

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

JOHN MANCINI <i>et al.</i>	)	
	)	
Plaintiffs,	)	CASE NO. 1:17-CV-00410
	)	
v.	)	
	)	JUDGE DONALD C. NUGENT
CITY OF CLEVELAND, <i>et al.</i>	)	
Defendants.	)	

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Defendants' Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order

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Defendants, City of Cleveland, Mayor Frank Jackson, and Chief Calvin Williams, by and through undersigned counsel, respectfully submit their Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order ("Motion"). Plaintiffs are not entitled to an injunction because City Codified Ordinances 471.06(b)-(d) and 605.031 (2017) do not violate Plaintiffs' rights under the First Amendment of the Constitution and are narrowly tailored to serve the City's compelling interest in the health and safety of its citizens. A brief in support of this Motion has been attached hereto and is incorporated herein.

Respectfully submitted,  
Barbara A. Langhenry (0038838)  
Director of Law

/s/ Elizabeth M. Crook  
ELIZABETH M. CROOK (0088709)  
JANEANE CAPPARA (0072031)  
ASSISTANT DIRECTORS OF LAW  
601 Lakeside Avenue  
Cleveland, Ohio 44114  
Phone: 216-664-3256  
Email: [ecrook@city.cleveland.oh.us](mailto:ecrook@city.cleveland.oh.us)  
[jcappara@city.cleveland.oh.us](mailto:jcappara@city.cleveland.oh.us)

*Attorneys for Defendants*

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Plaintiffs,	)	
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CITY OF CLEVELAND, <i>et al.</i>	)	JUDGE DONALD C. NUGENT
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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

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I. STATEMENT OF THE CASE

Plaintiffs originally filed a Complaint and Memorandum in Support of Temporary Restraining Order and Preliminary Injunction on February 28, 2017, alleging Defendants violated their rights under the First Amendment and Ohio Constitution. (ECF 3, ¶2) Defendants now file this Brief in Opposition. City Codified Ordinances (“CO”) 471.06(b)-(d) and 605.031 do not violate Plaintiffs’ constitutional rights because they are narrowly tailored regulations written to address the City’s compelling interest in protecting the health and safety of citizens and visitors to the City of Cleveland.

II. STATEMENT OF FACTS

According to the Complaint, Plaintiffs John Mancini (“Mancini”) and the Northeast Ohio Coalition for the Homeless (“NEOCH”) have incurred monetary fines and criminal charges due to violations of CO 605.031(b) and 471.06(b)-(d). (ECF #3, pg 4). Mancini alleges that he is a disabled veteran who often panhandles for money by sitting “quietly out of the way on a

sidewalk in downtown Cleveland” holding a sign that says “wartime vet; can you please help a vet trying to get by; your help appreciated.” (ECF #3, 4). NEOCH, alleges that its members have been “harassed, arrested, ticketed, excluded from public spaces, and/or charged with crimes” due to enforcement of CO 605.031(b) and 471.06(b)-(d).

The pertinent sections of CO 605.031 were first enacted by Cleveland City Council with the passage of Ordinance No. 695-05 on July 13, 2005. (Ex. A: Declaration of Dornat Drummond). As stated in the recitals to Ordinance No. 695-05, City Council passed the ordinance because “the prohibitions contained in this ordinance are necessary to ensure protection of pedestrians and vehicular traffic and free access and enjoyment of public spaces.” The Council found and determined that forcing oneself upon the company of another as prescribed in the ordinance “is conduct that would intimidate a reasonable person.” (Ex. B)

CO 605.031 does not prohibit solicitation in Cleveland. Rather the ordinance only prohibits soliciting in an “aggressive manner” and identifies specific locations where the “free flow of pedestrian traffic” warrants no interference from solicitors. In a sworn affidavit, Deputy Chief Dornat Drummond states this Code section “has been a critical part of the City of Cleveland’s ability to protect citizens from intentional or recklessly unwanted touching, physical conduct or threatening behavior in connection with aggressive solicitation.” (Ex.B: 695-05 The City Record).

CO 471.06(b), (c), and (d) address the safety issues arising out of persons engaging motorists along City streets and highways. Deputy Chief Drummond states that this Code section is a “critical tool to prevent highway accidents and fatalities that are associated with individuals other than law enforcement who access the highway.” (Ex. A).

