

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.

DEAN LUTRARIO,

Plaintiff,

vs.

CITY OF HOLLYWOOD,
FLORIDA, a Florida municipal corporation,

Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

The Plaintiff, Dean Lutrario, sues the Defendant, City of Hollywood, Florida (City), alleging as follows:

PRELIMINARY STATEMENT

1. Under City of Hollywood ordinances, a person cannot ask for donations along certain streets and roadways within the City. Moreover, people who engage in such conduct—defined by the City as “soliciting,” “begging,” or “panhandling”—must obtain a permit from the City and obey a list of specific restrictions. Violations are punishable by up to 60 days in jail and/or a \$500 fine. Over the last several years, over two hundred people have been arrested or cited for violating these ordinances.

2. However, a person seeking to engage in other forms of speech at the same locations—such as asking for votes, encouraging people to join a church, or requesting signatures on a petition—may do so without fear of arrest. Because the ordinances single out

certain forms of speech, they are content-based and subject to strict scrutiny. Because they are not narrowly tailored to any compelling government interest, nor are they the least restrictive means of advancing any government interest, they are unconstitutional restrictions of free speech.

3. Plaintiff Dean Lutrario is an individual of limited means who engages in panhandling within the City of Hollywood—an activity protected by the First Amendment. Plaintiff has been cited and arrested for panhandling along the public streets in Hollywood. As the result of the City’s adoption and enforcement of the challenged ordinances, Plaintiff has been hindered in the exercise of his First Amendment rights, faces a continuing threat of citation and arrest for his panhandling activities, and has suffered damages.

4. Plaintiff brings this action for declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 for past and ongoing injury to his rights guaranteed by the First Amendment of the U.S. Constitution.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue lies in the Southern District of Florida pursuant to 28 U.S.C. §1391(b). The parties are located in this District and all of the acts and omissions complained of herein occurred and will continue to occur in the Southern District of Florida.

PARTIES

7. Plaintiff Dean Lutrario is a resident of Broward County. He is without permanent housing and suffers from a medical disability. To contribute to his survival, he must request donations from others.

8. Defendant City of Hollywood is a municipal entity organized under the laws of the State of Florida, with the capacity to sue and be sued.

9. The City of Hollywood Commission sets final policy on the creation and adoption of City ordinances.

10. The City is the legal entity responsible for the police department known as the Hollywood Police Department (HPD).

11. The HPD is authorized to enforce City ordinances.

12. Sections 122.27, 122.31, and 122.54 of the City Code are official policies of the City.

13. The City is sued for injunctive and declaratory relief and damages on the basis of acts of officials, officers, agents and employees of the City and HPD, which were taken pursuant to official policy, practice and/or custom.

14. At all times relevant herein, the officials, officers, agents, and employees of HPD and the City were acting under color of state law.

FACTUAL ALLEGATIONS

Solicitation Ordinances Passed on October 21, 1981

15. On October 21, 1981, the Hollywood City Commission enacted Ordinance No. O-81-72, which was later codified as §§ 122.25—122.31 of the City Code, captioned “Charitable Solicitations.”

16. Section 122.26 defines “Solicitation” as: “The request, either directly or indirectly, of any donation or contribution for charitable purposes, including but not limited to any oral or written request; the sale, offer to sell or attempt to sell any article, service, publication, advertisement, subscription, membership or other thing for charitable purposes; or,

the making of any announcement to or through the press or other media concerning an appeal, drive or campaign to which the public is requested to make a donation. A solicitation shall be deemed to have taken place when the request is made, whether or not the person making the request receives any donation.”

17. Under § 122.27(A), “It shall be unlawful for any person to solicit donations for charitable purposes within the city without first having obtained a permit therefor; however, the provisions of this subchapter shall not apply to any solicitation conducted solely among members of charitable organizations by other members thereof.”

18. Section 122.31, “Solicitation Regulations and Prohibitions,” states:

“In conducting solicitations, individual solicitors shall be charged with obeying the following restrictions on behavior:

(A) While engaged in soliciting, each solicitor must carry and display an identification card issued by the Director of Licensing, which shall contain the name, address and telephone number of the solicitor as well as the name of the person or organization for whose benefit or on whose behalf the solicitor is acting.

(B) No solicitor shall in any way unlawfully obstruct, delay or interfere with the free movements of any person against that person's will or seek to coerce, or physically disturb any other person.

(C) No solicitor shall in any way unlawfully obstruct, delay or interfere with vehicular traffic within the city.

