the City's ordinance, the ACLU of Florida, the ACLU of Palm Beach County Chapter, and Southern Legal Counsel sent a letter to the City advising that the ordinance and the proposed amendments were unconstitutional content-based restrictions on speech that do not survive strict scrutiny. (Ex. 5.)

9. Counsel for Defendant City of West Palm Beach also warned Defendant that the ordinance "may be considered content based and subject to strict scrutiny. Thus, without the City's Ordinance being narrowly tailored to serve compelling state interests, it *may* be found unconstitutional." (Ex. 6, emphasis in original.)

10. Despite these warnings about the ordinance's unconstitutionality, both from inside the City Attorney's Office and from outside legal organizations, the City proceeded to adopt the 2020 amendments to the City's ordinance.

11. Plaintiffs seek preliminary injunctive relief as Plaintiffs have a substantial likelihood of success on the merits of their claims that the Challenged Provisions of

the ordinance are facially unconstitutional. Plaintiffs will suffer irreparable harm if an injunction is not issued, and the balance of equities weighs in their favor as neither the City nor the public has any legitimate interest in enforcing an unconstitutional ordinance.

12. In addition to facial unconstitutionality, Plaintiffs' Complaint also alleges that the ordinance is unconstitutional as applied, but do not seek to preliminarily enjoin the as applied part of the claim.

13. Plaintiffs request that this Court waive the bond requirement and enter an order.

WHEREFORE, Plaintiffs respectfully request that this Court GRANT their Motion for Preliminary Injunction and waive the bond requirement.

MEMORANDUM OF LAW

Plaintiffs meet the required elements to obtain a preliminary injunction: (1) a likelihood of success on the merits of their claims; (2) a likelihood that they will suffer irreparable harm; (3) the balance of equities tips in their favor as the threatened injury outweighs whatever damage the proposed injunction might cause the non-moving party; and (4) the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

I. Likelihood of Success on the Merits

Plaintiffs establish a likelihood of success on the merits of their claim that the Challenged Provisions of the City's ordinance are facially unconstitutional. The City's ordinance defines prohibited conduct based on the topic or ideas expressed, i.e.

whether an individual is requesting a donation of money or other thing of value. Courts have universally agreed, following the landmark U.S. Supreme Court decision in *Reed v. Town of Gilbert, Ariz.,* 576 U.S. 155 (2015), that ordinances similar to the one at issue here are content-based and subject to strict scrutiny. Few ordinances survive strict scrutiny, and the City's ordinance is no exception. As detailed below, nearly identical provisions have been held unconstitutional by courts nationwide, and binding precedent mandates a similar result here.

A. The City's ordinance infringes on Plaintiffs' protected speech in traditional public fora.

When Plaintiffs hold signs communicating a need for charitable assistance, or make oral requests for help, they are engaged in constitutionally protected speech. Charitable solicitation is protected speech under the First Amendment, whether undertaken on behalf of an organization or for one's own personal needs. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980); *see also Smith v. City of Ft. Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) ("Like other charitable solicitation, begging is speech entitled to First Amendment protection."); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 184 (D. Mass. 2015) ("Panhandling is not merely a minor, instrumental act of expression … at stake is 'the right to engage fellow human beings with the hope of receiving aid and compassion.'"). Thus, Plaintiffs have been warned, told they may not engage in these communications, and made to move along under threat of arrest for engaging in constitutionally protected speech. (Exs. 1-3.)

The Challenged Provisions regulate constitutionally protected speech in traditional public fora. Streets, sidewalks and parks are "historically associated with the free exercise of expressive activities." *United States v. Grace*, 461 U.S. 171, 177 (1983). The government's ability to restrict speech in traditional public fora is very limited because public streets and sidewalks "occupy a 'special position in terms of First Amendment protection' because of their historic role as sites for discussion and debate." *McCullen v. Coakely*, 573 U.S. 464, 476 (2014).

