

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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)
 JERRY HILL, SUSAN MYERS, and)
 JEFF DAVIS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF AKRON,)
 DAN HORRIGAN, in his official)
 capacity as Mayor of Akron, and)
 JAMES NICE, in his official capacity)
 as Chief of Police,)
)
)
 Defendants.)
)

Civil Action No.: 5:16-cv-1061

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs Jerry Hill, Susan Myers, and Jeff Davis, respectfully move this Court, under the Constitution of the United States, Fed. R. Civ. P. 65(a), and the Court's equitable powers, for an order preliminarily enjoining Defendants from implementing or enforcing Akron's unconstitutional anti-panhandling ordinance, Akron Ordinance § 135.10. This motion is supported by the attached Memorandum and its several exhibits, as well as the Complaint in this matter. A proposed order is attached.

May 3, 2016

Respectfully submitted,

/s/ Joseph Mead
Joseph Mead (0091903)
2121 Euclid Ave., UR 317
Cleveland OH 44115
Phone: 216-307-5322
j.mead@csuohio.edu

Freda Levenson (0045916)
Elizabeth Bonham (0093733)
ACLU of Ohio
4506 Chester Ave.
Cleveland, OH 44103
Phone: 216-472-2220
Fax: 216-472-2210
flevenson@acluohio.org
ebonham@acluohio.edu

Doron M. Kalir (0088894)
Cleveland-Marshall College of Law
Civil Litigation Clinic
2121 Euclid Ave., LB 138
Cleveland, OH 44115
Phone: 216.687.3948
d.kalir@csuohio.edu

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that on May 3, 2016, a copy of foregoing Motion for a Preliminary Injunction and supporting memorandum, proposed order, and exhibits was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Joseph Mead
Joseph Mead (0091903)
2121 Euclid Ave., UR 317
Cleveland OH 44115
Phone: 216-307-5322
j.mead@csuohio.edu

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR A PRELIMINARY INJUNCTION**

INTRODUCTION

The City of Akron is enforcing a content-based anti-panhandling ordinance that singles out one type of speech—requests for charitable donations—for special restrictions that do not exist for other types of speech. Akron Ordinance § 135.10. These burdens were crafted with the goal—and have the effect—of driving a disliked form of speech and speaker from the public square, and they are not narrowly tailored to further any legitimate government interest. Such content-based discrimination in our public spaces is offensive to the American tradition of free speech, and the ordinance is plainly unconstitutional under a long list of precedent from the Supreme Court, the Sixth Circuit, and federal courts across the country. In fact, as noted below, *every single* federal court to consider the matter over the past several years has reached the same conclusion: anti-panhandling laws like Akron’s violate the Constitutional right to free speech.

The unanimous string of judicial decisions striking down laws like Akron’s was brought to the City’s attention in January, 2016. After three months of study by the City’s law department, Akron City Council President Marilyn Keith acknowledged that the City’s anti-panhandling ordinance was “not as solvent as it should be” under Supreme Court precedent. Dave Nethers, *Akron City Council reacts to threatened suit over panhandling law*, Fox 8 (April 18, 2016) (Ex. A) available at <http://fox8.com/2016/04/18/akron-city-council-reacts-to-threatened-suit-over-panhandling-law/> Yet this Constitutionally-bankrupt law remains on the books, and Akron Police continue to aggressively enforce its restrictions even now, in brazen disregard of the City’s firmly-established First Amendment obligations.

The Constitution is not optional. The City’s continued enforcement of an unconstitutional ordinance inflicts harm on speakers each and every day, requiring this Court to

enter an order preliminarily enjoining the City from enforcing or implementing Ordinance 135.10.

FACTUAL BACKGROUND

“The City of Akron has enacted one of the strictest laws in the country” criminalizing panhandling. Email from Deputy Mayor Lieberth, dated July 20, 2011 (Ex. B). Akron’s ordinance imposes special burdens and limits on speech that “request[s] an immediate donation of money.” Akron Ord. § 135.10. The ordinance’s restrictions do not apply to individuals holding a sign, unless the speaker chooses to address the solicitation to a particular individual. *Id.* Individuals wishing to engage in this type of charitable solicitation must first register with the Akron police and wear a badge. Speakers communicating a need for charity are then bound by various burdensome restrictions on where, when, and how they can express themselves. These restrictions limit panhandlers from being heard by their intended audience, by, for instance, banning their speech from being close to Akron’s major parks, businesses, and institutions. *Id.*

While panhandling has been limited in Akron since 1994, the existing set of restrictions dates to 2006, when a coalition of downtown businesses lobbied Akron Deputy Mayor Dave Lieberth, asking the City to take action against what they perceived to be “too many” panhandlers. Hr’g of Public Safety Committee Mtg., Akron City Council, June 19, 2006 (“Hr’g”) (Exhibit C). Deputy Mayor Lieberth argued to City Council that the additional restrictions on panhandling would be good for the business community in Downtown Akron. *Id.* at 1:30; *see also* Sandra M. Klepach, *Strategy targets begging in Akron: Council, mayor hope stricter rules would cut down on panhandling*, AKRON BEACON JOURNAL June 13, 2006 (“When we survey downtown businesses, panhandling is usually the No. 1 or No. 2 complaint.”). Proponents of the law fretted that people who were asked for money were less likely to come back to the

downtown area. For example, the Deputy Mayor testified that the restrictions were needed to combat “a definite decline in downtown luncheon business,” which “to some extent [is] because [potential patrons] just don’t want to go up against panhandlers on their way to lunch.” Hr’g at 12:50-13:20. Downtown businesses and institutions such as the Art Museum testified in support of the restrictions as well, explaining that some of their patrons did not enjoy being asked by a stranger for money. *Id.*¹

Deputy Mayor Lieberth argued that actual public safety was not the issue; rather, the restrictions were needed because people were made uncomfortable by panhandlers’ speech:

Downtown is a safe neighborhood by and large by the statistics. But people remain afraid just because there is a large concentration of panhandling that goes on on Main Street at all hours of the day and night. And just being approached by someone who is larger than you; if you are female, by someone who is male; by someone who is looking you in the eye ... is intimidating behavior.

Hr’g at 12:00-12:30.

Having heard the preferences of a few business owners, Akron City Council adopted the current set of rules to try to reduce the number and visibility of panhandlers. Deputy Mayor Lieberth explained, “[b]y expanding the areas where panhandling is prohibited, by requiring registration, [the law] will have a deterrent effect” on panhandling. *Id.* at 7:00-7:30. Another supporter echoed this, saying that the registration requirement is likely to cut down on

¹ The Deputy Mayor also explained that “Akron as a city has quality programs in place to manage hungry and homeless people. . . What we want people to do is give money to those programs instead.” Klepach, *Strategy targets begging in Akron: Council, mayor hope stricter rules would cut down on panhandling*, AKRON BEACON JOURNAL, June 13, 2006. Obviously, a government’s preference for some causes over others gives it no power to drive speech in support of disfavored causes from the marketplace of ideas. *E.g., Riley v. Nat’l Fed’n of the Blind, Inc.*, 487 U.S. 781, 790–91 (1988).

panhandlers “because I would figure that 99 out of 100 of them won’t go and get registered.” *Id.* at 31:15-31:20 (testimony of G. Sikowski).