The intent of both ordinances is not to prohibit speech or regulate what is said; it is to deter dangerous or intimidating behavior by solicitors on the public streets and sidewalks. The City does not seek to curb protected speech. Rather it seeks to further its interest in keeping Cleveland safe for all individuals. Contrary to the assertions made by Plaintiffs that the City is enforcing the ordinances to protect “business,” the City is enforcing the ordinances to protect everyone who works, resides and visits Cleveland, including solicitors.

Deputy Chief Drummond’s affidavit confirms that the vast majority of complaints received by the City concern solicitors who are stalking individuals walking down the street, engaging in lewd behavior, urinating on public property, threatening violence and going so far as to physically assault individuals who refuse to give money. (Ex. A). This is certainly not First Amendment protected speech.

### **III. STANDARD OF REVIEW**

#### **A. Preliminary Injunction is Not Appropriate in This Matter**

To decide whether to issue a preliminary injunction, four factors must be considered: 1) whether the movant has a “strong” likelihood of success on the merits 2) whether the movant would otherwise suffer irreparable injury (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. *Leary v. Daechner*, 228 F.3d 729, 736 (6<sup>th</sup> Cir. 2000). A finding that there “is no likelihood of success on the merits is usually fatal.” *Lumpkins-El v. Department of Corrections*, 4 Fed. Appx. 401, 2001 WL 133118 at \*1 (6<sup>th</sup> Cir. 2001). As previously discussed at length in Defendants’ previous brief, this case is not appropriate for a preliminary injunction or temporary restraining order. And as this Court has recognized in its ruling denying the temporary restraining order, the public interest would not be served by issuing either form of

relief. Plaintiffs are not likely to be successful on the merits because the City has a compelling interest in public safety and the ordinances at issue are narrowly tailored to accomplish this interest. Plaintiffs are also unable to establish irreparable harm because soliciting is not banned in the City of Cleveland and Plaintiffs may solicit so long as they are in compliance with the ordinance.

B. The City's Ordinances Are Neutral Regulations Intended to Address the Compelling Government Interest in Public Health and Safety.

First and foremost, *Reed v. Gilbert* does not involve the regulation of panhandlers or solicitors. Rather, it is a case involving a sign ordinance that had 23 different categories of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218, 2221 (2015) not an aggressive solicitation ordinance that is before this Court today. The *Reed* court was presented with a sign ordinance that not only had 23 different categories of signs, it also had restrictions on what size, which direction, and onerous restrictions on how long the sign was able to be displayed in a twenty-four hour period. *Id.* Even *Reed* recognizes that regulatory programs almost always require content discrimination and cautions that to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management of ordinary regulatory activity by the government. *Id.* at 2234. *Reed* concedes that its decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate government objectives. While the facts in *Reed* are easily distinguished from the instant case, further allowing *Reed* to morph into areas which it was not intended as the practical effect of placing the livelihood and safety of the citizens of Cleveland at risk.

Prior to the decision in *Reed*, the leading U.S. Supreme Court case governing the regulation of solicitors is *Hill v. Colorado*, 530 U.S. 703, 718, 120 S. Ct. 2480, 2490, 147 L. Ed. 2d 597 (2000). In this decision, the U.S. Supreme Court held that minor restrictions on a

category of speech with unwilling listeners did not make a statute content based and discussed the fact that the purpose of protecting an individual's safety when entering into a building was not unconstitutional but a reasonable time place manner regulation. In *Hill*, the Court aptly observed that the unwilling audience has just as much of a right to avoid the confrontation as the man who decides to hold the audience captive:

Yet we have continued to maintain that “no one has a right to press even ‘good’ ideas on an unwilling recipient.” *Rowan*, 397 U.S., at 738, 90 S.Ct. 1484. None of our decisions has minimized the enduring importance of “a right to be free” from persistent “importunity, following and dogging” after an offer to communicate has been declined. While the freedom to communicate is substantial, “the right of every person ‘to be let alone’ must be placed in the scales with the right of others to communicate.” *Id.*, at 736, 90 S.Ct. 1484. It is that right, as well as the right of “passage without obstruction,” that the Colorado statute legitimately seeks to protect. The restrictions imposed by the Colorado statute only apply to communications that interfere with these rights rather than those that involve willing listeners

*Hill v. Colorado*, 530 U.S. 703, 718, 120 S. Ct. 2480, 2490, 147 L. Ed. 2d 597 (2000). The U.S. Supreme Court has historically recognized that the government has the ability to protect its citizens against aggressive and disorderly behavior. Even applying the *Reed* decision to this case, the City can meet strict scrutiny. The City has a compelling governmental interest for both ordinances and they have been narrowly tailored to address this interest.