B. The City's ordinance is content-based and presumptively unconstitutional.

The Challenged Provisions of the City's ordinance are content-based because they define prohibited conduct in terms of the message, ideas, subject matter, or content. The ordinance defines "solicit" as used in Sec. 54-127 to mean "to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication." (ECF 1-3, § 54-126.) The ordinance separately defines "panhandling and soliciting" as used in Sec. 54-147 to mean "to request an immediate or future donation of money or other thing of value from another person, regardless of the panhandler's purpose or intended use of the money or other thing of value. The panhandling or soliciting may be, without limitation, by the spoken, written, or printed word, or by other means of communication." (*Id*., § 54-146.) Both definitions single out a specific type of speech, i.e. requests for donations of money or things of value, for regulation. They are therefore content-based.

The First Amendment prohibits governments from restricting expression "because of its message, its ideas, its subject matter, or its content." *Reed*, 576 U.S. at 163. A law is a content-based restriction on speech if either of the following is true: (1) the text of the law makes distinctions based on speech's "subject matter ... function or purpose" or (2) the purpose behind enacting the law is driven by an objection to the content of the speech. *Id*. at 163-64. In other words, a regulation is content-based if its application depends on the message a speaker conveys. *Id*. When a regulation impedes speech based on its "communicative content," it is "presumptively unconstitutional." *Id*. at 163. The Court in *Reed* found that a town's sign ordinance was content-based for this reason -- three types of signs (ideological signs, political signs, and temporary event signs) were exempted from the City's permitting scheme based only on the content of speech expressed on the signs. *Id*. at 164-65.

Reed marked a turning point in First Amendment jurisprudence on the constitutionality of charitable solicitation ordinances of the kind at issue here. *See Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 666 (E.D. La. 2017) (*Reed* "worked a sea change in First Amendment law"). Florida federal courts have agreed that ordinances or statutes that regulate panhandling or soliciting charitable funds are content-based restrictions on speech that must survive strict scrutiny. *Messina v. City of Ft. Lauderdale*, Case No. 21-cv-60168-ALTMAN/Hunt, 2021 WL 2567709, at *7 (S.D. Fla., June 23, 2021) ("Since 2015, several courts have found that panhandling ordinances like the City's—especially general bans on panhandling in large swaths of a city, such as commercial zones or historic districts, or near bus stops and sidewalk

cafés—are content based and (thus) unconstitutional."); *Vigue v. Shoar*, 494 F. Supp. 3d 1204, 1223 (M.D. Fla. 2020) ("Following *Reed*, multiple statutes that restrict charitable solicitation have been viewed as content-based and struck down because they cannot survive strict scrutiny."); *Homeless Helping Homeless, Inc. v. City of Tampa, Fla.*, Case No. 8:15-cv-1219-T-23AAS, 2016 WL 4162882, at *4 (M.D. Fla., Aug. 5, 2016) (Tampa's panhandling ordinance "punishes speech based not at all on the place, and manner of the speech but based decidedly and exclusively on the content of the speech, a fact that subjects [the ordinance] to strict scrutiny").

The nationwide impact of *Reed* on the constitutionality of laws that on their face regulate panhandling or soliciting charitable donations can be seen in two federal appeals court decisions. Within two weeks of its decision in *Reed*, the Supreme Court vacated and remanded a decision by the First Circuit for further consideration in light of *Reed*. *Thayer v. City of Worcester, Mass.*, 576 U.S. 1048 (2015). The First Circuit had affirmed the district court's denial of a preliminary injunction against enforcement of a city ordinance that made it unlawful to beg, panhandle or solicit. *Thayer v. City of Worcester*, 755 F.3d 60, 63 (1st Cir. 2014), vacated and remanded for consideration in light of *Reed*. Upon remand, the district court entered summary judgment in favor of plaintiffs, reversing its original decision that the ordinance was content-neutral, and instead finding the solicitation ordinance was a content-based restriction on speech, subject to strict scrutiny. *Thayer v. City of Worcester,* 144 F. Supp. 3d 218, 233 (D. Mass. 2015) ("a protracted discussion of this issue is not warranted as substantially all of the Courts which have addressed similar laws since *Reed* have found them to

be content based and therefore, subject to strict scrutiny" (collecting cases)). The court noted, "[s]imply put, *Reed* mandates a finding that [the solicitation ordinance] is content based because it targets anyone seeking to engage in a specific type of speech, i.e., solicitation of donations." *Id*. at 234 n.2.