In the preamble to the Anti-Panhandling Ordinance, Akron City Council codified its purpose to reduce the prevalence and visibility of one form of disliked speech. The preamble explains “excessive and aggressive panhandling has become a concern to business and restaurant owners and their patrons,” and that limits on panhandling was needed to “protect[] . . . enjoyment of public spaces, particularly in the downtown area.” Ord. 356-2006 (Exhibit D). It is in the public interest, explains the preamble, to make public areas “inviting for residents and visitors:” “persons should be able to move freely upon the streets and sidewalks of the city without undue interference from or intimidation or harassment by panhandlers.” *Id.*

Since it was enacted, the law has been regularly enforced through tickets, arrests, and even jail time.² Like hundreds of others, plaintiffs have been required to obtain a license to engage in their speech. Hill Decl. ¶ 6 (Ex. E); Myers Decl. ¶ 1 (Ex. F); Davis Decl ¶2 (Ex. G). Also like hundreds of others, plaintiffs have been stopped, questioned, insulted, or told to leave by police officers relying on the Anti-Panhandling Ordinance. Hill Decl. ¶ 11 (“Every once in awhile, an Akron Police Officer will tell me I’m not allowed to hold up a sign. One officer told me I am a ‘stain on society.’ Another said that I made the neighborhood look ‘ugly.’ Another said, ‘why don’t you go get a f***ing job.’”); Myers Decl. ¶ 6 (“Every once in a while, a police officer asks to see my license and tells me I need to leave the corner or I’ll be arrested.”); Davis Decl ¶ 5 (“I was told not to stand in front of a business or I would be arrested.”).

² Earlier this year, Jeffrey Boyd Brown was sentenced to 30 days in jail—22 suspended, 8 served—for unlawful panhandling and trespass. Akron Muni. Ct. Case No. 1601486, <https://courts.ci.akron.oh.us/cases/akroncourtcases.nsf/Sentences?ReadForm&CATYPE=Crimna1&CASENUM=1601486&COUNTNUM=1>

These restrictions cabin the ability of Plaintiffs and many others in Akron to express their message of personal need. Plaintiffs are limited in whom they can reach, where they can speak, and how they can communicate with their intended audience. And they face the continued threat of being arrested, ticketed, or required to “move along” by the Akron police if they are perceived as not complying with the strictures of the ordinance while expressing themselves.

STANDARD OF REVIEW

Plaintiffs challenging a content-based restriction on speech are presumptively entitled to a preliminary injunction. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666, 671 (2004). A court considers four factors when deciding whether to grant a preliminary injunction: 1) Whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits; 2) Whether the plaintiff has shown irreparable injury; 3) Whether the issuance of a preliminary injunction would cause substantial harm to others; 4) Whether the public interest would be served by issuing a preliminary injunction. *Newsom v. Norris*, 888 F.2d 371, 373 (6th Cir. 1989) (citation omitted). In light of our national commitment to First Amendment freedoms, each of these factors tip sharply in favor of a preliminary injunction against a content-based restriction on speech *unless* the government comes forward with sufficient evidence to meet a heavy burden of justifying the law’s restrictions. *Ashcroft*, 542 U.S. at 666, 671.

To begin, Plaintiffs challenging a content-based restriction are “deemed likely to prevail”—and therefore entitled to a preliminary injunction—unless the Government comes forward with proof that there is no less restrictive alternative that will fulfill its compelling interests. *Ashcroft*, 542 U.S. at 666. The First Amendment places the heavy burden of justifying content-based restrictions on speech “entirely upon the Government,” which can succeed only if it can prove that the restrictions meet strict scrutiny, “the most demanding test known to

constitutional law.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). “When a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor.” *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Likewise, “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (citations and quotations omitted). Thus, Plaintiffs are entitled to a preliminary injunction unless the Government can meet its high burden of justifying its restrictions on speech.

LEGAL ARGUMENT

I. Plaintiffs are Likely to Prevail on their Claim that the City of Akron’s Content-Based Anti-Panhandling Ordinance Violates the First Amendment

“Consistent with the traditionally open character of public streets and sidewalks, we have held that the government's ability to restrict speech in such locations is very limited.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). Both the Supreme Court and the Sixth Circuit have repeatedly held that speech that solicits a donation is entitled to the highest level of First Amendment protection. *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 324 (6th Cir. 2015) (collecting cases).

Laws that target speech based on its content are the most offensive to the First Amendment, and must be closely scrutinized under strict scrutiny, “the most demanding test known to constitutional law.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). As the Supreme Court clarified last year, 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 the law is driven by

an objection to the content of a message. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015) (internal citations, quotations, and alterations omitted).

The Supreme Court's holdings are fatal to Akron's anti-panhandling ordinance. Section 135.10 is unconstitutional as a content-based restriction on speech under either of *Reed's* alternative tests: The restriction discriminates against one type of speech in both the text of the ordinance *and* the motive behind its enactment. Akron's ordinance thus faces the same fate as *every single* anti-panhandling law considered by *every single* federal court in recent years, from Maine to Hawaii. *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412 (7th Cir. 2015); *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015); *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549 (4th Cir. 2013); *Thayer v. City of Worcester*, --- F. Supp. 3d ---, 2015 WL 6872450 (D. Mass. Nov. 9, 2015); *McLaughlin v. City of Lowell*, --- F. Supp. 3d ---, 2015 WL 6453144 (D. Mass. Oct. 23, 2015); *Browne v. City of Grand Junction, Colorado*, --- F. Supp. 3d ---, 2015 WL 5728755 (D. Colo. Sept. 30, 2015); *Norton & Otterson v. City of Springfield*, Case No. 3:15-cv-03276, ECF #14 (C.D. Ill. Sept. 23, 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014); *Guy v. County of Hawaii*, 2014 WL 4702289, at *5 (D. Hawaii 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013); *see also Planet Aid v. City of St. Johns*, 782 F.3d 318, 328 (6th Cir. 2015); *Cutting v. City of Portland, Me.*, No. 14-1421, 2015 WL 5306455, at *7 (1st Cir. Sept. 11, 2015).³ In light of this overwhelming precedent, many other cities have conceded

³ Two recent appellate decisions initially upheld anti-panhandling ordinances, but each was subsequently vacated in light of new Supreme Court guidance, and ultimately led to a final judgment declaring the ordinances unconstitutional. *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014), *rev'd*, 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*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015).

the unconstitutionality of similar restrictions on panhandling by stipulating to injunctions or halting the enforcement of anti-panhandling laws without waiting for a Court to rule.⁴ Indeed, just last month, the mayor of New Bedford, Massachusetts said that he would refuse to enforce a proposed anti-panhandling law *modeled after the City of Akron's* because it violated the First Amendment. Adam Bagni, *New Bedford mayor calls proposed panhandling law "unconstitutional,"* available at <http://turnto10.com/politics/new-bedford-mayor-calls-proposed-panhandling-law-unconstitutional> ("We're not going to enforce an unconstitutional act. That's not what we do here in New Bedford. We abide by the law. We abide by the constitution.").