Under *Reed*, the Supreme Court held that “government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” 135 S.Ct. 2218, 2227 (2015). Laws that are content based are subject to strict scrutiny. Public safety has historically been found to satisfy the intermediate standard of review. See *Ward v. Rock Against Racism*, 491 U.S. 781, 796-97 (1989). Justice Kennedy, in his concurring opinion in *Int’l Society for Krishna Consciousness*, said the following regarding the safety risks posed by in person solicitation:

In person solicitation of funds, when combined with intermediate receipt of that money, creates a risk of fraud and duress that is well recognized... In-person solicitation has been associated with coercive or fraudulent conduct... Requests for intermediate payment of money create a strong potential for fraud or undue pressure... [Q]uestionable practices associated with solicitation can include the targeting of vulnerable and easily coerced persons, misrepresentation of the solicitor's cause, and outright theft.

*Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 705-6 (1992) (Kennedy, J, concurring) (internal citations omitted). The First Amendment does not “preclude all regulation of speech. The right to free speech must be weighed against government and public interests.” *Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Michigan Gaming Control Bd.*, 172 F.3d 397, 410 (6<sup>th</sup> Cir. 1999).

As previously stated, the expression of City Council's intent in Ordinance No. 695-05, which enacted CO 605.031 supports a compelling interest in the safety of visitors and residents of the City of Cleveland. City Council passed the ordinance because “persons should be able to move freely upon the streets and sidewalks of the City without undue interference or exposure to intimidation or harassment... this Council finds and determines that the free flow of pedestrian and vehicular traffic is of vital importance to the economic vitality of business and the City as a whole.” City Council found that the “forcing oneself upon the company of another as proscribed in this ordinance is conduct that would intimidate a reasonable person.” (Ex. A).

While Plaintiffs continue to hide behind the argument that the solicitation of alms by Plaintiff Mancini and NEOCH are “peaceful” and benign in nature, the very act of solicitation is actually “by its very nature, inherently more assertive and aggressive than other forms of speech...” *National Anti-Drug Coalition, Inc. v. Bolger*, 737 F.2d 717, 727 (1984). Solicitation is a very different act and makes demands upon a person's livelihood and physical safety than a simple request for directions or a statement in support of a local sports team. Even the silent

holding of a sign can be a problem if it is done in a way that interferes with the free flow of pedestrian traffic or is done in a way that blocks public access.

As for CO 471.06, as previously stated in the City's response to Plaintiffs' Temporary Restraining Order, the ordinance addresses the safety risks that are inherent when cars and pedestrians are using the roadways. CO 471.06 has an emergency exception when individuals need to use the roadways for emergencies. It also has an exception for police and firefighters. This exception is made in light of the fact that these officers already possess the training and knowledge needed to navigate vehicular traffic without risking the lives of drivers. Because the safety of the citizens of Cleveland is a compelling interest, this Court should reject Plaintiffs' argument that CO 605.031 and 471.06 violate Plaintiffs' rights under the First Amendment of the Constitution.

C. Both City Ordinances Are Narrowly Tailored And Do Not Restrict Speech In Violation Of The First Amendment Of The Constitution.

Both CO 471.06 and 605.031 are narrowly tailored to address the abusive conduct that was found to be a compelling interest when they were first passed by City Council. As Defendants previously stated in their Brief In Opposition to Plaintiffs' Temporary Restraining Order, soliciting is permissible in the City of Cleveland. What is not permitted by CO 605.031 is conduct that is dangerous, abusive, and detrimental to the health and safety of individuals working, visiting, travelling, and residing in the City of Cleveland. Specifically, CO 605.031 defines aggressive solicitation as "approaching, seeking or following a person before, during, or after solicitation if that conduct is intended, or likely to cause, a reasonable person to 1) fear bodily harm to oneself or another 2) fear damage to or loss of property, or 3) be intimidated." There simply is no First Amendment right to threaten bodily harm to anyone, regardless of whether that threat with or without a request for monetary assistance. The ordinance also places