(D) No solicitor shall solicit door-to-door at any residence between the hours of 9:00 p.m. and 8:00 a.m.

(E) Solicitors shall solicit only during the conditions permitted.

(F) Solicitors shall not solicit at nor enter upon any premises within the city where a “No Solicitation” sign is posted in accordance with the provisions of this subchapter, unless otherwise invited onto the premises for that purpose.”

Solicitation Ordinances Passed on June 18, 2014

19. On June 18, 2014, the Hollywood City Commission expanded its regulation of charitable solicitation to include roadway solicitations by enacting Ordinance No. O-2014-12, which was later codified as §§ 122.50—122.54 of the City Code, captioned “Panhandling, Begging or Solicitation.”

20. Section 122.51 defines “Right of Way Solicitor” as:

Any person who sells or offers for sale any thing or service of any kind, or who seeks any donation of any kind, or who personally hands to or seeks to transmit by hand or receive by hand any thing or service of any kind, whether or not payment in exchange is required or requested, to any person who operates or occupies a motor vehicle of any kind, which vehicle is engaged in travel on or within any portion of any of the streets or roadways in the city, whether or not such vehicle is temporarily stopped in the travel lanes of the road. The term shall not apply to any person who merely holds or displays a sign lawfully permitted to be displayed by a person as long as there is no entry by such person or sign into any portion of the roadway or its median.

21. Section 122.54 then states that, “It shall be unlawful for any person to act as a right-of-way panhandler or solicitor on a prohibited roadway or within 200 feet from the lateral curb or boundary line of an intersection located on the prohibited roadways identified in this section.”¹

22. The “prohibited roadways” in Hollywood are State Road 7/US 441, Federal Highway, A1A/Ocean Drive, Hollywood Boulevard, Johnson Street, and Sheridan Street.

¹ Section 122.51 has its own definition of “soliciting”: “Any request made in person on a street, sidewalk or public place, asking for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the transaction or purchase is a donation. Solicitation shall not include passively standing or sitting with a sign or other indication that one is seeking donations without addressing the request to any specific person.” “Begging” or “Panhandling” is defined as “the same as soliciting.” *Id.* If prohibited, this would be a content-based restriction that would fail strict scrutiny; however, this ordinance does not appear to rely on this definition.

23. The penalty for a violation of any of the solicitation provisions is set forth in Section 122.99 of the City Code, which provides for a fine not to exceed five hundred dollars (\$500.00), a term of imprisonment not to exceed sixty (60) days, or both a fine and imprisonment.

Enforcement of the Ordinances

24. Sections 122.27, 122.31, and 122.54 of the Hollywood City Code have been enforced predominantly against poor and homeless people who were soliciting donations in public places.

25. On August 30, 2018, numerous civil rights organizations notified the City of Hollywood in a letter that §§ 122.50—122.54 were unconstitutional restrictions on speech and requested that the City cease enforcement, repeal the ordinances, and develop constructive approaches to the issues of homelessness and poverty.

26. Upon information and belief, the City did not respond to the letter.

27. Instead, the City has persisted in enforcing the ordinances and continues to cite and arrest people for asking for donations.

28. Since mid-2018 to the present date, over 150 people—all of whom were soliciting for donations—were either cited with a notice to appear in court or arrested and taken to jail for a violation of §§ 122.27, 122.31, or 122.54 of the City Code. One hundred and forty-two people (142) were cited for a violation of § 122.54, eight (8) for a violation of § 122.27, and six (6) for a violation of § 122.31.

29. In 2022, based on the latest point-in-time-count data compiled by Broward County, there were 2,054 people experiencing homelessness in Broward County.

Plaintiff Dean Lutrario

30. Plaintiff Dean Lutrario is sixty-two years old. Mr. Lutrario suffers from a medical disability and is currently without permanent housing.

31. Because he receives limited financial assistance, Mr. Lutrario must peacefully request donations from others to contribute to his survival.

32. To help support himself, Plaintiff engages in peaceful panhandling in the City of Hollywood and requests donations from occupants of cars. He stands on either the sidewalk adjacent to the street, or on a median, or on the edge/shoulder of a city street and verbally requests a donation while holding a sign that requests assistance. If a motorist or an occupant of a stopped car signals to Mr. Lutrario that they want to give him a donation, he walks to the car and accepts it, and then quickly returns to the shoulder, sidewalk, or median and resumes holding his sign. He does not obstruct or interfere with vehicular traffic.

33. Mr. Lutrario is indigent and does not have a permit to panhandle nor does he carry an identification card issued by the Hollywood Director of Licensing.

