

(The following is not a verbatim transcript of comments or discussion that occurred during the meeting, but rather a summarization intended for general informational purposes. All motions and votes are the official records).

ORDINANCE COMMITTEE

Regular meeting of the Ordinance Committee was held on Thursday, January 12, 2017, in the Council Chambers, City Hall, Cranston, Rhode Island.

CALL MEETING TO ORDER:

The meeting was called to order at 7:10 P.M. by the Chair.

Present: Councilman Christopher G. Paplauskas, Chair
Councilman Kenneth J. Hopkins, Vice-Chair
Council Vice-President Michael W. Favicchio
Councilman Trent M. Colford, Sr.
Councilman Paul H. Archetto
Council President Michael J Farina

Also Present: Councilman Steven A. Stycos
Councilman Paul J. McAuley
Councilman John E. Lanni, Jr.
Robert Coupe, Director of Administration/Acting Personnel Director
Mark Schieldrop, Special Assistant to the Mayor
Christopher Rawson, City Solicitor
J. Patrick O'Neill, Asst. City Solicitor
Evan Kirshenbaum, City Council Legal Counsel
Maria Medeiros Wall, City Clerk
Rosalba Zanni, Assistant City Clerk/Clerk of Committees
Heather Finger, Stenographer

MINUTES OF THE LAST MEETING:

On motion by Council President Farina, seconded by Council Vice-President Favicchio, it was voted to dispense with the reading of the last meeting and they stand approved as recorded. Motion passed unanimously.

CORRESPONDENCE/COMMUNICATIONS

OLD BUSINESS:

PUBLIC HEARINGS/NEW BUSINESS:

12-16-02 **Ordinance in amendment of C. 10.40.070 of the Code of the City of Cranston, 2005, entitled "Solicitation On Roadways Prohibited" (Prohibition against distribution to and receiving from occupants of motor vehicles). Referred to Ordinance Committee January 12, 2017.**

Debbie Flipin, 51 Lindsey Lane, elected member of the RI ACLU, appeared to oppose to this Ordinance. She stated that this Ordinance is geared for the homeless and mentally unstable. It is not geared for children collecting money for certain organizations. She also presented a packet. She stated that this Ordinance is unconstitutional and is constitutional problematic.

Melissa Jenkins, 135 Arnold Ave., appeared to oppose to this Ordinance because it does not reflect the compassion of the City. This is a kind, caring, compassionate community. If you want to stop panhandling, she asked that the City provide real help that these desperate people need.

Andy Horowitz, 199 Rawley Ave., Pawtucket, Professor of Law at Roger Williams University, appeared to speak and stated that this Ordinance is not about public safety as stated by the sponsor. If you want to pass this Ordinance, do not pass it because of public safety, pass it on an honest piece of legislation.

Jonathan Thomas, panhandler and homeless, appeared to speak and stated that he lives behind the Providence Place Mall in a tent. He stated that on his signs, he asks for work and for opportunities. He also stated that every penny he receives, he saves. To see it as a public safety, he is on the streets and he has not seen one accident.

Jane Young, Executive Director for Muscular Dystrophy for RI and MA, appeared to speak and stated that this organization has history of firefighters filling the boots for Muscular Dystrophy. She also stated that Muscular Dystrophy has insurance for firefighters who are out there.

Ryan Connington, Ward 3 resident, appeared to speak in favor of this Ordinance and stated that there is a halfway house near Gladstone School which houses sex offenders and that is dangerous.

Kerri Kelleher, 83 Phenix Ave., CLCF Lacrosse coach, appeared to speak in favor of this Ordinance and stated that they do not ever ask for money on the corner. She also spoke as President of BASICS and stated that this organization is constantly doing fundraisers. They can outside Stop and Shop with permit. They also have never been on the streets asking for money. She would like to see some sort of permit ability for such things as firefighters filling boots. As to the panhandling, she has witnessed two panhandlers in the City fighting for a spot. She also had a panhandler approach her car and banging on the car. She is concerned about the sex offenders out there. She does not want this to be an anti-homeless movement. The homeless people need the help and they are not getting it. She is disgusted with the sex offenders at Harrington Hall and being allowed to roam the City.

Melissa Lacroix, 39 Lockmere Rd., appeared to speak and stated that she works with the homeless population at House of Hope. As to Harrington Hall, there are approximately 100 people there and 33 sex offenders committed to stay there. She has seen no proof of the panhandlers being a danger.

Natalia Congdon, 85 Julia St., appeared to speak in favor of this Ordinance.