reasonable restrictions on where the requests takes place, in light of the fact that many of these areas are areas found to place the unwilling listener in a potentially threatening position. Those areas include certain feet from the entrance to a building, an ATM, near a public toilet, or within twenty feet of a bus shelter. Even if other provisions of the Ohio Revised Code and City Ordinances cover aggressive conduct, the Supreme Court has previously noted that criminal laws often have overlapping provisions and the existence of an overlap in and of itself does not conflict with the confines of the constitution. *See U.S. v. Henderson*, 857 F.Supp. 2d 191, 202 (2012) (“two statutes which overlap and express partial redundancy may still be capable of coexisting.”) Indeed, illegal conduct, whether it is associated with stalking, theft or harassment,, is illegal and simply stating that a law prohibits mixing soliciting with illegal activity is not sufficient to show a burden upon free speech as guaranteed by the First Amendment of the Constitution.

A solicitor simply needs to walk a few steps away from the restricted area to conduct their activity. The ban on solicitors in a roadway is for the safety of all individuals, including the solicitor. Allowing individuals who are not trained in best traffic safety practices to have unfettered access to roadways presents a substantial safety risk to the individual as well as the driver. A solicitor can simply stand on the sidewalk or any other area near the roadway to stay in compliance with CO 471.06. All buffer zones under CO 471.06 and 606.031 are narrowly tailored. Twenty feet, fifteen feet, and even ten feet is not a large distance and solicitors are still able to reach their target audience so long as they stand outside the narrowly restricted areas. Solicitors have alternative locations where they may solicit and there are ample geographic alternatives throughout the City where they may do so.

Striking down the ordinances tips the balance of justice on the side of individuals who may do harm to persons simply wishing to walk to work or home without being aggressively harassed. On the other end, Plaintiffs just need to walk a few feet further and refrain from blocking entrances to and from public buildings. Since the City's ordinances are narrowly tailored to address a compelling governmental interest, Plaintiffs' Complaint and Motion for Preliminary and Temporary Restraining Order should be denied.

### **CONCLUSION**

For all the foregoing reasons, Defendants respectfully requests that the Court dismiss Plaintiffs' Complaint and deny Plaintiffs' Motion for Preliminary Injunctive Relief and Temporary Restraining Order.

Respectfully submitted,  
Barbara A. Langhenry (0038838)  
Director of Law

/s/ Elizabeth M. Crook  
ELIZABETH M. CROOK (0088709)  
JANEANE CAPPARA (0072031)  
ASSISTANT DIRECTORS OF LAW  
City of Cleveland  
601 Lakeside Avenue  
Cleveland, Ohio 44114  
Phone: 216-664-3256  
Email: [ecrook@city.cleveland.oh.us](mailto:ecrook@city.cleveland.oh.us)  
[jcappara@city.cleveland.oh.us](mailto:jcappara@city.cleveland.oh.us)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Brief was filed electronically on April 7, 2017. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Elizabeth M. Crook  
Elizabeth M. Crook (0088709)

*Attorney for Defendants*

Codified Ordinances of the City of Cleveland, 1976; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio, 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No(s). 015-10-120, as more fully described below, to Greater Cleveland Habitat for Humanity.

**Section 2.** That the real property to be sold pursuant to this ordinance is more fully described as follows:

P. P. No. 015-10-120

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 12 in J.M. Curtis Subdivision of part of Original Brooklyn Township Lot No. 66, as shown by the recorded plat in Volume 4 of Maps, Page 29 of Cuyahoga County Records, and being 50 feet front on the Northerly side of Trowbridge Avenue, S.W., and extending back of equal width 135 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

**Section 3.** That all documents necessary to complete the conveyance authorized by this ordinance shall be executed within six (6) months of the effective date of this ordinance. If all of the documents are not executed within six (6) months of the effective date of this ordinance, or such additional time as may be granted by the Director of Community Development, this ordinance shall be repealed and shall be of no further force or effect.

**Section 4.** That the consideration for the subject parcel shall be established by the Board of Control and shall be not less than Fair Market Value taking into account such terms and conditions, restrictions and covenants as are deemed necessary or appropriate.

**Section 5.** That the conveyance authorized hereby shall be made by official deed prepared by the Director of Law and executed by the Mayor on behalf of the City of Cleveland. The deed shall contain such provisions as may be necessary to protect and benefit the public interest including such restrictive covenants and reversionary interests as may be specified by the Board of Control, the Director of Community Development or the Director of Law.

