



October 11, 2016

OPEN LETTER REGARDING PANHANDLING ORDINANCE

Via email

cusimano@cityofslidell.org
harbison@cityofslidell.org
pichon@cityofslidell.org
abney@cityofslidell.org
crockett@cityofslidell.org
vanney@cityofslidell.org
caruso@cityofslidell.org
councildistrictf@bellsouth.net
councilman@billborchert.com

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
LOUISIANA
PO BOX 56157
NEW ORLEANS, LA 70156
T/504.522.0617
WWW.LAACLU.ORG

Members of the Slidell City Council:

The ACLU of Louisiana has learned that the City of Slidell has adopted an ordinance, Ordinance 3826, requiring panhandlers to register with the police, and to obtain a permit, before engaging in what has long been recognized as a protected First Amendment activity. We further understand that an amendment to “refresh” that ordinance will be considered at an upcoming City Council meeting. This letter is to advise the City of Slidell that Ordinance 3826 and the pending “refresh” language both violate the United States Constitution.

I. Background

On July 12, 2016, the City of Slidell adopted an ordinance that reads, in part:

- (a) It shall be unlawful for any person to beg or panhandle upon the streets of any other public property without first obtaining a permit from the Chief of Police or his designee.
- (b) Application for the permit shall be in writing on a form furnished by the Chief of Police and shall be submitted to the Police Department at least forty-eight (48) hours before the first day sought for begging. The application shall include the full legal name of the applicant, the applicant's address, telephone numbers, and e-mail addresses, and any other information needed to establish the applicant's identity. The applicant shall also provide picture identification at the time the application is submitted or, if picture identification is impractical, the applicant shall provide other documentation that definitively establishes identity. The Chief shall grant the permit unless:
 - (1) The application contains a false or fraudulent statement; or
 - (2) The applicant has been convicted of violating begging or panhandling ordinances within the twelve (12) months prior to the application date.

We understand that at an upcoming meeting, the City Council will vote on a proposed ordinance as follows:

(a) It shall be unlawful for any person to beg or panhandle within the city limits of Slidell without first obtaining a permit from the Chief of Police or his designee;

In 2013, this office wrote the City of Slidell regarding arrests and threats to arrest panhandlers in Slidell, explaining that the First Amendment to the United States Constitution does not permit restrictions on soliciting others for money. Ordinance 3826, and the amendment proposed, continue to violate the rights of people within the City of Slidell.

II. Legal Analysis

A. Ordinance 3826 is an unlawful content-based restriction on protected speech

Enforcement of Ordinance 3826, and adoption and enforcement of the proposed amendment, violates the First Amendment, as begging is protected speech. See *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013) (striking down a Michigan anti-panhandling statute and holding that “begging, or the soliciting of alms, is a form of solicitation that the First Amendment protects.”); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013) (calling it “relatively uncontroversial” that “begging [on a public street] constitutes expressive activity in a traditional public forum, which garners the full protective force of the First Amendment.”); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 940 (9th Cir. 2011) (en banc) cert. denied, 132 S.Ct. 1566 (2012) (striking down an ordinance that prohibited solicitations from occupants of motor vehicles); *Gresham v. Peterson et al.*, 225 F.3d 899, 903 (7th Cir. 2000) (admonishing that “While some communities might wish all solicitors, beggars and advocates of various causes be vanished from the streets, the First Amendment guarantees their right to be there, deliver their pitch and ask for support.”); *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999) (noting that “Like other charitable solicitation, begging is speech entitled to First Amendment protection.”); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 1993) (explaining, “It is beyond dispute that solicitation is a form of expression entitled to the same constitutional protections as traditional speech.”); *Loper v. New York City Police Dep’t*, 999 F.2d 699, 704 (2d Cir. 1993) (remarking, “We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed.”).

Not only is begging protected speech, Slidell’s public streets, like all public streets, are traditional public forums in which any content-based regulation of speech is presumptively invalid. See *Service Employees, Local 5 v. City of Houston*, 595 F.3d 588, 595 (5th Cir. 2010) (noting that the traditional public forum consists of places like public streets and parks, “which by long tradition or by government fiat have been devoted to assembly and debate.”); *Rangra v. Brown*, 566 F.3d 515 (5th Cir. 2009) (content-based restrictions on speech in public forums are presumptively invalid and subject to strict scrutiny).

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B. Ordinance 3826's Permit Requirement is Flatly Unlawful

Just as constitutionally untenable is the provision requiring panhandlers to register with the City and obtain a permit prior to begging. “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. Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.” *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002). “[W]e 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).

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For the those reasons, we request that the City of Slidell immediately discontinue enforcement of this unlawful ordinance, terminate any and all pending prosecutions and expunge all arrests under §20-3 from the records of anyone unlawfully arrested under this ordinance, and repeal this ordinance as quickly as possible. We reserve the right to take appropriate action without further notice to the City of Slidell.

Sincerely,

Marjorie R. Esman
Executive Director