Dennis Bunker, currently homeless, appeared to speak and stated that the stays at Harrington Hall, but is not a sex offender. There are sex offenders at Harrington Hall, but they have nothing to do with this and they have nothing to do with panhandling in the City. There are 112 beds and approximately have are sex offenders, but they have nothing to do with him and the other homeless people.

Pastor Dwayne Clinker, 23 Davis Ave., appeared to speak and stated there is a safety issue, public safety problem, but in a different kind of way. He questioned what kind of community would make it illegal for someone to ask for help. We have to find a way to be human to each other and help each other. If this Ordinance is passed, there will be other clergy joining the cause to fight this. Don't tell people in the City not to help people in need.

Peter Savin, 403 Wood St., Bristol, appeared to oppose to this Ordinance. He stated that the First Amendment Right should not be violated by anyone.

Mr. Faizon, 166 William St., Providence, Medical student, appeared to oppose to this Ordinance and stated that he works with the homeless and most of his clients he speaks to are looking for work and not looking to hurt anyone. He is also an Intern at the ACI and if this is passed, we would only be feeding the criminal justice system.

Gregory Delfortin, 122 Camp St., Apt. 2, Providence, appeared to speak and stated that when he votes he votes to protecting his wallet and protecting his freedom. By passing this Ordinance you would be trashing them both.

Carolyn Medeiros, Executive Director of Alliance in Safe Communities, appeared to speak in favor of this Ordinance and stated that this Ordinance is a public safety issue. Panhandling is causing problems on the roads such as distractions. As to the panhandlers stating that they need help and money, she states to them that they need to look at the multi-million dollar nonprofits in this State. It's not working is it? Something is wrong. As to aggressive or non-aggressive panhandlers, in Warwick on Jefferson Blvd., there was an incident with two panhandlers who also panhandle on Garfield Ave. in Cranston. This is aggressive behavior. She indicated to House Bill 5028 and stated that her organization will be revisiting how shelters are run. This Ordinance is a safety issue of having people disturbing traffic and safety.

Mariah Acande, Providence resident, appeared to speak and stated that she was homeless for 2 ½ years. She is an advocate for homeless community. She asked that the Council rethink honesty of this bill as to whether it is about public safety. She urged the Council to be compassionate and not pass this Ordinance.

Meghan Swift, 45 Grace Ave., Warwick, appeared to speak and stated that she agrees that the system is broken. She also stated to the Council that if they are looking at safety, look at homelessness and poverty as a safety issue. She urged the Committee to reject this Ordinance.

Coreen Hasseberf, 46 Hope St., Cranston, appeared to oppose top this Ordinance and stated that what offends her and bothers her is that this Council would pass such an Ordinance. This is waste of taxpayers' dollars. This Ordinance infringes on her rights also. She feels she should have the right to give to people if she wants. We should not be trying to stigmatize poverty.

On motion by Council President Farina, seconded by Council Vice-President Favicchio, it was voted to recommend approval of this Ordinance.

Under Discussion:

Councilman Lanni stated that this Ordinance was before the prior Ordinance Committee and was rejected because it felt it was a violation of constitutional rights. Resurrecting it by calling it a safety Ordinance, you are not fooling anyone. It is a panhandling Ordinance. He also stated that a Law Professor, ACLU and numerous bodies say it is unconstitutional.

Council President Farina asked Solicitor and Council attorney for their legal opinion regarding this Ordinance.

Solicitor Rawson stated that he and Attorney Kirshenbaum will review the law and will have an opinion for the Council meeting.

Council President Farina stated that he has been told by several hundred if not thousands that they want the City Council to fix public safety on the roads and they do not want people on the roads. This is a public safety issue. Anyone who says it is not, has a vested interest in their organization.

Councilman McAuley stated that he wonders if we should be addressing the situation at Harrington Hall instead of panhandling.

Council Vice-President Favicchio stated that the Committee has heard so much this evening from the advocates whose organizations receive millions of dollars from the government, he questions why are we not solving the problem? Allowing people to beg for money on the streets is not solving the problem, is not giving them a home or a job. He also stated that if someone is hit by a vehicle, they will sue the City stating that the City did not maintain the safety.

Councilman Archetto stated that panhandling has become a problem in the City. He applauded the Mayor for initiating this Ordinance, however, he has a number of concerns with this particular Ordinance. He does not think this Ordinance is the answer to the problem. This Ordinance could bring on a lawsuit from the ACLU. This would affect charitable organizations. Maybe we can restrict panhandling in safety zones in the City. He will be voting no because of the present form of this Ordinance.