A. Akron's Panhandling Ordinance is, on its face, a Content-Based Restriction on Speech that Must Satisfy Strict Scrutiny

Any law that draws distinctions based on speech's "subject matter . . . function or purpose" is a content-based rule that is presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). Akron's anti-panhandling ordinance is clearly such a law. Whether the Ordinance's criminal prohibitions apply to a speaker depends on the content of the person's speech: a request for money is treated differently than any other type of speech. Under both logic and precedent, this makes the ordinance a content-based restriction. *See Reed*, 135 S. Ct. at 2229 (citing an "improper solicitation" regulation as a content-based restriction); *Planet Aid*, 782 F.3d at 328 (restriction on "charitable solicitation and giving" was content-based);

⁴ See, for example, Providence, Rhode Island, <http://www.golocalprov.com/news/new-providence-to-stop-enforcing-anti-panhandling-ordinance>; Denver, Colorado, http://www.denverpost.com/news/ci_28998413/denver-proposes-rollback-panhandling-rules-response-rulings; Madison, Wisconsin, http://host.madison.com/wsj/news/local/govt-and-politics/under-pressure-madison-is-backing-off-controversial-panhandling-ordinance/article_cffb9e4f-84e5-5be6-8e65-6e5094f736a0.html

accord, e.g., Norton, 806 F.3d at 412 (concluding anti-panhandling law was content-based).

This alone triggers strict scrutiny, which is fatal to the ordinance here.

B. The City’s Censorial Purpose of Deterring a Constitutionally-Protected Form of Speech Also Renders the Ordinance Unconstitutional

Yet an additional, independent reason for why the anti-panhandling law is unconstitutional is that it was enacted with the unconstitutional purpose of silencing requests for help simply because some business owners or downtown visitors would prefer not to hear it. This is the classic unconstitutional motive. “The Supreme Court . . . has repeatedly affirmed the principle that constitutional rights may not be denied simply because of hostility to their assertion or exercise.” *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 252 (6th Cir. 2015) (en banc); *see also, e.g., McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (“[T]he government may not selectively shield the public from some kinds of speech on the ground that they are more offensive than others.” (internal quotations and alterations omitted)); *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.”). A censorial purpose is an unconstitutional purpose; a censorial purpose is fatal to the ordinance. *E.g., Minneapolis Star and Tribune Co. v. Minnesota Com’r of Revenue*, 460 U.S. 575, 580 (1983).

Contrary to the concerns identified in support of the anti-panhandling law, 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. Thus, even if speech “cause[s] offense or ma[k]e[s] listeners uncomfortable, such offense or discomfort would not give the [Government] a content-neutral justification to restrict the speech.” *Id.* at 2532. Quite to the contrary, restricting a category of speech because some members of the community would prefer not to hear it is exactly what the First Amendment prohibits.

McLaughlin v. City of Lowell, 2015 WL 6453144, at *7 (D. Mass. Oct. 23, 2015) (“The First Amendment does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed.”); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014) (“Business owners and residents simply not liking panhandlers in acknowledged public areas does not rise to a significant governmental interest.”). The Anti-Panhandling Ordinance’s unconstitutional purpose supplies an independent reason to strike it down.

C. The Ordinance Falls Well Short of Meeting Demands of Strict Scrutiny.

Content-based laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed*, 135 S. Ct. at 2226. This means that the government must point to a compelling (and non-censorial) governmental objective (such as protection of human life) that cannot be furthered with a more specific law. This is “the most demanding test known to constitutional law.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015) (quotation omitted). “The burden for justifying such restrictions on speech falls entirely upon the government.” *Id.* Plaintiffs challenging content-based laws are “deemed likely to prevail” unless the government meets its heavy burden of justifying the curtailment of Constitutional rights. *Ashcroft*, 542 U.S. at 670.

This presumption of unconstitutionality of content-based laws is exceedingly difficult to overcome. Virtually every law fails to survive the strict scrutiny analysis. *See United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012) (“[C]ontent-based restrictions on speech have been permitted, as a general matter, only when confined to the few ‘historic and traditional categories [of expression] long familiar to the bar’” (internal quotations omitted)). Over the past few years,

the Sixth Circuit has *twice* struck down laws that imposed restrictions on charitable solicitation. *Planet Aid*, 782 F.3d at 328; *Speet*, 726 F.3d at 880. In fact, to our knowledge, *no* federal court has *ever* found an anti-panhandling law—even one less restrictive of speech than Akron’s—to satisfy strict scrutiny. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015); *McLaughlin v. City of Lowell*, 2015 WL 6453144 (D. Mass. Oct. 23, 2015); *Browne v. City of Grand Junction, Colorado*, 2015 WL 3568313, at *1 (D. Colo. June 8, 2015); *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F. Supp. 2d 908, 917 (D. Idaho 2014); *Guy v. County of Hawaii*, 2014 WL 4702289, at *5 (D. Hawaii 2014); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, 631 (S.D.W.Va. 2013). Recognizing the futility of the argument, other cities have not bothered to defend their laws against a strict scrutiny analysis. *Norton*, 806 F.3d at 413; *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 797 (9th Cir. 2006) (“As the City concedes, the solicitation ordinance cannot survive strict scrutiny.”).

Akron’s Anti-Panhandling Ordinance’s restrictions bear little relationship to any compelling, non-censorial government interest. Consider, for example, the ordinance’s time restrictions, which ban solicitation “on private property between the hours of sunset and 9:00 a.m.” Akron Ord. §135.10(B). During winter months, this can mean that solicitation in the city must stop as early as five in the afternoon. This provision makes it illegal for the food bank, the art museum, the University of Akron, or anyone else in the city to request a donation after sunset - even on their own property. There has been no evidence offered before, during, or after the ordinance’s enactment which would or could explain how such a broad and clumsy ban is carefully written to further a compelling interest. Indeed, both the Supreme Court and the Sixth Circuit have struck down similar time restrictions on solicitation. *Ohio Citizen Action v. City of*

Englewood, 671 F.3d 564, 580 (6th Cir. 2012) (striking down 6 pm curfew for door-to-door solicitation); *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1558 (7th Cir. 1986) (“Watsseka has failed to offer evidence that its 5 p.m. to 9 p.m. ban on solicitation is narrowly tailored to achieve Watsseka's legitimate objectives. Watsseka failed to show both the necessary relationship between the ban and its objectives, and that it could not achieve its objectives by less restrictive means.”), *aff'd without opinion*, 479 U.S. 1048 (1987).⁵