Similarly, after *Reed*, the Seventh Circuit granted a petition for rehearing in a challenge to a municipal ordinance which prohibited oral requests for the immediate donation of money in the city's downtown municipal district. *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412 (7th Cir. 2015), cert. denied, 577 U.S. 1140 (2016). The Seventh Circuit initially held that the ordinance was not content-based. *Id*. at 411. It deferred consideration of a petition for rehearing until the Supreme Court decided *Reed*. Applying *Reed*, the Seventh Circuit on rehearing determined that the ordinance was content-based, stating that "*Reed* effectively abolishes any distinction between content regulation and subject-matter regulation. Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification." *Id*. at 412. As the Southern District of Florida recently observed in analyzing the *Norton* rehearing decision:

> In other words, the Seventh Circuit read *Reed* as holding that an ordinance is content based if it distinguishes between *topics* of speech—even if it's neutral with respect to ideas or viewpoints. Under this new framework, the Seventh Circuit vacated its prior opinion and reversed and remanded the case for the district court to enjoin an ordinance that prohibited panhandling in a city's historic district. In his concurrence, Judge Manion predicted that "[f]ew regulations will survive [Reed's] rigorous standard."… Judge Manion was right.

Messina, 2021 WL 2567709, at *7 (internal cites omitted).

Courts have overwhelmingly agreed that the definition of panhandling or soliciting used by the City in its ordinance is content-based.[1] *See, e.g., Messina*, 2021 WL 2567709, at *8-10 (ordinance defining "panhandling" as "an immediate donation of money or other thing of value" is content-based and subjected to strict scrutiny); *Blitch,* 260 F. Supp. 3d at 660, 666 (ordinance restricting "begging" or "panhandling" which were defined to mean "asking for money or objects of value, with the intention that the money or object be transferred at that time, at that place" was content-based and "*Reed* mandates strict scrutiny"); *Homeless Helping Homeless*, 2016 WL 4162882, at *4 (ordinance is content-based because the prohibited conduct "depends entirely on the expressed message (i.e., a solicitation for 'donations or payment')"); *McLaughlin*, 140 F. Supp. 3d at 182, 185 (ordinance which restricted the "solicitation of any item of value through a request for an immediate donation" was "plainly content-based under current Supreme Court guidance").

This Court should similarly hold the Challenged Provisions of the City's ordinance are content-based and that *Reed* mandates strict scrutiny.

[1] The City Attorney's office reached a similar conclusion in a July 2020 memo by an Assistant City Attorney who advised the City Attorney in a memo titled "Constitutional Validity of Panhandling Ordinance" that the City's ordinance was likely content based. The memo reasoned that because the City's ordinance "regulates 'the topics discussed,' i.e., 'an immediate or future donation of money or other thing of value,' it may be considered content based and subject to strict scrutiny. Thus, without the City's Ordinance being narrowly tailored to serve compelling state interests, it may be found unconstitutional." (emphasis in original). (Ex. 6.)

C. The Challenged Provisions fail strict scrutiny.

Strict scrutiny requires the government to prove that the ordinances are narrowly tailored to serve a compelling government interest, and that they are the least restrictive means of achieving it. *See Messina,* 2021 WL 2567709, at *6; *Vigue,* 494 F. Supp 3d at 1223. The Challenged Provisions fail strict scrutiny as the City has not identified a compelling government interest to justify its content-based restrictions on speech, nor has it demonstrated that the Challenged Provisions of the ordinance are narrowly tailored to meet any such interest. *See Reed*, 576 U.S. at 171. As the Southern District of Florida recently observed, "the application of strict scrutiny *usually* sounds the death knell for a challenged ordinance, particularly in the arena of the First Amendment." *Messina*, 2021 WL 2567709, at *8. Recognizing that "[t]here are of course, notable exceptions," the Court concluded that "so far anyway, there don't appear to be exceptions in the panhandling context." *Id*. The Court analyzed an extensive body of caselaw to conclude that the cases can be divided into two categories: ones where the City has no compelling interest, and others where the City has identified a compelling interest but is still unable to demonstrate it is narrowly tailored to accomplish the compelling interest. *Id*. The Challenged Provisions fail on both accounts.

