



ACCESS • JUSTICE • IMPACT



Gainesville City Commission
citycomm@cityofgainesville.org

Re: Pedestrians Prohibited in Traffic Separators Ordinance

February 4, 2021

Dear Mayor Poe & City Commissioners:

We write on behalf of Southern Legal Counsel, the ACLU-FL, and the National Homelessness Law Center (“Law Center”) to urge you to vote no on the proposed ordinance “Pedestrians prohibited in traffic separators.” As you know, Southern Legal Counsel is a statewide non-profit public interest law firm based in Gainesville, FL that regularly represents persons experiencing homelessness to stop criminalization of life-sustaining activities that they do to survive such as sleeping, having personal property, physically occupying public spaces, or asking for help. The ACLU-FL is the Florida affiliate of the national American Civil Liberties Union, which works daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. The National Homelessness Law Center is the only national legal organization dedicated solely to ending and preventing homelessness.

We all share the goal of reducing the number of people who need to ask for charity on Gainesville’s streets. But if we share the same goal, we should also share the desire to implement the best, evidence-based ways of getting there. This proposed ordinance, unfortunately, is both unconstitutional and a step in the wrong policy direction, and our organizations write to urge the City of Gainesville to consider adopting proven, constructive alternatives instead. We also write to share the exciting news that federal COVID-relief resources could enable Gainesville to safely house its entire homeless population in hotels or motels for the duration of the pandemic at no cost to the city, which would eliminate the need for many individuals to panhandle. Rather than spending its time debating this ordinance, the city should instead direct its efforts at obtaining these federal resources, which could help dramatically reduce homelessness (and panhandling) far into the future.

Although the ordinance does not reference “panhandling” on its face, from the public debate it has been evident that the primary purpose of proposing this ordinance is

to prohibit individuals from standing in medians near stoplights holding signs with written messages asking for charity (commonly called “panhandling”). The effect of an ordinance like this one is to disproportionately impact and harm vulnerable persons without homes and in need of assistance. Further, the justification of this ordinance in public debate has consistently focused on the need to move panhandlers from the medians, something *The Gainesville Sun* has repeatedly endorsed on its editorial pages. However, this is not a constitutionally sound purpose.

The First Amendment to the United States Constitution and Article 1, Section 4, of the Florida Constitution protect the speech of everyone in public forums, including individuals who are homeless. The proposed ordinance restricts standing on medians, which means it prohibits making charitable requests by holding a sign while standing on medians, which are public forums and thus are subject to First Amendment protection. *Cutting v. City of Portland*, 802 F.3d 79, 83 (1st Cir. 2015) (City’s medians are traditional public fora for First Amendment purposes). The government’s ability to regulate speech within such places is very limited.

Additionally, governments cannot restrict speech based on its content. Just as the First Amendment prohibits the City from infringing on its residents’ rights to speak about religion, education, sports, or politics, so too does the First Amendment prohibit the City from infringing on its residents’ rights to request charity. Case law is extensive in this area.

Since the landmark Supreme Court ruling in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), laws in Florida and throughout the nation have been consistently declared unconstitutional by the courts. In fact, since *Reed*, every panhandling ordinance challenged in federal court has been found constitutionally deficient. In Florida, a federal court declared a Tampa panhandling ordinance unconstitutional. *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882 (M.D. Fla. Aug. 5, 2016). Two State statutes were likewise struck down as unconstitutional by a federal court. *Vigue v. Shoar*, 3:19-CV-186-J-32JBT, 2020 WL 6020484 (M.D. Fla. Oct. 12, 2020). Florida state courts have also followed *Reed* in striking down panhandling ordinances. *Toombs v. State of Florida*, 25 Fla. L. Weekly Supp. 505a, Case No. 15-220 AC (Fla. 11th Jud. Cir. 2017) (holding City of Miami ordinance unconstitutional).

Gainesville’s ordinance not only almost certainly violates the constitutional right to free speech protected by the First Amendment, but there are numerous examples of better alternatives that exist which the City could draw on.