Councilman Stycos asked Solicitor if he would agree that panhandling is free speech under the Constitution. Solicitor Rawson stated that it depends. Not all asking for money is free speech. Councilman Stycos asked who drafted this Ordinance. Solicitor Rawson stated that it was a combination of legal counsel, himself and Attorney DeSisto, who is a municipal lawyer who does a lot of Constitutional Law. Councilman Stycos asked if Attorney DeSisto charged to draft this Ordinance. Solicitor Rawson stated, yes.

Councilman Stycos indicated to the Ordinance passed by the City of Portland, Maine, which was declared unconstitutional and which Ordinance had to do with medians. He stated that Cranston's Ordinance does not talk about medians, it talks about roadways. This Ordinance limits speech on 315 miles of road despite US Supreme Court on ruling on speech. He asked Solicitor how he can say that this is unconstitutional. Solicitor Rawson stated that this Ordinance is prohibiting transactions not prohibiting speech.

Council Vice-President Favicchio asked Solicitor to do some sort of analysis of the size of the character of the medians that we are addressing so if we have to, we can tweak the Ordinance.

Council President Farina stated that he would like to see the amount of miles of medians we have in the City.

Councilman Lanni referred to the list of intersections and stated that there are no statistics of anyone being hit on medians, so we are passing a safety Ordinance when no one has been hurt.

Mr. Coupe stated that there is a list of statistics of accidents and collisions with cars at these intersections. The point is to protect the individual standing in the street and the drivers.

Councilman Stycos stressed that this Ordinance is not limited to medians, it states roadways.

Chair stated that to him, common sense is you should not be standing in the middle of the roadway.

Roll call was taken on motion to recommend approval of this Ordinance and motion passed on a vote of 5-1. The following being recorded as voting "aye": Councilmen Paplauskas, Hopkins, Council Vice-President Favicchio, Councilman Colford and Council President Farina -5. The following being recorded as voting "nay": Councilman Stycos -1.

The meeting adjourned at 8:50 P.M.

Respectfully submitted,

Rosalba Zanni
Assistant City Clerk/Clerk of Committees



CITY OF CRANSTON
Ex. # 1 Sub: Ordinance Com.
11/2/17
By: Debbie Fligin
Re: Ord. 12-16-02

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**TESTIMONY BEFORE CRANSTON CITY COUNCIL ORDINANCE COMMITTEE ON
"PROHIBITION AGAINST DISTRIBUTION TO AND RECEIVING FROM
OCCUPANTS OF MOTOR VEHICLES"**

January 12, 2017

This proposed ordinance is designed as a substitute for the City's current ban on roadway solicitations, which the City has acknowledged is unconstitutional. However, the proposal is identical to one that was brought before the City Council in October for consideration. At that time, the ACLU wrote a letter to the Council, in which we stated that the proposal contained "many - if not more - of the First Amendment problems that the current one does." Nothing that has transpired in the past three months changes that analysis. Rather than repeat all of it, please find attached a copy of our October letter.

It is true there is one change in the way the ordinance is now being presented: it contains a new, rather self-serving, section entitled "Legislative Findings," but which only further demonstrates the tenuous nature of the proposed ordinance itself.

This lengthy preamble lists 21 intersections in the City as having a high number of motor vehicle accidents in 2016. But the "findings" make no attempt to attribute those accidents to people engaged in the activity the ordinance seeks to prohibit. Nor is it clear to us why these particular locations were chosen. To the best of our understanding, these are neither the top 21 intersections where the most accidents in the City occur nor are they all intersections where the distribution of money or other items regularly takes place. Further, a review of the accident data for the cited intersections for 2014 and 2015 shows no meaningful trends. If the intent of using 2016 data is to suggest that accidents have gone up at certain intersections since last year due to the lack of an enforceable anti-solicitation ordinance, it fails miserably. In some of those intersections, accidents have actually decreased, and others have shown no change at all.

Further, even if these intersections did have a correlation with places where more solicitation takes place (which they do not), the proposed ordinance doesn't attempt to limit its reach to those particular intersections. Instead, the proposal prohibits the peaceful exercise of this particular First Amendment activity citywide. This sort of blunderbuss approach to restricting free speech rights is precisely what was condemned by the U.S. Court of Appeals in the Portland, Maine case cited in our October letter.

As we previously testified, this is a thinly-veiled attempt to undermine the right of poor people to engage in panhandling. In doing so, the proposal harms the rights of many other people engaged in first Amendment activity, whether it is firefighters with their laudable "Fill the Boot" campaign, cheerleaders attempting to raise needed funds to attend

an out-of-state tournament, or striking employees seeking to make motorists aware of their grievances.