**Section 6.** That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected 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 from and after the earliest period allowed by law.

Passed July 13, 2005.

Awaiting the approval or disapproval of the Mayor.

**Ord. No. 659-05.**

**By Council Member Lewis.**

**An emergency ordinance authorizing the sale of real property as part of the Land Reutilization Program and located on Melrose Avenue to Joseph A. Rudolph.**

Whereas, the City of Cleveland has elected to adopt and implement the procedures under Chapter 5722 of the Ohio Revised Code to facilitate reutilization of nonproductive lands situated within the City of Cleveland; and

Whereas, real property acquired under the City's Land Reutilization Program is acquired, held, administered and disposed of by the City of Cleveland through its Department of Community Development under the terms of Chapter 5722 of the Ohio Revised Code and Section 183.021 of Codified Ordinances of the City of Cleveland, 1976; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That pursuant to Section 183.021 of the Codified Ordinances of Cleveland, Ohio, 1976, the Commissioner of Purchases and Supplies is hereby authorized to sell Permanent Parcel No(s). 106-11-071, as more fully described below, to Joseph A. Rudolph.

**Section 2.** That the real property to be sold pursuant to this ordinance is more fully described as follows:

P. P. No. 106-11-071

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot No. 21 and part of Sublot No. 20 in the Howard White's Subdivision of part of Original One Hundred Acre Lot No. 342 as shown by the recorded plat in Volume 14 of Maps, Page 5 of Cuyahoga County Records, and part of Sublot Nos. 2, 3, and 4 in the Peter Sammon's Re-Subdivision of part of Original One Hundred Acre Lot No. 342, as shown by the recorded plat of said Re-Subdivision in Volume 27 of Maps, Page 10 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Southerly line of Melrose Avenue N.E. (formerly Melrose Avenue), at the Northwesterly corner of said Sublot No. 21; thence Easterly along said Southerly line of Melrose Avenue, N.E. 40 feet to the Northeasterly corner of said Sublot No. 21; thence Southerly along the Easterly line of said Sublot No. 21, and along the Southerly prolongation thereof to a point in the Southwesterly line of Sublot No. 2 in the Peter Sammon's Re-Subdivision as recorded in Volume 27, Page 10 of Cuyahoga County Maps Records; thence Northwesterly along the Southwesterly lines of Sublot Nos. 2 and 3 to a point at the Southeasterly corner of Sublot No. 20 in said Howard White's Subdivision; thence Westerly along the Southerly line of said Sublot No. 20 to its intersection with the Southerly prolongation of the Westerly line of

said Sublot No. 21 and along its Westerly line, about 143.80 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Also subject to all zoning ordinances, if any.

**Section 3.** That all documents necessary to complete the conveyance authorized by this ordinance shall be executed within six (6) months of the effective date of this ordinance. If all of the documents are not executed within six (6) months of the effective date of this ordinance, or such additional time as may be granted by the Director of Community Development, this ordinance shall be repealed and shall be of no further force or effect.

**Section 4.** That the consideration for the subject parcel shall be established by the Board of Control and shall be not less than Fair Market Value taking into account such terms and conditions, restrictions and covenants as are deemed necessary or appropriate.

**Section 5.** That the conveyance authorized hereby shall be made by official deed prepared by the Director of Law and executed by the Mayor on behalf of the City of Cleveland. The deed shall contain such provisions as may be necessary to protect and benefit the public interest including such restrictive covenants and reversionary interests as may be specified by the Board of Control, the Director of Community Development or the Director of Law.

**Section 6.** That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected 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 from and after the earliest period allowed by law.

Passed July 13, 2005.

Awaiting the approval or disapproval of the Mayor.

**Ord. No. 695-05.**

**By Mayor Campbell.**

**An emergency ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Section 605.031 relating to aggressive solicitation.**

Whereas, this Council believes that persons should be able to move freely upon the streets and sidewalks of the City without undue interference or exposure to intimidation or harassment; and

Whereas, this Council finds and determines that the free flow of pedestrian and vehicular traffic is of vital importance to the economic vitality of business and the City as a whole; and

Whereas, this Council believes in free access and enjoyment of public places; and

Whereas, this Council believes that the prohibitions contained in this ordinance are necessary to ensure protection of pedestrian and

July 20, 2005

## The City Record

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vehicular traffic and free access and enjoyment of public places; and

