

February 15, 2021

Mayor Shelly Petrolia & City Commission of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444

Sent only via email to Petrolia@mydelraybeach.com,
Boylston@mydelraybeach.com, Johnsons@mydelraybeach.com,
Frankel@mydelraybeach.com, Casale@mydelraybeach.com



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

4023 N. Armenia Ave.
Suite 450
Tampa, FL 33607
(786) 363-2708 (Direct)
aclufl.org

Jacqueline Azis
Staff Attorney

Re: **Ordinance No. 07-21**

Dear Mayor Shelly Petrolia and City Commissioners,

We write on behalf of the ACLU of Florida, Southern Legal Counsel, the Palm Beach County Chapter of the ACLU of Florida, and the National Homelessness Law Center to express our concerns regarding Ordinance 07-21, which seeks to criminalize the innocent act of requesting charity (“panhandling”). After reviewing the ordinance and the City Commission discussion at the meeting on January 27, 2021, it is obvious that this ordinance unconstitutionally infringes on the free speech rights of your residents.

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 charitable requests in areas that are public forums and thus are subject to such protection. 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. Gilbert*, 576 U.S. 155 (2015), laws in Florida and throughout the nation, which were similar to the one you are considering, have been consistently declared unconstitutional by the courts. In fact, since *Reed*, every panhandling ordinance challenged in federal court, including many with features like the City’s ordinance, 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).



As a result, a court will likely hold the ordinance is a “content-based” restriction on speech that is presumptively unconstitutional. *See Reed*, 576 U.S. at 163-64; *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Courts use the most stringent standard – strict scrutiny – to review such restrictions. *See, e.g., Reed*, 576 U.S. at 163 (holding that content-based laws only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling state interest”). The ordinance cannot survive strict scrutiny because it neither serves any compelling state interest, nor is it narrowly tailored. *Reed* and its progeny are controlling here. The cases cited in your ordinance are constitutionally distinct from the ordinance. Any reliance on these cases is misguided and ill-informed.

Further, it appears a purported rationale in passing this ordinance is that people who ask for charity are themselves vectors of diseases that cause COVID-19 and other pandemics. But given the state of the COVID19 pandemic and widespread community transmission, there is no justification for singling out people experiencing homelessness as uniquely driving spread of the disease. Rather, the City has less intrusive means to address what you assert is a public health issue. For instance, the state could ensure distribution of masks to the local homeless population, along with educational materials on how to reduce the spread of COVID19 through masking, distancing, and other measures. It could provide hand-washing and other sanitary supplies. And it could target vaccination campaigns at the local homeless population. In fact, CDC guidelines instruct that state and local distribution plans should include how to vaccinate individuals experiencing homelessness. *See CDC Vaccination for People Experiencing Homelessness FAQ*, <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless->



[shelters/vaccine-faqs.html](#). The City could also address its lack of affordable housing. Additionally, the City could place people in non-congregate shelter, which is the root cause of people's lack of access to water and sanitation.

The City also claims this ordinance is necessary to address defecation and urination concerns. Those actions are already illegal and unrelated to the act of making a request for charity, making this rationale illogical and not the least restrictive means available to the City. If the City is truthfully concerned about the lack of water and sanitation for persons experiencing homelessness, then the City should follow CDC guidance and ensure there are restrooms and hand-washing facilities available 24 hours a day, as well as provide hand sanitizer and masks. *See* CDC's guidance on Homelessness and COVID-19, (August 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

If passed, this ordinance will not solve homelessness in Delray Beach. Instead, it will only further harm your City's most vulnerable residents. Homeless experts will tell you that homeless individuals rarely choose to be homeless. Criminalizing charitable requests will likely cost the City more than if the City were to address the root causes of homelessness. In Central Florida, a study found that communities were spending more than \$30,000 per year in jail and hospital costs alone for every chronically homeless person. The study projected that by investing in permanent supportive housing, the region would save hundreds of millions of dollars over the course of a decade. *See* THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>. 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>.

We can all agree that we would like to see a Delray Beach where people are not forced to beg on the streets. But whether examined from a legal, policy, or fiscal standpoint, criminalizing

requests for charity is not a way to achieve this goal. Handcuffs are not a solution to homelessness. Arrests and convictions lead to more difficulties in the lives of the already vulnerable individuals whom you seek to criminalize. The speech you seek to criminalize—requesting charity—is a life-sustaining act that homeless individuals must do to survive.

Our organizations are willing to sit down with the City to discuss the above issues and work toward an effective solution. It is our hope we can work together to find a mutually agreeable solution to address homelessness in the community, while protecting the constitutional rights of the individuals involved. We are available to discuss constructive solutions. Please contact Mark Schneider (masch@aya.yale.edu) and James Green (jkg@jameskgreenlaw.com) if you are willing to discuss these constructive solutions with us.



We strongly urge that the City Commission vote against this unconstitutional ordinance and develop constructive approaches that will lead to the best outcomes for all the residents of Delray Beach, housed and unhoused alike.

Sincerely,

Jacqueline Azis, Staff Attorney, ACLU of Florida

Kirk Bailey, Political Director, ACLU of Florida

Kirsten Anderson, Litigation Director, Southern Legal Counsel

Mark Schneider, ACLU of Palm Beach County Chapter President

James K. Green, ACLU of Palm Beach County Chapter Legal Panel Chair

Eric Tars, Legal Director, National Homelessness Law Center