



Memorandum

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cc: Tom Carruthers
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From: Mac McCarley
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Re: Survey of ordinances addressing solicitation and/or panhandling

This memo contains a compilation of solicitation or panhandling ordinances from cities in North Carolina and across the nation that were enacted after the 2015 US Supreme Court decision in Reed vs Town of Gilbert. We express no opinion on the constitutionality of some of these provisions, but would note that the mere fact that another community passed a revised ordinance doesn't mean it is constitutional. The judgment of what meets the evidence backed needs of the City of Greensboro in addressing public safety concerns post-repeal of the previous ordinance, and whether such a proposed ordinance is also constitutional, should be made independently of what other communities have done.

Here Greensboro is facing an open threat of litigation, where potential plaintiffs have already retained counsel. However, there is promising potential of working with members of the ACLU in drafting a legally defensible ordinance. A proposed ordinance must carefully address the legitimate public safety concerns born out by the collected data on citizen initiated and officer initiated calls for police service regarding panhandling, while at the same time recognizing and protecting the constitutional rights of all citizens. That is a narrow path, and must be based on data specific to Greensboro and the problems experienced in this community. It must also meet the test or tests that courts likely will apply in determining whether the enactment is constitutional. The material below is helpful in that it suggests various approaches to this problem, but the fact

that another community has chosen a particular path does not mean that it is necessarily the right path for Greensboro, or a constitutionally defensible path.

Only two cities in North Carolina have adopted ordinances post-Reed. Fayetteville's ordinance makes it a violation to both accept and pass items to or from the occupant of a motor vehicle on a roadway. Council began discussing revisions to the draft in work sessions as early as October of 2017, and the revised ordinance was passed in March of 2018. The ACLU opposed the ordinance in public comments. Mebane also passed post-Reed restrictions on solicitation specifically as it relates to solicitation from medians. Mebane began publically considering the ordinance in July of 2016 and passed the ordinance in August of the same year.

Nationwide, it is apparent that most cities contemplating a revision to solicitation ordinances post-Reed have deliberated extensively (see Lexington and Columbus examples). Additionally, other cities facing legal challenge have repealed existing ordinances based on allegations that the ordinance was unconstitutional, as in Cleveland. Some cities determined that continued regulation of panhandling city wide was not possible or not desirable post-Reed and have instead opted to regulate only door to door solicitation (see Woodburn). It is important to note that where any ordinance enacted post-Reed still specifically references solicitation for a purpose (for example, solicitation for funds or donations), the provisions must be narrowly written to fit the needs of the enacting city in order to be considered constitutional. In other words, there is no one size fits all solution, and, though other ordinances are instructive, each city still must go through the process of making sure the regulation enacted meets the specific needs of the city in order to have any chance of passing the constitutionality test.

The following are brief summaries of the applicability of certain ordinances that have been compared to Greensboro's previously proposed ordinance and current process:

1. Cleveland's Ordinance: Cleveland's previous aggressive solicitation ordinance and its challenge in court is not instructive. Cleveland previously did have an aggressive solicitation ordinance that was challenged by the ACLU. The ACLU asked a federal court to enjoin the prosecution of that ordinance while the legal challenge was heard. The judge denied ACLU's request on the basis that the specific plaintiff would not be harmed while the litigation went forward if the ordinance was enforced. That ruling did not address the constitutionality of the ordinance. That ruling is therefore not instructive on the potential constitutionality of the aggressive solicitation ordinance. Cleveland repealed that ordinance shortly after the court's ruling and now has drafted an ordinance speaking only to the actions involved in signaling to drivers by the side of the road.
2. Orlando's Ordinance: Orlando amended its ordinance numerous times to prohibit not only aggressive solicitation but other content neutral acts. Groups praised action by council during the enactment of the latest revisions because it concurrently set up drop boxes for cash donations as an alternative to panhandling.

North Carolina Updated Solicitation Ordinances

CITY	YEAR/CODE	NOTES
Fayetteville	2018 Chpt 16: Motor Vehicles. Sec. 16-266 The passing of items to or from	Persons who distribute any item to, receive any item from or exchange any item with the occupant of a motor vehicle upon a roadway presents a threat to the free and safe flow of

	the occupant of a motor vehicle on a roadway is prohibited.	motor vehicle traffic. Newspaper exempted per NCGS 20-175(d)
Mebane	2016 Chpt. 39: Sales and Solicitations in the Street ROW	Permit Required. “ <i>Solicitation-restricted right-of-way</i> ” Cannot solicit from moving vehicles. Cannot sit, stand, or walk on medians. Ok to solicit from stopped vehicles provided it’s from the sidewalk-side of the street; must wear reflective vest. First Amendment goods (newspaper) ok.