We understand that protecting pedestrian safety is a top priority of a City that has suffered the tragic loss of too many individuals in traffic accidents, especially students. However, this particular proposal does not address those issues that make roadways unsafe. Indeed, we respectfully suggest that it will have the opposite effect and make pedestrians less safe.

We applaud the City for making this proposed ordinance a non-criminal infraction, but issuing fines to people standing on the roadway asking for money is

counterproductive. It will contribute to a cycle of poverty. And we strongly oppose punishments that escalate the cost and involve individuals in court hearings of any kind, as failure to appear in court hearings can lead to incarceration in our county jail. These types of ordinances are costly to enforce and only exacerbate problems associated with homelessness and poverty. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run. See National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (December 2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

For many individuals, this ordinance will not deter them from standing in the medians. Why do people asking for charity in the roadways stand in the medians? It is the side closest to the driver. Individuals do not have to walk into traffic or on the street to receive money or food. Even with the adoption of such an ordinance, individuals will risk getting cited because no ordinance can deter people who are desperate to survive.

For other individuals, they will move to the roadside. We will see more people on sidewalks or shoulders of the road. More people will walk into the roadways when traffic is stopped. In this way, the ordinance will simply move pedestrians to other parts of the roadway and will create unintended consequences for pedestrians and traffic by creating more dangerous situations not less.

Indeed, the part of University Avenue in front of the University of Florida has multiple medians, regulated by this ordinance, that students, faculty, and other residents regularly stand on while crossing the street. There are very few places to cross the street, and anyone who has spent any time in Gainesville knows that hundreds of people cross this street every day in this manner when school is in session especially in the stretch between NW 18th Street and NW 13th Street. While it may be preferable to cross at a light, that is not a standard practice. Assuming the City would apply this ordinance neutrally and not solely target persons who are panhandling, citing students and faculty for “standing” in a median so as to avoid traffic while crossing University Ave. seems counterproductive to the goal of traffic safety.

While tragic and deserving of attention, the 2019 data included in the ordinance of 10 pedestrians killed in traffic related accidents aren't reflective of median safety or specific to individuals that use medians to ask for charity. Also tragic are the 26 known deaths caused by homelessness in the City of Gainesville in 2020 (NCFL Alliance). We know this City is interested in pursuing solutions to address the root causes that are leading persons to stand on our street corners and hold signs asking for help. Those of us who work with these individuals, and who know many of them by name, can tell you that they are individuals in need of the help they seek.

The City of Gainesville has been focused on evaluating access to equity and justice within its practices--homelessness must be a part of that conversation. Per 2018

Census data, Black residents were just over 21% of the total population in the city of Gainesville. Yet within persons experiencing homelessness in Gainesville, Black residents represent nearly 42% of the population. An ordinance like this inevitably will have a disparate impact and contribute to racial disparities in policing.

The COVID-19 pandemic, the resulting economic crisis, and the looming eviction avalanche, create a perfect storm of risk and vulnerability for persons experiencing homelessness in our community. But there are also opportunities as there are numerous federal funding streams available to house homeless persons in non-congregate shelter under the CARES Act and the recent COVID relief package. The Federal Emergency Management Agency has approved waivers of both its 30 day renewal and 25% match requirements, offering 100% reimbursement funding for the duration of the pandemic. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelter-reimbursement-duration-emergency>, <https://nlihc.org/resource/new-executive-order-addresses-urgent-health-and-housing-needs-people-experiencing>. This means communities have no fiscal constraint to stop them from offering non-congregate shelter to people experiencing homelessness for the duration of the crisis.

The persons who are standing in medians to ask for help need social workers to connect them to housing and services, not police officers to give them tickets and notices to appear in court. And the pedestrians, bicyclists, and drivers need a more meaningful approach to traffic safety than an ordinance that was not truly designed with them in mind.

As always, we remain available and committed to help the City pursue meaningful solutions. Please contact us if you have questions. Thank you.

Sincerely,

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