

Ericka Burnett

From: Lysia Bowling
Sent: Wednesday, March 08, 2017 12:16 PM
To: Ashton Hayward; City Council Only
Cc: 'Michael Stebbins'
Subject: LOCAL GOVERNMENTAL REGULATION OF FIRST AMENDMENT ACTIVITIES

Dear Mayor Ashton Hayward, Council President Brian Spencer and Members of City Council:

I am providing the following to assist City Council in its review and consideration of the proposed panhandling ordinance. The ordinance as proposed reflects the current state of the law however this is an area of law that is evolving.

The federal courts have interpreted the First Amendment to allow local governmental regulation of “freedom of speech” only under certain circumstances.

For many years, the courts have held that the act of soliciting donations on public sidewalks and in public parks is fully protected First Amendment activity.

In order for a city or county to regulate First Amendment activity on public sidewalks and rights-of-way, the following conditions must be present:

- The government must have a legitimate, substantial interest in regulating the activity. The courts have found that keeping sidewalks unobstructed so that all can use them, and enticing tourists to visit a particular area are legitimate, substantial interests.
- The regulation must be “content neutral,” meaning that the regulation cannot discriminate between speech that the government allows and speech that the government wants to ban, without a rational and reasonable basis for distinguishing between the two.
- Regulations of First Amendment activities which are not “content neutral” are subjected to a much higher standard of legal justification (“strict scrutiny,” in the parlance of the courts), and they rarely survive judicial scrutiny. In the last few years, the U.S. Supreme Court has rendered several decisions in the areas of sign regulation and sidewalk abortion counselling that have indicated that the Court’s view and definition of “content neutrality” is changing.
- The regulation must be reasonably limited in its time, place and manner of application, leaving open other venues for the First Amendment activity to take place.
- The regulation must be “narrowly tailored” to advance the government’s legitimate interest, or cure the problem that it is directed to. If there is a problem in an identified geographic area, the regulation on First Amendment activity must be limited to that area.

Thank you,

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