34. Mr. Lutrario has been repeatedly harassed by the Hollywood police while panhandling. The police typically drive up to where he is panhandling and warn him that if he doesn't stop and leave the area, they will arrest him and take him to jail.

35. Mr. Lutrario has been formally charged with violations of Hollywood solicitation ordinances on four occasions over the past thirty months.

36. On September 28, 2020, Plaintiff was cited by the HPD with a violation of § 122.54. The police issued him a Notice to Appear (NTA) which charged that Plaintiff was acting as a "right-of-way-solicitor" at the intersection of two of the prohibited roadways, Sheridan Street and Federal Highway. The NTA alleged that Plaintiff was panhandling and holding a sign

which stated, “Food and Water. Please Help. Anything Helps.” Because he was homeless and did not have a reliable address, Mr. Lutrario did not receive notice of the date of his court appearance and when he failed to appear for his arraignment, a warrant was issued for his arrest. On February 16, 2022, Plaintiff was arrested on the warrant and taken to jail. At his first appearance hearing while he was in custody, he pled guilty and received a sentence of credit for time served in the county jail.

37. On July 11, 2022, Plaintiff was again cited by the HPD with a violation of § 122.54. The police issued him an NTA which charged that Plaintiff was acting as a “right-of-way-solicitor” on Sheridan and Federal Highway. The NTA alleged that Plaintiff was “seeking a donation” from people in cars at and holding a sign which stated, “Please help food!” On October 6, 2022, the City filed a Nolle Prosequi, and the charges were dismissed.

38. On January 8, 2023, Plaintiff was issued a citation by the HPD for a violation of § 122.31(F). The NTA alleged that Plaintiff was “soliciting for money holding a sign for donations at the above intersection [Sheridan Street and Federal Highway] where signs are posted.” On April 18, 2023, the City filed a Nolle Prosequi, and the charges were dismissed.

39. On January 22, 2023, Plaintiff was charged again with a violation of § 122.31(F) by the same HPD officer who had cited him two weeks earlier. The officer issued him an NTA which alleged that Plaintiff was “holding a sign at the above location [Sheridan Street and Federal Highway] attempting to solicit drivers/persons for money.” On April 18, 2023, the City filed a Nolle Prosequi, and the charges were dismissed.

40. Mr. Lutrario wants to panhandle more in the City of Hollywood but does not because he is afraid of being cited and arrested. Because he has been deterred from panhandling more, he has not been able to obtain the amount of donations that he otherwise would receive

and is constantly struggling to survive. He has also suffered mental and emotional distress from the constant threat and fear of arrest.

41. The ongoing threat of citation and arrest has had a chilling effect on Mr. Lutrario's exercise of his First Amendment rights in the City of Hollywood. Consequently, Plaintiff has suffered and continues to suffer damages and harm for the violation of his constitutional rights under the First Amendment.

CAUSES OF ACTION

COUNT I - FIRST AMENDMENT - FREEDOM OF SPEECH **(Permit Requirement / Section 122.27 of the Hollywood City Code)**

42. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 41 as if set forth herein.

43. At all times relevant hereto, the Hollywood City Commission was the final policymaker for the City of Hollywood for the purpose of adopting ordinances regulating constitutionally protected speech and expressive conduct within the boundaries of the city.

44. Requests for donations are recognized as speech entitled to First Amendment protection.

45. The City's streets and sidewalks are traditional public fora that hold a special position in terms of First Amendment protection because of their historic role as places of public expression.

46. Section 122.27 of the Hollywood City Code is a content-based restriction on speech, as it singles out one subject area of speech—soliciting donations—for different treatment than speech on other subject matters.

47. As a content-based regulation, § 122.27 is subject to strict scrutiny, requiring the City to show that this regulation is narrowly tailored to serve a compelling government interest and is the least restrictive means of serving that interest, to establish its constitutionality.

48. Section 122.27 is not narrowly tailored to, and is not the least restrictive means of serving, any compelling government interest, and is therefore unconstitutional under the First Amendment.

49. Should § 122.27, or any part thereof, be construed as content-neutral rather than content-based, this regulation is nonetheless unconstitutional because it is not a reasonable time, place, and manner restriction, in that it is not narrowly tailored to serve a significant governmental interest, and it does not leave open ample alternative channels of communication.

50. As a direct and proximate result of the City's adoption and ongoing enforcement of § 122.27, Plaintiff has suffered and will suffer irreparable harm and damages, which will continue absent relief.