(1) The City has no compelling interest.

The 2020 amendments to the ordinance revised Section 54-147, which prohibits engaging in "an act of panhandling or soliciting" in prohibited areas that include the downtown area and Northwood areas of the City. The City asserts its

purported interests for these provisions in the preamble to the 2020 amendments in Ordinance No. 4919-20. (ECF 1-4). The City's asserted interests for expanding the geographic scope of the ordinance to include Northwood in addition to downtown are that: "panhandling and/or soliciting in the downtown and Northwood areas of the City blocks pedestrian and vehicular traffic and has become extremely disturbing and disruptive to residents and businesses, and has contributed to the loss of access to and enjoyment of public places and businesses." (*Id*. at 1.)

Such reasons are not recognized as compelling government interests. Restricting speech because it offends or makes listeners uncomfortable is not a legitimate interest, let alone a compelling one. *McCullen*, 134 S. Ct. at 2532. Governments cannot limit requests for money simply because others do not like being asked. *See McLaughlin*, 140 F. Supp. 3d at 189. Protecting listeners from any kind of speech they do not want to hear has never been a compelling government interest. *Ohio Citizen Action v. City of Mentor-On-The-Lake*, 272 F. Supp. 2d 671, 685 (N.D. Ohio 2003) ("The second interest advanced by the City is protecting its residents from annoyance. While the government's interest in minimizing annoyance is legitimate, it is not, in and of itself, compelling enough to form the basis for a content-based restriction on free speech.").

Further, similar restrictions that prohibit panhandling or soliciting in geographic zones such as downtown areas or historical districts have all been held unconstitutional. *See Norton*, 806 F. 3d at 413 (ordinance prohibiting panhandling in its downtown historic district fails strict scrutiny for lack of government justification);

Homeless Helping Homeless, 2016 WL 4162882 at *5 (ordinance that prohibits soliciting charitable contributions in downtown Tampa and in Ybor City, an adjacent historical district fails strict scrutiny for lack of compelling interest); *McLaughlin*, 140 F. Supp. 3d at 190-91 (striking down a ban on "Downtown Panhandling" on basis that tourism and nuisance abatement are not compelling interests). This Court should similarly find that the City's provisions in Section 54-147 prohibiting requesting donations in the downtown and Northwood area fails strict scrutiny for lack of a compelling government interest.

The City also claims that its interests in adopting the 2020 amendments to the ordinance are "that the blockage of ingress and egress into and from commercial businesses and other public areas as well as the impedance of pedestrian walkways and other public right-of-ways caused by panhandling and soliciting in the downtown and Northwood areas of the City implicates the compelling government interest of the City in protecting the health, safety, and welfare of its citizenry and visitors in preserving police and fire department access to such right-of-ways in order to save lives." (ECF 1-4, at 1.)[2] Protecting the entrances of commercial establishments and allowing passage on sidewalks are not compelling interests—Plaintiffs are certainly not aware of any cases holding that they are.

[2] Plaintiffs do not challenge the portion of the ordinance prohibiting "aggressive panhandling" as defined by § 54-126, "public indecency" as defined in § 54-146, or the regulations that pertain to panhandling or soliciting on private property set forth in § 54-127(4) and § 54-147(a)(2).

(2) The Ordinance is not narrowly tailored.

Even assuming the existence of a compelling government interest, however, the Challenged Provisions are not narrowly tailored to meet that interest. The connection the City draws between "saving lives" and "preserving police and fire department access" to public rights-of-ways is speculative at best. The City's interest in preventing people from "impeding" public roads and sidewalks is not furthered by restricting peaceful requests for money by as few as one individual on a public street. *Burk v. Augusta-Richmond Cnty.*, 365 F.3d 1247, 1255 (11th Cir. 2004) (content-based permit scheme "regulating as few as five peaceful protestors (*e.g.* silently sitting in on the edge of the sidewalk) is not the least restrictive means of accomplishing the County's legitimate traffic flow and peace-keeping concerns"). Moreover, the City can simply enforce its own ordinance that prohibits obstructing passage on streets, sidewalks, and bicycle paths without reference to the content of the individual's speech. *See* § 78-1, City Code; *see also Vigue,* 494 F. Supp. 3d at 1232 ("there are other laws which can be brought to bear").