Another illustration of the ordinance’s plainly unconstitutional sweep comes from its “place” restrictions which outlaw solicitation in zones around churches, the Akron Art Museum, the Lock 3 Park, the Akron Civic Theater, Canal Park Stadium, outdoor restaurants, and various other landmarks within the City. Akron Ord. § 135.10(C). No valid government objective was offered for nor is served by establishing these zones; such geographical restrictions may only be explained by the censorial goal of sparing churchgoers, museum patrons, and park visitors the indignity of being exposed to one type of speech. This is not a valid goal of government. Geographic restrictions like these are not narrowly tailored to further any compelling interest. As a result, such geographic bans have been repeatedly struck down. *See, e.g., Norton*, 806 F.3d at 413 (striking down ban on panhandling in downtown district); *Thayer*, 2015 WL 6872450, at *15 (striking down 20-foot no panhandling buffer zones around ATMs, outdoor cafés, bus stops); *McLaughlin*, 2015 WL 6453144 (similar); *Browne*, 2015 WL 5728755, at *13; *Wilkinson v. Utah*, 860 F.Supp.2d 1284, 1290 (D. Utah 2012).

⁵ “[L]ower courts are bound by summary decisions by this Court until such time as the Court informs them that they are not.” *Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (internal alterations and quotations omitted).

The ordinance's provisions that proscribe the manner in which panhandlers may ask for donations are also unconstitutional. The ordinance prohibits a panhandler from "blocking the path" of a person or asking a person to reconsider a "no" answer. Akron Ord. § 135.10(D). Although the City can regulate "true threats," *Virginia v. Black*, 538 U.S. 343, 359 (2003), standing in the middle of a sidewalk or asking a person who said "no" to reconsider hardly meets this standard. These provisions are not sufficiently related to the City's purported goal of public safety (or any other compelling interest) to be justified. *See, e.g., Thayer*, 2015 WL 6872450 (striking down provisions against blocking path and following a person after they gave a negative response); *McLaughlin*, 2015 WL 6453144, at *9 ("The bans on following a person and panhandling after a person has given a negative response are not the least restrictive means available"); *Browne*, 2015 WL 5728755, at *12-13 ("[T]he Court does not believe[] that a repeated request for money or other thing of value necessarily threatens public safety.").

The ordinance's ban on so-called "false and misleading" panhandling is also unconstitutional. Akron Ord. § 135.10(E). False speech is not automatically outside constitutional protection, *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012), and the City must do more to make certain types of statements illegal than declare them to be "false" or "misleading" in a content-discriminatory fashion. Moreover, even the City's general interest in preventing actual fraud would not justify *content-based* prohibitions on fraud. For example, even though a state may regulate obscenity, "it may not prohibit . . . only that obscenity which includes offensive *political* messages." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992) (striking down content-based statute that regulated fighting words, even though government could have outlawed the same conduct in a content-neutral manner). Here, the City has no compelling interest for treating fraud that is carried out in connection with an immediate

charitable solicitation differently from fraud carried out in, for example, a business transaction. *McLaughlin*, 2015 WL 6453144, at *9 (striking down law against coercive panhandling).

Finally, perhaps the most odious provision of the ordinance is its mandate that all solicitors pre-register with the police by visiting a downtown police station, filling out an application, being photographed and fingerprinted, and obtaining a license before asking anyone for help. Akron Ord. § 135.10(F). “It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” *Watchtower Bible & Tract Soc’y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002). “It is therefore not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum.” *Berger v. City of Seattle*, 569 F.3d 1029, 1039 (9th Cir. 2009) (en banc). In fact, shortly before Akron adopted its registration mandate, the City of Cincinnati repealed its panhandler registration rules following an adverse court decision. *Henry v. City of Cincinnati, Ohio*, 2005 WL 1198814, at *10 (S.D. Ohio 2005).⁶

Many of the restrictions contained in Akron’s Anti-Panhandling Ordinance would not pass the laugh test; none are justified with the amount of evidence and careful tailoring even close to what strict scrutiny demands. As overwhelming precedent indicates, the City is unlikely

⁶ As Akron police captain Daniel Zampelli explained, the registration requirement would increase the “hassle factor” for panhandlers. *Council tightens restrictions on beggars: City hopes to satisfy merchants while avoiding free speech suit*. AKRON BEACON J., 7/11/2006. Or, as the Act’s chief proponent, Deputy Mayor Lieberth, put it: “By requiring registration, we make it difficult for people to come into Akron and panhandle and then go back to their communities.” Sherry Karabin, *Business owners weigh in on the city’s panhandling ordinance*, AKRON LEGAL NEWS, May 27, 2011, available at <http://www.akronlegalnews.com/editorial/233>. Clearly, “hassl[ing]” speakers and “mak[ing] it difficult” to speak are not legitimate government interests.

to meet its heavy burden in defense of the law, and Plaintiffs are likely to prevail on their challenge.⁷

II. The Other Factors Support Issuance of a Preliminary Injunction

With the strong likelihood of success on Plaintiffs' First Amendment case, a preliminary injunction is plainly appropriate. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). "Even threats of arrest or being told to 'move along' by the police violate Plaintiff's rights" and constitute irreparable harm. *Jefferson v. Rose*, 869 F. Supp. 2d 312, 318 (E.D.N.Y. 2012) (enjoining police from arresting or threatening to arrest panhandlers). The City has no interest in violating the First Amendment, and "it is always in the public interest to prevent the violation of a party's constitutional rights." *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014) (quotation omitted). The Court should issue a preliminary injunction to prevent continued enforcement of an unconstitutional law. "To do otherwise would be to do less than the First Amendment commands." *Ashcroft*, 542 U.S. at 670.

CONCLUSION

For these reasons, the Court should grant Plaintiffs' Motion for a Preliminary Injunction and Enjoin Enforcement or Implementation of Akron Ordinance § 135.10.

⁷ Indeed, Akron's anti-panhandling ordinance is so ill-suited to further any legitimate government purpose that it would fail even under the more forgiving intermediate scrutiny. Even under this standard, a law "still must be narrowly tailored to serve a significant governmental interest." *McCullen*, 134 S. Ct. at 2534 (quotation omitted). "As the Court explained in *McCullen*, however, 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) (emphasis in original). Akron's anti-panhandling ordinance falls well short of satisfying even this easier test. *See, e.g., id.* at 232 (striking down content-neutral restrictions used against panhandlers); *Cutting v. City of Portland, Me.*, 802 F.3d 79 (1st Cir. 2015) (same); *Thayer v. City of Worcester*, 2015 WL 6872450, at *14 (D. Mass. 2015) (same).