Whereas, this Council finds and determines that forcing oneself upon the company of another as proscribed in this ordinance is conduct that would intimidate a reasonable person; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That the Codified Ordinances of Cleveland, Ohio, 1976, as supplemented by enacting new Section 605.031 to read as follows:

**Section 605.031 Aggressive Solicitation**

(a) For purpose of this section:

(1) "Aggressive manner" means as follows:

A. Approaching, seeking or following a person before, during, or after solicitation if that conduct is intended, or likely to cause, a reasonable person to (i) fear bodily harm to oneself or another, (ii) fear damage to or loss of property, or (iii) be intimidated;

B. Intentionally or recklessly touching or causing physical contact with another person without that person's consent in the course of soliciting if the touching or physical conduct is likely to cause a reasonable person to feel restrained or intimidated;

C. Continuing to solicit from a person after the person has given a negative response;

D. Intentionally or recklessly blocking the safe or free passage of a person or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact. Acts authorized by a lawfully issued permit shall not constitute obstruction of pedestrian traffic for purposes of this section; or

E. Intentionally or recklessly using obscene, abusive, or threatening language, or gestures, toward a person being solicited.

(2) "Automated-teller machine" means a device, linked to a financial institution's account records, that is able to carry out transactions, including, but not limited to account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(3) "Automated-teller machine facility" means the area comprised of one or more automated-teller machines, and any adjacent space that is made available to banking customers.

(4) "Public property" means all property owned, operated or controlled by any governmental agency, including but not limited to streets, public sidewalks, tree lawns, parks, playgrounds, publicly-owned parking lots, schools, libraries, post offices, municipal transit facilities and other public lands and buildings.

(5) "Solicit" or "soliciting" means 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 or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, by gesture or by other means of communication.

(b) No person shall solicit:

(1) In an aggressive manner;

(2) Within twenty feet of any automated-teller machine without the consent of the owner or other person legally in possession of the machine, provided, however, that when an automated-teller machine is located within an automated-teller machine facility, the distance shall be measured from the entrance or exit of the automated-teller machine facility;

(3) Within twenty feet of a bus stop, rapid-transit shelter, or bus shelter;

(4) Within twenty feet of a line of pedestrians waiting to obtain access to a building or event;

(5) Within twenty feet of the area of the sidewalk used by an outdoor restaurant under a temporary public right-of-way occupancy permit issued under Chapter 513 of the Codified Ordinances or by a vendor under a permit issued under Chapter 508, Section 675.06, or Section 675.07 of the Codified Ordinances;

(6) Within twenty feet of a valet zone established under Section 451.33 of the Codified Ordinances;

(7) Within fifteen feet of any pay telephone, provided, however, that when a pay telephone is located within a telephone booth or other facility, the distance shall be measured from the entrance or exit of the telephone booth or facility;

(8) Within fifteen feet of the entrance or exit of any public toilet facility;

(9) On public property within ten feet of an entrance to a building; or

(10) On public property within ten feet of an entrance to a parking lot.

(c) Whoever violates division (b)(1) of this section shall be guilty of a misdemeanor of the fourth degree for a first offense, a misdemeanor of the third degree for a second offense, and a misdemeanor of the first degree for a third and subsequent offense. Whoever violates any provision in division (b)(2) through (b)(10) of this section shall be guilty of a minor misdemeanor for a first offense, and a misdemeanor of the fourth degree for a second and subsequent offense. A separate offense shall be deemed committed each day during or on which an offense occurs or continues.

**Section 2.** That Section 605.031 shall expire and be of no force and effect on October 15, 2006.

**Section 3.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected 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 from and after the earliest period allowed by law.

Passed July 13, 2005.

Effective July 14, 2005.

**Ord. No. 717-05.**

**By Council Members Gordon, White and Jackson (by departmental request).**

An emergency ordinance to amend Sections 183.021 and 183.022 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, relating to land reutilization programs and development of an industrial land bank; and to authorize the Director of Economic Development to use the proceeds for the sale of these lands for environmental investigation and remediation.