In short, this proposed ordinance is constitutionally problematic, fails to legitimately address the problem it is purportedly aimed at, and wields a broad brush against the exercise of peaceful and safe free speech activity. We therefore urge the Ordinance Committee to reject this proposal.

Submitted by: Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island

Enclosure

CITY OF CRANSTON

Ex. # 2 Sub: Ord. Comm.

1-12-17

By: Debbie Fligin

Re: Ord. 12-16-02



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SENT VIA EMAIL

October 11, 2016

Dear Cranston City Council Members:

Because our organization is holding an event that evening, we will be unable to attend Thursday's ordinance committee meeting, at which time a revised anti-panhandling ordinance is going to be reviewed. I am therefore writing in advance to lay out the ACLU of Rhode Island's deep concerns about this proposal, which would ban the distribution of anything to or from occupants of vehicles.

As members of the Council are well aware, this past year our organization successfully challenged the constitutionality of the City's current anti-panhandling law, which bars "solicitation on roadways." In resolving that case, the City wisely and appropriately acknowledged the ordinance's unconstitutionality. We are therefore quite surprised to see serious consideration being given to this proposal, which contains many – if not more – of the First Amendment problems that the current one does.

In fact, the only significant difference between the two ordinances is that the "roadway solicitation" ban prohibited any distribution or solicitation of items *to* the occupants of a motor vehicle, while this newest proposal would ban any distribution or solicitation of items *to or from* the occupants of a motor vehicle. In other words, the new proposal seeks to prohibit even *more* First Amendment activity than the City's current unconstitutional ordinance. This step, we submit, hardly solves the free speech problems that were inherent in the ordinance prompting our previous legal challenge.

Indeed, the First Circuit appeals court decision on which we assume the City relied in conceding the unconstitutionality of the "roadway solicitation" ordinance involved a broadly worded Portland, Maine ban more similar to this proposal. When the appellate court said in that case that it was "hard to imagine a median strip ordinance that could ban more speech," the court's purpose was not to praise the ordinance, but to bury it. *Cutting v. City of Portland*, 802 F.3d 79, 89 (1st Cir. 2015). In response, we have heard some feeble attempts to justify this ordinance on the grounds that its constitutionality was upheld by a Missouri court. But that claim is both misleading (for technical reasons not worth explaining here) and, particularly in light of the First Circuit ruling, irrelevant.

At bottom, this broadly worded ordinance is a thinly-veiled attempt to undermine the right of poor people to engage in panhandling. Efforts by some City officials to label this a

“public safety” issue are quite unconvincing, and in any event, protection of public safety was also the City of Portland’s rationale in attempting to justify its ban on median speech, unsuccessfully, before the First Circuit.

This proposal is virtually identical to an ordinance recently proposed by former Mayor Joseph Paolino in Providence. Like that one, it is a direct attack on individuals who are struggling with homelessness or destitution and who seek to peacefully exercise their First Amendment right to solicit donations. Rather than addressing the problems that have forced people to engage in panhandling in the first place, this proposal instead seeks to punish them for their poverty.

To put it another way: Since harassing, assaultive or other dangerous behavior, whether done by panhandlers or any other person, is already illegal, an ordinance like this is really aimed at prohibiting an activity because of who the people are, not because of what they are doing. All an ordinance like this does is try to hide the disturbing fact that there is a population in the city financially forced to beg for handouts. To take an “out of sight, out of mind” approach in an attempt to hide this disturbing fact is harsh and ungenerous.

Further, in trying to punish the poor, efforts like this also significantly impact the First Amendment rights of all of us to engage in core political speech in public spaces. Frankly, we suspect that an ordinance like this would be selectively enforced against poor people pleading for donations, just as the roadway solicitation ban was. But to the extent we are wrong and this ordinance were evenly enforced, it would bar firefighters from continuing to engage in their long-standing charitable “Fill the Boot” campaigns. It would prohibit school teams, cheerleaders and non-profit groups from making use of this long-recognized method of obtaining needed financial support, something such groups have done for years in Cranston. It would similarly impose significant restrictions on the First Amendment rights of organized labor engaged in peaceful picketing activities. In short, it would make illegal a wide swath of First Amendment activity that has gone on for decades without serious incident, harming the free speech rights of many people, not just panhandlers.

For all these reasons, the ACLU urges the Ordinance Committee and the Council to reject this troubling and constitutionally problematic proposal. Thank you for considering our views.

Sincerely,

Steven Brown
Executive Director

cc: The Hon. Allan Fung
Christopher Rawson