May 3, 2016

Respectfully submitted,

/s/ Joseph Mead

Joseph Mead (0091903)
2121 Euclid Ave., UR 317
Cleveland OH 44115
Phone: 216-307-5322
j.mead@csuohio.edu

Freda Levenson (0045916)
Elizabeth Bonham (0093733)
ACLU of Ohio
4506 Chester Ave.
Cleveland, OH 44103
Phone: 216-472-2220
Fax: 216-472-2210
flevenson@acluohio.org
ebonham@acluohio.edu

Doron M. Kalir (0088894)
Cleveland-Marshall College of Law
Civil Litigation Clinic
2121 Euclid Ave., LB 138
Cleveland, OH 44115
Phone: 216.687.3948
d.kalir@csuohio.edu

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JERRY HILL, SUSAN MYERS, and)
JEFF DAVIS,)

 Plaintiffs,)

 v.)

CITY OF AKRON,)
DAN HORRIGAN, in his official)
capacity as Mayor of Akron, and)
JAMES NICE, in his official capacity)
as Chief of Police,)

 Defendants.)

Civil Action No.: 5:16-cv-1061

[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION

The matter came before the Court on the Plaintiffs’ Motion for a Preliminary Injunction. After consideration of the parties’ legal arguments, the allegations in the Plaintiffs’ complaint, and the exhibits attached to the Plaintiffs’ motion, the Court concludes that a preliminary injunction is needed to prevent the violation of Constitutional rights.

When deciding whether to issue a preliminary injunction, the Court considers four factors:

- (1) the movant's likelihood of success on the merits;
- (2) whether the movant will suffer irreparable injury without a preliminary injunction;
- (3) whether issuance of a preliminary injunction would cause substantial harm to others;
- and (4) whether the public interest would be served by issuance of a preliminary injunction.

Nat'l Viatical, Inc. v. Universal Settlements Int'l, Inc., 716 F.3d 952, 956 (6th Cir. 2013).

Because the burden of defending a content-based law is always on the government, Plaintiffs challenging a content-based law like the City of Akron's are "deemed likely to prevail" unless the government is able to meet its burden of proof. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004). When, as here, "a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor." *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (quotation omitted). All four factors favor the issuance of a preliminary injunction in this case.

After reviewing the allegations in Plaintiffs' complaint and the exhibits attached to the Plaintiffs' motion for a preliminary injunction, and the legal argument set forth in the parties' briefs, the Court finds that Plaintiffs are likely to prevail on their claim that Defendants' content-based restriction on charitable solicitation violates the First Amendment. The Court also finds that Plaintiffs face irreparable harm if an injunction is not entered. When, as here, "constitutional rights are threatened or impaired, irreparable injury is presumed." *Id.* at 560. Similarly, an injunction requiring Defendants to follow the Constitution will not harm Defendants. Finally, the Constitution defines the public interest in this case, which favors an injunction preserving Constitutional rights.

For the foregoing reasons, the Court grants Plaintiffs' Motion for a Preliminary Injunction.

Accordingly, it is hereby ORDERED:

(1) Plaintiffs' Motion for a Preliminary Injunction is GRANTED;

(2) Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the forgoing, are hereby ENJOINED and RESTRAINED from enforcing, implementing, or applying Akron Ordinance § 135.10;

(3) It is further ORDERED that Plaintiffs are not required to provide security because Defendants are unlikely to sustain costs and damages arising out of this injunction and because the injunction is in the public interest. *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995).

It is so ordered.

Date: _____

Akron City Council reacts to threatened suit over panhandling law

POSTED 6:54 PM, APRIL 18, 2016, BY DAVE NETHERS



AKRON, Ohio - City council members met in executive session on Monday with their attorneys discussing what they will do about a threatened lawsuit over the city's decade old panhandling law.

The law requires panhandlers to register and get a permit.

Police say it does not apply to those people who stand peacefully on street corners holding signs, but only to the people who aggressively approach others demanding money, food, cigarettes, or anything.

It is a law that rarely results in arrests or citations.

But ACLU cooperating attorney Joseph Mead says it also violates the First Amendment right of freedom of speech and is threatening a costly lawsuit against the City of Akron unless the law is immediately repealed.

"It's obtaining a license; it's registering; it's doing something before you are allowed to speak so the prior approval that you need to speak is what's problematic," Mead explained to Fox 8 News on Monday.

"Typically when you or I want to just engage in conversation in a public space we don't need to ask for permission. Requiring individuals who just want to exercise the right to free speech to first ask the government for permission to do so runs afoul of the most basic longstanding guarantee that you are allowed to speak without asking the government first," said Mead.

He said many federal cases in the past five years have overturned laws like that in Akron.

City council adjourned the meeting taking no action on Monday.

may be coming.

"What we are going to do is look at the law that we have right now and even if it has been amended in the past we want to look at the basis for why it was done. Are we actually addressing what we need to address so we are protect rights of the citizens as well as the rights of the community?" said Keith.

She acknowledged that legislation can evolve and change over time.

"The Supreme Court has overturned something in the past which now makes what we have crafted not as solvent as it should be, so that is why we have to go back and look and make sure that it can withstand the question," said Keith.

Mead says other communities in the area that currently have panhandling laws may be subject to the threat of a lawsuit as well.

He says when a letter was sent to the City of Youngstown over a 'no begging' law there, the law was repealed.

Mead says there are ways to address panhandling without violating freedom of speech.

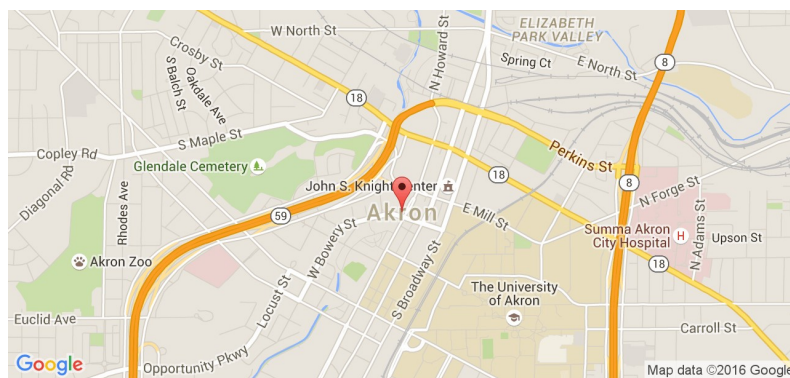
"Enforce laws that are already on the books in a fair and even-handed way, laws that have nothing to do with speech, laws like disorderly conduct, menacing, laws that regulate behavior instead of the words that are being spoken by an individual," said Mead.

Read more here.