Whereas, The City of Cleveland has implement the provisions of Chapter 5722 of the Revised Code for a land reutilization program as therein provided; and

Whereas, The City of Cleveland desires to establish an industrial land bank under the procedures set forth in Chapter 5722 of the Revised Code; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That Sections 183.021 and 183.022 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance Nos. 1547-90, passed April 8, 1991 and Ordinance No. 660-79, passed June 11, 1979, are amended to read as follows:

**Section 183.021 Land Reutilization Programs**

(a) The Directors of Community Development and Economic Development shall administer Land Reutilization Programs established under Chapter 5722 of the Revised Code and adopted and implemented by Ordinance 2076-76, passed October 25, 1976, and shall perform the duties specified in Chapter 5722.06 of the Revised Code. If land acquired as part of the Land Reutilization Programs is sold, it shall be sold according to the terms of Chapter 5722 of the Revised Code, without competitive bidding, for not less than fair market value, with reference to such terms and conditions, restrictions and covenants to assure the effective reutilization of the land, as the Board of Control shall authorize, and the land shall be conveyed notwithstanding any other provisions of the Codified Ordinances to the contrary.

(b) If a member of Council disapproves in writing to the use of the following process for selling Land Reutilization Program properties in his or her ward and files his or her written disapproval in File No. 1547-90-A, then the following process shall not be used for the selling of the property in his or her ward.

(c) The Commissioner of Purchases and Supplies when directed by the Director of Community Development or Economic Development with the prior consent of the member or members of Council in whose ward or wards the land to be sold is located, is authorized to sell any land which is acquired as part of Land Reutilization Programs to an abutting or adjacent landowner if the land is either less than forty-

COUNTY OF CUYAHOGA )

) :SS

AFFIDAVIT

STATE OF OHIO )

I, Deputy Chief Dornat Drummond, being first duly sworn state as follows:

1. I am one of the Deputy Chiefs of Police serving the City of Cleveland. I have personal knowledge of the facts stated in this affidavit.
2. I have been employed by the City of Cleveland as a police officer for 28 years. I have served the City as a Deputy Chief for 3 years.
3. I have received a copy of the Temporary Injunctive Relief and Complaint filed in *Northeast Ohio Coalition for the Homeless et al. v. City of Cleveland et al.* Case No. 1:17-CV-00410.
4. I am familiar with City of Cleveland Ordinances 605.031 and 471.06. Solicitation is legal in the City of Cleveland. There is no ban on solicitation in the City of Cleveland.
5. Solicitors, including panhandlers such as Plaintiff John Mancini, may solicit throughout the City of Cleveland so long as they comply with Ordinance 605.031 and 471.06. Our officers are trained to understand that panhandlers can panhandle throughout the City so long as they are in compliance with 605.031 and 471.06.
6. Ordinance 605.031 has been a critical part of the City of Cleveland's ability to protect citizens from intentional or recklessly unwanted touching, physical conduct or threatening behavior in connection with aggressive solicitation that does not arise to the level of other criminal infractions in the Ohio Revised Code.
7. Ordinance 471.06 has also been a critical tool to prevent highway accidents and fatalities that are associated with individuals other than law enforcement who access the highway. Law enforcement and firefighters are trained on how to safely navigate vehicular traffic. The ordinance has a built in exception allowing all individuals to stand in the highway in case of an emergency or when the solicitation is due to the person needing hired transportation. Vehicles travelling at a fast speed pose a safety threat to individuals who do not know how to navigate or control traffic. Firefighters and police officers are authorized by law to control traffic when needed and know how to do so safely without causing harm to vehicles or drivers.
8. Granting the temporary restraining order will impair the City police division's ability to protect its citizens.
9. Granting the temporary restraining order could also have the adverse effect of encouraging aggressive forms of solicitation such as intentional and reckless touching or physical contact with individuals without consent and other behavior that could cause individuals to fear bodily harm, fear damage to or loss of property or to be intimidated.



Incidents of blocking pedestrians and vehicle traffic for the purpose of intimidating individuals to give money may increase without 605.031.

FURTHER AFFIANT SAYETH NAUGHT

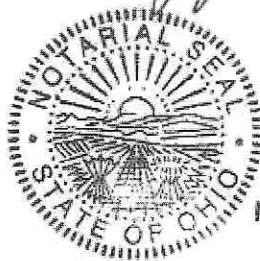
SIGNED:

Donald Drummond, D.C. #5044

Dornat Drummond, Deputy Chief, City of Cleveland

Sworn to before me and subscribed in my presence this \_\_\_ day of March 2017.

Anthony J. Gorsek



ANTHONY J. GORSEK  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Cuyahoga County  
My Comm. Exp. 12/3/17

Notary Public  
My Commission Expires:

12-3-17