The other challenged provisions of the ordinance, in § 54-127, were in the City's 1979 Code. The text of the ordinance itself contains no information as to the City's asserted interests for adopting these provisions. One of the Challenged Provisions in this subsection prohibits soliciting money or other things of value from any motor vehicle in traffic in a public street. (ECF 1-3, § 54-127(5).) While traffic safety is a legitimate interest, neither the Supreme Court nor the Eleventh Circuit have recognized traffic safety as a compelling interest for purposes of applying strict

scrutiny. *Solantic, LLC v. City of Neptune Bch.*, 410 F.3d 1250, 1267 (11th Cir. 2005); *Reed*, 576 U.S. at 171 ("Assuming for the sake of argument that [preserving the Town's aesthetic appeal and traffic safety] are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive."). Even assuming here that the City's interest in traffic safety is compelling, that interest is not furthered by its content-based restrictions on speech nor are the restrictions narrowly tailored to serve that interest. *See Reed*, 576 U.S. at 172 ("[t]he Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not."); *Solantic*, 410 F.3d at 1267 (government must show that its interests are served by the content-based distinctions it is making between permissible and impermissible speech). The City's concerns about traffic safety can be adequately addressed by other laws that are "less intrusive than a direct prohibition on solicitation." *Vigue*, 494 F. Supp. 3d at 1229. For example, the City could enforce its own ordinance that prohibits obstruction of public streets, highways, and roads, without any reference to the content of a person's speech. *See* § 86-8, City Code. For these reasons, this Court should follow other courts in holding that such content-based prohibitions against roadside solicitation are not narrowly tailored. *See Messina*, 2021 WL 2567709, at *16 (City's Right-of-Way ordinance did not address any traffic safety problems by less intrusive means); *Vigue*, 494 F. Supp. 3d at 1225 (state statute barring panhandling on public streets, highways, and roads was insufficiently tailored to serve the compelling interest of safety); *Rodgers v. Bryant*,

942 F.3d 451, 457 (8th Cir. 2019) (state has not shown that anti-loitering law is narrowly tailored to achieve its public and motor-vehicle safety interest).

Finally, the City's ordinance contains no information about its interests in location-based restrictions found in 54-127(2) & (3) of the ordinance. The City prohibits soliciting "money or other things of value" or to "solicit the sale of goods or other services" in "any public transportation vehicle, or bus station or stop." (ECF 1-3, § 54-127(2).) The City also prohibits soliciting "money or other things of value" or to "solicit the sale of goods or other services" "within 15 feet of any entrance or exit of any bank or check cashing businesses or within 15 feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities; however, that when an automated teller machine if located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility." (*Id.* at § 54-127(3).) Whatever the City's interests, the ordinances are not narrowly tailored to serve them, in part because they sweep much too broadly. A buffer zone around a bus stop, for example, prohibits panhandling on the sidewalk, not just panhandling from those waiting for a bus. *Id*. Courts have struck down similar provisions for failing strict scrutiny, and this Court should do the same. *See, e.g., Thayer*, 144 F. Supp. 3d at 226 (striking down 20-foot no-panhandling zone around entrance to or parking area of any bank, ATM, mass transportation facility or stop, and other public areas); *McLaughlin*, 140 F. Supp. 3d at 195 ("while it may be more bothersome, and even in some sense more coercive for a

person to be panhandled when they cannot, or find it difficult to leave, it is not demonstrably more dangerous").

As the Southern District of Florida reasoned in preliminarily enjoining similar provisions, "if public safety were *really* the goal, the Panhandling Ordinance would seem to be a very bad way of achieving it." *Messina*, 2021 WL 2567709, at *11 ("the character of the areas the City chose to regulate strongly suggests that the City was motivated, not by any great desire to protect the public from dangerous crimes, but by an understandable (if insufficient) interest in preventing its residents' discomfort"). The situation is the same here.