RELATED STORIES

Akron City Council reacts to threatened suit over panhandling law

Akron attempting to crack down on panhandling



House Speaker Paul Ryan Holds Town Hall With Millennials At Georgetown University

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Akron attempting to crack down on panhandling



Gun maker seeks dismissal of lawsuit over Newtown shooti



Canton is third city in state to approve outdoor drinking area ordinance



Akron's new mayor Daniel Horrigan takes office



Jackson, Mississippi councilman says throw rocks at police chasing petty crooks



Judge sides with Apple over feds in New York



Towpath bridge in Akron destroyed by arson



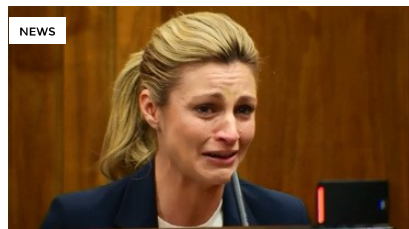
Akron to remove portable speeding cameras throughout the city



Akron police: Suspect shot aft attacking humane officer. threatening police with knife



Disnev sued for replacing American workers with foreigners



Whv is the Erin Andrews nude video still online?



City council says Indians must have permit to hang banners on utility poles



I-Team finds drivers still getting red light tickets, though city of East Cleveland not following state law

Linda Fry

From: Linda Fry <lfry@downtownakron.com>
Sent: Thursday, July 25, 2013 4:49 PM
To: 'Suzie Graham'
Subject: FW: Panhandling Brochure

This email exchange with Dave goes back two years. I haven't seen anything about it since.

From: Lieberth, Dave [<mailto:DLieberth@akronohio.gov>]
Sent: Wednesday, July 20, 2011 2:10 PM
To: Linda Fry
Cc: Suzie Graham
Subject: RE: Panhandling Brochure

Try this:

The City of Akron has enacted one of the strictest laws in the country -- consistent with First Amendment protections extended to panhandlers by federal courts -- to combat abuses by people asking for money. Panhandlers must register with the city (at no cost), display city-issued identification when asking for money, and obey the restrictions set forth below. The city is NOT permitted by federal courts to prevent people from "passively" asking for money - such as holding a sign declaring they are in need.

Dave Lieberth
Deputy Mayor Administration/ Chief of Staff
166 S. High St.
Akron, OH 44308
Phone: 330.375.2345
Fax: 330.375.2468
E-Mail: dlieberth@akronohio.gov

From: Linda Fry [<mailto:lfry@downtownakron.com>]
Sent: Wednesday, June 29, 2011 10:04 AM
To: Lieberth, Dave
Cc: Suzie Graham
Subject: Panhandling Brochure

Hi Dave,

I have attached a digital version of the Panhandling Brochure.

I was going to wait until the new safety legislation relating to panhandlers was passed so it could be included, but I understand that could be a long process.

Suzie said you wanted to add some information about begging.

Linda Fry, Project Director

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

)	
)	
JERRY HILL, SUSAN MYERS, and)	
JEFF DAVIS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 5:16-cv-1061
)	
CITY OF AKRON,)	
DAN HORRIGAN, in his official)	
capacity as Mayor of Akron, and)	
JAMES NICE, in his official capacity)	
as Chief of Police,)	
)	
)	
Defendants.)	
)	

EXHIBIT C

Exhibit C is an audio recording that cannot be filed through the Court's electronic filing system. It will be filed manually with the Clerk of the Court.

MR/EBD/tlc 7-10-06
Requested by the Mayor

RECEIVED
CLERK OF COUNCIL
CITY OF AKRON

Public Safety

JUL 10 2016
SUBSTITUTE OFFERED
AS AN AMENDMENT

Offered by SHEALEY

ORDINANCE NO. 356 - 2006 amending and/or supplementing Title 13, Chapter 135, Section 135.10 of the Code of Ordinances by adding locations where panhandling is prohibited and requiring registration of panhandlers; and declaring an emergency.

WHEREAS, the City of Akron has an important, substantial and significant governmental interest in protecting public safety and welfare and protecting the public from fraud, intimidation, crime and undue annoyance on public streets and sidewalks and in their homes; and

WHEREAS, persons should be able to move freely upon the streets and sidewalks of the city without undue interference from or intimidation or harassment by panhandlers; and

WHEREAS, excessive and aggressive panhandling has become a concern to business and restaurant owners and their patrons; and

WHEREAS, additional panhandling regulation is necessary to ensure protection of pedestrian traffic and free access and enjoyment of public places, particularly in the downtown area; and

WHEREAS, soliciting financial support is subject to reasonable regulation; and

WHEREAS, the City of Akron has an important, substantial and significant interest in regulating panhandling as necessary to serve these interests; and

WHEREAS, it is in the public interest to regulate the time, place and manner of panhandling in order to promote public safety and order and to make public areas safe and inviting for residents and visitors; and

WHEREAS, Council has reviewed studies and reports and considered testimony as to the effects of panhandling on businesses and individuals; and

WHEREAS, based upon its review of the studies, and testimony and its own familiarity with and knowledge of the harmful effects in the City of Akron, Council determines that regulation of panhandling is necessary; and

WHEREAS, Council intends that this ordinance address the inherently disruptive and frequently intimidating nature of panhandling; and

WHEREAS, Council recognizes that there remain numerous places and means to solicit a monetary donation consistent with the provisions of this ordinance.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That Title 13 "General Offenses", Chapter 135 "Offenses Against Persons," Section 135.10 "Unlawful Panhandling and Fraudulent Solicitation" of the Code of Ordinances of the City of Akron, be and is hereby amended and/or supplemented to read as follows:

135.10 Unlawful panhandling and fraudulent solicitation.

A. **DEFINITIONS.** For purposes of this section, "panhandling" means any solicitation made in person requesting an immediate donation of money. The purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is, in substance, a donation shall be considered a donation. "Panhandling" does not include passively standing or sitting with a sign or other non-verbal indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

B. **TIME OF PANHANDLING.** No person shall panhandle after sunset or before sunrise on any street, sidewalk, public right-of-way, or other public property.

C. **PLACE OF PANHANDLING.** No person shall panhandle any person(s) **WHEN THE PERSON PANHANDLING OR THE PERSON BEING PANHANDLED IS IN ANY OF THE FOLLOWING PLACES:**

1. At a bus stop or train stop;
2. In a public transportation vehicle or facility;
3. In a vehicle ~~on the street~~; **WITHIN THE PUBLIC RIGHT-OF-WAY;**
4. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT OF ANY BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR CHECK CASHING BUSINESS DURING ITS BUSINESS HOURS OR WITHIN TWENTY FEET OF ANY AUTOMATED TELLER MACHINE;**
5. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO CANAL PARK STADIUM;**
6. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO AKRON CIVIC THEATRE;**
7. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO LOCK 3 PARK;**
8. **IN OR AT ANY SIDEWALK CAFÉ FOR WHICH A PERMIT HAS BEEN ISSUED IN ACCORDANCE WITH SECTION 98.05;**
9. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO THE AKRON ART MUSEUM;**
10. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO ANY SCHOOL OR CHURCH;**
4. 11 On private property, ~~unless the panhandler has written permission from the owner or occupant of the private property~~ **IF THE OWNER, TENANT, OR LAWFUL OCCUPANT HAS ASKED THE PERSON NOT TO SOLICIT ON THE PROPERTY, OR HAS POSTED A SIGN CLEARLY INDICATING THAT SOLICITATIONS ARE NOT WELCOME ON THE PROPERTY.**

D. **MANNER OF PANHANDLING.** No person shall panhandle on any street, sidewalk, public right-of-way, or public property by:

1. Blocking the path of the person being asked for a donation;
2. Following **AND CONTINUING TO SOLICIT** a person who walks away from the panhandler; or
3. Making any statement, gesture, or other communication by which the panhandler knowingly causes another to believe that the panhandler will cause physical harm to the person or property of the other person.