COUNT II - FIRST AMENDMENT - FREEDOM OF SPEECH
(Solicitation Regulations / Section 122.31 of the Hollywood City Code)

51. Plaintiff realleges and incorporates the allegations in Paragraphs 1 through 41 as if set forth herein.

52. At all times relevant hereto, the Hollywood City Commission was the final policymaker for the City Hollywood for the purpose of adopting ordinances regulating constitutionally protected speech and expressive conduct within the boundaries of the City.

53. Requests for donations are recognized as speech entitled to First Amendment protection.

54. The City's streets and sidewalks are traditional public fora that hold a special position in terms of First Amendment protection because of their historic role as places of public expression.

55. Section 122.31 of the Hollywood City Code is a content-based restriction on speech, as it singles out one subject area of speech—soliciting donations—for different treatment than speech on other subject matters.

56. As a content-based regulation, § 122.31 is subject to strict scrutiny, requiring the City to show that this regulation is narrowly tailored to serve a compelling government interest, and is the least restrictive means of serving that interest, to establish its constitutionality.

57. Section 122.31 is unconstitutional because it is a content-based restriction on speech that is not narrowly tailored to serve compelling state interests, nor is it the least restrictive means of serving any compelling government interest.

58. Should Section 122.31, or any part thereof, be construed as content-neutral rather than content-based, this regulation is nonetheless unconstitutional because it is not a reasonable time, place, and manner restriction, in that it is not narrowly tailored to serve a significant governmental interest, and it does not leave open ample alternative channels of communication.

59. As a direct and proximate result of the City's adoption and ongoing enforcement of § 122.31, Plaintiff has suffered and will suffer irreparable harm and damages, which will continue absent relief.

COUNT III - FIRST AMENDMENT - FREEDOM OF SPEECH
(Prohibition of Right-of-Way Soliciting / Section 122.54 of the Hollywood City Code)

60. Plaintiff realleges and incorporates the allegations in Paragraphs 1 through 41 as if set forth herein.

61. At all times relevant hereto, the Hollywood City Commission was the final policymaker for the City Hollywood for the purpose of adopting ordinances regulating constitutionally protected speech and expressive conduct within the boundaries of the City.

62. Requests for donations are recognized as speech entitled to First Amendment protection.

63. The City's streets and sidewalks are traditional public fora that hold a special position in terms of First Amendment protection because of their historic role as places of public expression.

64. Section 122.54 of the Hollywood City Code is a content-based restriction on speech, as it singles out one subject area of speech—soliciting donations—for different treatment than speech on other subject matters.

65. As a content-based regulation, § 122.54 is subject to strict scrutiny, requiring the City to show that this regulation is narrowly tailored to serve a compelling government interest, and is the least restrictive means of serving that interest, to establish its constitutionality.

66. Section 122.54 is unconstitutional because it is a content-based restriction on speech that is not narrowly tailored to serve compelling state interests, nor is it the least restrictive means of serving any compelling government interest.

67. Should § 122.54, or any part thereof, be construed as content-neutral rather than content-based, this regulation is nonetheless unconstitutional because it is not a reasonable time, place, and manner restriction, in that it is not narrowly tailored to serve a significant governmental interest, and it does not leave open ample alternative channels of communication.

68. As a direct and proximate result of the City's adoption and ongoing enforcement of § 122.54, Plaintiff has suffered and will suffer irreparable harm and damages, which will continue absent relief.

REQUEST FOR RELIEF - ALL COUNTS

WHEREFORE, Plaintiff respectfully requests and seeks the following relief:

A. A declaration that Sections 122.27, 122.31, and 122.54 of the City Code violate the First Amendment to the U.S. Constitution, facially and as applied to Plaintiff.

B. A preliminary and permanent injunction prohibiting the City from enforcing Sections 122.27, 122.31, and 122.54 of the City Code.

C. All damages permitted by law, including but not limited to compensatory and nominal damages.

D. Attorneys' fees and costs; and

E. Any other relief that is just and proper.

Jury Demand

Plaintiff demands trial by jury on all counts alleged above.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division**

DEAN LUTRARIO,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
CITY OF HOLLYWOOD,)	
FLORIDA, a Florida municipal)	
corporation,)	
)	
Defendant.)	
_____)	

DECLARATION OF DEAN LUTRARIO

I, Dean Lutrario, make this Declaration Under Penalty of Perjury, and declare that the statements below are true, and state:

My name is Dean Lutrario. I have reviewed the Verified Complaint above, and state that the facts which pertain to me are true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Dean Lutrario
Dean Lutrario

Date: April 25, 2023