The Challenged Provisions are not narrowly tailored to serve any compelling government interest, nor are they the least restrictive means of achieving them. The overwhelming weight of the legal authority demonstrates that Plaintiffs have a likelihood of success of establishing that the Challenged Provisions of the City's ordinance are facially unconstitutional in violation of the First Amendment of the U.S. Constitution.

II. Balance of Equities

In weighing the balance of equities, the Eleventh Circuit recently held that plaintiffs challenging content-based regulations that directly penalize protected speech "meet the remaining requirements as a necessary legal consequence of our holding on the merits." *Otto v. City of Boca Raton, Fla*., 981 F.3d 854, 870 (11th Cir. 2020). The same principle applies here. Plaintiffs will suffer irreparable harm if this

Court does not enter a preliminary injunction, and it is neither in the interest of the City nor the public to allow continued enforcement of an unconstitutional ordinance.

For ordinances that are "unconstitutional 'direct penalization' of protected speech, continued enforcement, 'for even minimal periods of time,' constitutes a per se irreparable injury." *Id*., quoting *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983). Further, the Southern District of Florida explained in finding irreparable harm in a similar case:

> Our Plaintiffs, recall, don't panhandle for fun; they canvass the streets because it's their only means of subsistence. Were we to push off our injunction until the end of the case, therefore, we'd be preventing them (perhaps for six months or more) from collecting the donations they need to survive. That, we think, is precisely what the law means when it speaks of irreparable injury.

Messina, 2021 WL 2567709, at *18.

When the nonmovant is the government, "the third and fourth requirements—'damage to the opposing party' and 'public interest'—can be consolidated." *Otto*, 981 F.3d at 870. "[N]either the government nor the public has any interest in enforcing an unconstitutional ordinance." *Id*. Indeed, it disserves the public interest to allow enforcement of unconstitutional ordinances. *Messina*, 2021 WL 2567709, at *19. All three U.S. District Courts in Florida have similarly held in granting preliminary injunctions that the balance of equities tips in a plaintiffs' favor when challenging similar content-based ordinances or statutes that infringe on protected free speech rights to request charitable assistance. *Id*.; *Vigue v. Shoar*, Case No. 3:19-cv-186-J-32JBT, 2019 WL 1993551, at *2 (M.D. Fla. May 6, 2019); *Booher v. Marion Cnty.*, Case No: 5:07-cv-00282-WTH-GRJ, 2007 WL 9684182, at *4 (M.D. Fla., Sept. 21,

2007); *Chase v. City of Gainesville*, Case No. 1:06-CV-044-SPM/AK, 2006 WL 2620260, at *2 (N.D. Fla., Sept. 11, 2006). Any of the City's concerns about public safety can be met by the enforcement of other laws less intrusive of First Amendment freedoms. *See, e.g., Vigue*, 2019 WL 1993551, at *2.

III. Waiver of the Bond Requirement

Plaintiffs request that this Court waive the bond requirement under Fed. R. Civ. P. 65(c). Bond is not required where the party seeking the injunction has high probability of success, an injunction is sought against a municipality that would not incur significant cost, and requiring payment would injure the constitutional rights of the plaintiff or the public. *Univ. Books & Videos, Inc. v. Metropolitan Dade Cnty.*, 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999). All three requirements are met here. Further, public interest litigation is a recognized exception to the bond requirement. *Vigue*, 2019 WL 1993551, at *3, citing *City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981). Florida District Courts have waived bond requirements in similar litigation. *See Vigue*, 2019 WL 1993551, at *3 (waiving bond requirement for indigent and homeless plaintiff challenging constitutionality of state statutes regulating charitable solicitation on roadways); *Booher*, 2007 WL 9684182, at *4 (waiving bond requirement for indigent and homeless plaintiff challenging constitutionality of county ordinance regulating charitable solicitation).

IV. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court enter a preliminary injunction restraining the City from taking any action to enforce § 54-

147(a)(1) and § 54-127(2), (3) & (5) of the West Palm Beach City Code during the pendency of this litigation, and to waive the bond requirement.

Dated: August 30, 2021

Respectfully submitted,

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