~~F. 4. No person shall panhandle~~ Stating that the donation is needed for a specific purpose and then spending the donation received for a different purpose.

E. **FALSE OR MISLEADING SOLICITATION.** No person shall knowingly make any false or misleading representation in the course of panhandling. False or misleading representations include, but are not limited to, the following:

1. Stating that the donation is needed to meet a specified need, when the panhandler already has sufficient funds to meet that need and does not disclose that fact;
2. Stating that the donation is needed to meet a need which does not exist;
3. Stating that the panhandler is from out of town and stranded, when that is not true;
4. Wearing a military uniform or other indication of military service, when the panhandler is neither a present nor former member of the service indicated;
5. Wearing or displaying an indication of physical disability, when the panhandler does not suffer the disability indicated;
6. Use of any makeup or device to simulate any deformity; or
7. Stating that the panhandler is homeless, when the panhandler is not.

F. **REGISTRATION REQUIRED.** **NO PERSON SHALL PANHANDLE WITHOUT A REGISTRATION ISSUED BY THE CHIEF OF POLICE EXCEPT AS PROVIDED IN SUBSECTION (6). THE REGISTRATION SHALL INCLUDE THE NAME AND PHOTOGRAPH OF THE PERSON TO WHOM IT IS ISSUED. ANY PERSON WHO HAS BEEN REGISTERED SHALL DISPLAY THE REGISTRATION IN PLAIN VIEW ON THE FRONT OF THAT PERSON AT ALL TIMES WHILE PANHANDLING.**

1. **THE CHIEF OF POLICE SHALL ISSUE THE REGISTRATION, WITHOUT FEE, TO ANY ELIGIBLE PERSON WHO PRESENTS HIMSELF OR HERSELF AT THE H.K. STUBBS JUSTICE CENTER, STATES HIS OR HER TRUE NAME, PRESENTS A PHOTO IDENTIFICATION OR SIGNS A DECLARATION UNDER PENALTY OF PERJURY THAT HE OR SHE HAS NO SUCH IDENTIFICATION, AND PERMITS HIMSELF OR HERSELF TO BE PHOTOGRAPHED AND FINGERPRINTED.**

2. **A PERSON IS INELIGIBLE TO REGISTER AND/OR MAY HAVE HIS OR HER REGISTRATION REVOKED IF, AND ONLY IF, WITHIN THE PAST TWO YEARS, HE OR SHE:**

A. **HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SECTION 135.10(B), (C), OR (F);**

B. **HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SECTION 135.10(D) OR (E) OR TWO OR MORE OFFENSES UNDER THE LAWS OF ANY JURISDICTION WHICH INVOLVE AGGRESSIVE OR INTIMIDATING BEHAVIOR WHILE PANHANDLING OR FALSE OR MISLEADING REPRESENTATIONS WHILE PANHANDLING.**

C. **HAS HAD HIS/HER REGISTRATION REVOKED BY THE CHIEF OF POLICE PURSUANT TO SECTION 135.10(F)(5).**

D. IS DETERMINED BY THE CHIEF OF POLICE TO HAVE VIOLATED THE PROVISIONS OF SECTION (F)(4).

E. ANY REVOCATION UNDER THIS SECTION SHALL REMAIN IN EFFECT UNTIL THE PERSON WHOSE REGISTRATION IS REVOKED IS ELIGIBLE TO REGISTER.

3. UPON RECEIPT OF AN APPLICATION FOR REGISTRATION IN ACCORDANCE WITH THIS SUBSECTION, THE CHIEF OF POLICE SHALL ISSUE A TEMPORARY REGISTRATION VALID FOR TEN DAYS AND SHALL DETERMINE ELIGIBILITY FOR A REGULAR REGISTRATION BEFORE THE TEMPORARY REGISTRATION EXPIRES. AN ELIGIBLE APPLICANT SHALL RECEIVE A REGULAR REGISTRATION UPON DETERMINATION OF THE APPLICANT'S ELIGIBILITY. THE REGULAR REGISTRATION SHALL EXPIRE ONE YEAR FROM THE DATE OF ISSUANCE. ALONG WITH THE REGISTRATION, THE CHIEF OF POLICE SHALL GIVE THE APPLICANT A COPY OF THIS SECTION.

4. NO PERSON SHALL MAKE A FALSE OR MISLEADING REPRESENTATION WHILE APPLYING FOR REGISTRATION UNDER THIS SECTION.

5. UPON ARREST FOR ANY VIOLATION OF SECTION 135.10, A PANHANDLER SHALL RELEASE TO THE ARRESTING OFFICER ANY REGISTRATION ISSUED TO THE ARRESTEE. THE ARRESTEE MAY APPLY TO THE CHIEF OF POLICE FOR CONSECUTIVE 30-DAY TEMPORARY REGISTRATIONS PENDING ADJUDICATION OF THE ARREST CASE, WHICH SHALL BE ISSUED PROMPTLY. THE CHIEF OF POLICE SHALL REVOKE ANY REGISTRATION ISSUED UNDER THIS SECTION TO ANY PERSON WHO IS INELIGIBLE TO REGISTER OR SUBJECT TO REVOCATION OF REGISTRATION UNDER SECTION (F)(2).

6. A PERSON SHALL BE EXEMPT FROM THE REGISTRATION REQUIREMENTS IN SUBSECTION (F) IF THE PERSON IS ELIGIBLE TO REGISTER AND ENGAGES IN PANHANDLING EXCLUSIVELY ON PRIVATE PROPERTY WHERE NOT PROHIBITED BY SUBSECTION (C)(11).

G. APPEALS. ANY APPLICANT SHALL HAVE THE RIGHT TO APPEAL THE DENIAL OR REVOCATION OF REGISTRATION BY REQUESTING A REVIEW. THE APPEAL SHALL BE TAKEN BY THE APPLICANT OR REGISTRATION HOLDER WITHIN TEN DAYS AFTER ISSUANCE OF THE NOTICE OF DENIAL OR REVOCATION BY FILING WRITTEN NOTICE OF APPEAL WITH THE POLICE CHIEF AT 217 SOUTH HIGH STREET, AKRON, OHIO 44308. A HEARING OFFICER APPOINTED BY THE MAYOR OF THE CITY OF AKRON SHALL CONSIDER THE APPEAL WITHIN A REASONABLE TIME PERIOD NOT TO EXCEED THIRTY DAYS. THE HEARING OFFICER SHALL DIRECT THAT THE DENIAL OR REVOCATION BE RESCINDED IF THE APPLICANT HAS MET ALL OF THE QUALIFYING CRITERIA SET FORTH IN THIS SECTION. THE APPLICANT OR REGISTRATION HOLDER MAY APPEAL THE DECISION OF THE HEARING OFFICER TO THE COURT OF COMMON PLEAS OF SUMMIT COUNTY PURSUANT TO CHAPTER 2506 OF THE OHIO REVISED CODE.

G. H. PENALTY. Whoever violates any provision of this section is guilty of a misdemeanor of the fourth degree.

Section 2. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that further panhandling regulation is necessary to immediately enable persons to move

freely upon the streets and sidewalks of the city without undue interference or exposure to intimidation or harassment from panhandlers, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed July 10, 2006

Cheryl C. Prange
Clerk of Council

Marc S. Lomax
President of Council

Approved July 12, 2006

Adm

[Signature]
MAYOR

- File
- Fin.
- muni ct
- 1) Clerk of Courts
- 2) Library
- Pres. office
- Attn Law Library
- Attn " "
- Lexis Nexis
- Police Chief
- Ken Kuckuck - muni ct

DECLARATION OF JERRY HILL

My name is Jerry Hill, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I have lived in the Akron area my entire life. For the past 15 years, it has been very difficult to make ends meet. That's when I first started asking neighbors for help.
2. I am not able to work or drive a car because I have a condition, which I believe is Parkinson's disease, which causes my hands and body to shake severely. I have applied for social security disability, but have not yet been approved.
3. I try to support my son as much as possible. He is 18 years old, and has a mental delay. He receives a small monthly payment from social security but it is not enough to buy everything that he needs.
4. I recently parted ways with my partner of 16 years. She also had a serious disability that required me to take care of her.
5. I am currently homeless. I am staying in temporary living situation. I'm not sure how I am going to be able to afford a more stable housing situation.
6. I hate the name "panhandler," but I obtained my panhandler registration from the City of Akron police several years ago, and have renewed it several times. I most recently renewed it last year.
7. When times are tough, I go to a corner in Akron and hold up a sign. I will sometimes make eye contact with drivers. I also talk with pedestrians who may be walking by.

8. My sign says:

GOD Bless. MATT 5:42 Luke 10:31. Listen to your Heart. NEED Compassion!

PLEASE HELP MY FAMILY. Waiting on SSI claim for Parkinsons disease. Don't

Drink Lost our Place. NEED Help with Getting an apartment. Food for my family.

Staying with friends and family, now (parents)

9. I have also tried to raise money through the internet. For example, I ask for money in a video posted on YouTube, <https://www.youtube.com/watch?v=FAJzVtncBgM>. Unfortunately, internet fundraising has not been as effective in getting my message to my neighbors.

10. I heavily rely on the compassion of neighbors. I do not enjoy fundraising in this way, but I do it because I am desperate.

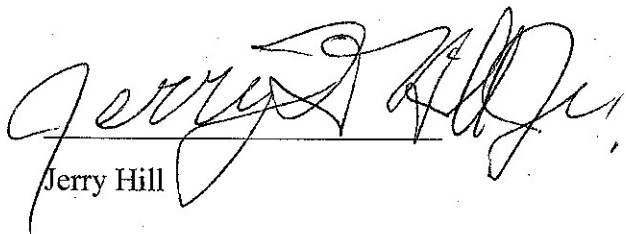
11. Every once in awhile, an Akron Police Officer will tell me I'm not allowed to hold up a sign. One officer told me I am a "stain on society." Another said that I made the neighborhood look "ugly." Another said, "why don't you go get a fucking job."

12. I have also been harassed and told I'm not allowed to ask for help in Cuyahoga Falls, Fairlawn, Copley, and Bath Township.

13. I do not use any of the money I collect to buy alcohol or purchase illegal drugs. I use the money to try to obtain shelter and food for myself and my family.

14. I believe strongly in freedom of speech. I believe that I should have the right to speak to others about my needs, by holding a sign and by speaking.

I sign this declaration under penalty of perjury,


Jerry Hill

Dated: 4-30-16

DECLARATION OF SUSAN MYERS

My name is Susan Myers, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I have panhandled for the last 6 years in Akron. I am a registered panhandler with the City.
2. I stand on the corner of a busy intersection. I clean up the litter, and then stand out there and hold my sign. I do it from morning until early evening. I sometimes panhandle after dark but I try not to because the law prohibits it.
3. I hold up a sign that says "Could you help please God Bless Thank You." I smile, wave, and make eye contact with cars.
4. I also occasionally speak with pedestrians who walk by. If I know the person, I may ask them to help me out if it is a bad day.
5. I don't like having to beg on the corner, but I need to do it to make money.
6. Every once in a while, a police officer asks to see my license and tells me I need to leave the corner or I'll be arrested.

I sign this declaration under penalty of perjury,

Susann M. Peters

Dated: May 1 2016

DECLARATION

My name is Jeff Davis, and I am over the age of 18 and fully competent to make this declaration. Under penalty of perjury, I declare the following:

1. I am without a permanent residence. I sleep in the City of Akron, Ohio. I am currently staying at the Haven of Rest.
2. I am a registered panhandler with the City of Akron police. I registered on April 22, 2016. I registered after I was approached three different times by the Akron Police asking why I did not have a registration.
3. I have been panhandling in Akron for approximately two weeks. I hold up a sign that reads "This is Humiliateing But I need help for Bus Fair trying to go home Fort Dodge, Iowa Please Help"
4. When I panhandle, I typically stand on street corners and hold up my sign and talk with people as they pass by.
5. I don't know why I can't stand in front of a business. I was told not to stand in front of a business or I would be arrested. If Akron didn't have these restrictions, I would stand near bus stops, the University, or businsses downtown to reach more people, but I am afraid of being arrested if I were to panhandle there.
6. I try to panhandle from 7:30 in the morning to 7 in the evening.
7. Until I make enough to buy a bus pass, I will be forced to continue to panhandle in the future.
8. I do not make a lot of money panhandling, but the money I get is very important for me. I believe that I should be able to tell people about my need to get home. Being able to communicate with people about my needs is necessary.
9. I am easy to get along with; I like to socialize with people. I do not intend to intimidate anyone.

I sign this under penalty of perjury,

/s/ Jeff Davis

Jeff Davis

PAGE NO.

PREPARED BY	
DATE	

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I have read and sign the
declaration of April 24