Nationwide Ordinance Survey

CITY	YEAR/CITATION	NOTES
St. Augustine, FL	2018 Ordinance 2018-06	Begging, Panhandling, Solicitation prohibited in certain areas based on distance from established restricted areas.
Orlando, FL	2017 Chapter 51: Registration of Solicitors and requests for City funds	Registration required. must be registered to “solicit money, donations of money, property or financial assistance of any kind, or to sell or offer for sale any article, tag, service, emblem, publication, ticket, advertisement, subscription or anything of value on the pleas or representation that such solicitation or sale, or the proceeds thereof, is for a charitable, patriotic, public, philanthropic or political purpose, in the City” “Harass” defined as any threats or demands that place the person solicited in reasonable fear of harm to his or her person or damage to his or her property. prohibits “aggressive solicitation”= blocking entry or exit of parking area, harassing the person solicited, following person with the intent to harass, continuing to solicit after receiving a clear refusal, by soliciting an individual while that person is operating an automated teller machine (ATM) prohibits false or misleading solicitation: stating need for solicitation that does not exist, wearing disguise to create image of handicap that does not exist, making false or misrepresenting statements, using another entities logo without consent
Tampa, FL	2016 Article II Division 2, Section 14-46	prohibits solicitation by: (1) threat of injury to any person or property; (2) continuing to solicit after receiving a clear refusal (3) impede the passage or free movement of the solicited person. (including persons on foot or bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles.)
Columbus, OH	2018	prohibits distribution with driver of car that is in a right-of-way unless the vehicle is lawfully stopped

	Chapter 2333 Pedestrian or Vehicle interference; ATM Privacy	or parked driver can't solicit to another driver while both are in different cars; but may do so with another who is not occupant of the vehicle as long as person remains on the surrounding sidewalks; can't be in right of way itself, medians, or traffic islands in right of way "aggressive distribution" = touching, grabbing, continuing to attempt distribution after person states they are unwilling can't be within 3 feet of person using atm. can't obstruct city right of way
Cleveland, OH	2017 Section 605.031 Aggressive Solicitation Section 471.06 Use of Highway for Soliciting; Riding in Cargo Storage Area, on Tailgate or on Outside of Vehicle	§ 605.031 Aggressive Solicitation – Repealed § 471.06 - No person shall stand on a street or highway, or on any other portion of the right-of-way, including the berm, treelawn, shoulder, and sidewalk, and repeatedly stop, beckon to, or attempt to stop vehicular traffic by hailing, waving arms, or making other bodily gestures.
Township of Harrison, NJ	2017 Chapter 155 Peddling and Soliciting	license required limits days and times of solicitation. focuses mostly on door-to-door solicitation permits charitable solicitation in roadways. restricts days of week and time of day.
Emerson, NJ	2017 Chapter 208-9, Peddling and Soliciting, License Fees	solicitors and distributors must obtain \$100 license. restricted conduct: peddle, solicit, or distribute merchandise except between the hours of 10:00 a.m. to 6:00 p.m. or sunset, whichever occurs earlier, on each weekday; and between noon and 6:00 p.m. or sunset, whichever occurs earlier, on weekends, unless specifically having been invited to a dwelling by an occupant thereof or having made an appointment with an occupant. cannot "breach the peace" or constitute "a menace to the health, safety or general welfare of the public." Shall not "accost anyone against his or her will or desire."
Woodburn, OR	2018 Ordinance 2545	repealed the "Peddlers and Solicitors Ordinance" because of concerns it was unconstitutional replaced it with Ordinance 2545 that simply restricts time of soliciting door to door
Spalding County, GA	2018 Chapter 9—Canvassing, Peddling and Door to Door Sales	Registration required. \$100 registration fee. Canvasser, peddler, or solicitor = any person who sells or solicits for sale in the unincorporated county any new or used goods, wares, merchandise, services, produce or other things of value and goes about from place to place within the unincorporated county selling or offering for sale any of such things to either merchants or customers shall be deemed a peddler or solicitor. Excluded from this definition are persons who sell or solicit for sale goods, wares or merchandise, or other things of value from house to house for charitable organizations or purposes or

		<p>on behalf of religious organizations, political organizations and political candidates.</p> <p>restricts canvassing on public streets from 9am-Civil Dusk</p> <p>permits: political canvassing or religious canvassing, provided that such canvassing does not include the soliciting of orders, sales, subscriptions or business of any kind</p>
Houston, TX	2017 Chapter 40, Section 40-27	prohibits "impeding the use of a roadway" and defines "impeded" "block" and different roadways
Fort Worth, TX	2017 Section 30-16 Aggressive Panhandling or Solicitation	<p>"aggressive" as related to soliciting, begging and panhandling means "violent and threatening gestures" continuing to solicit after receiving negative response</p> <p>prohibited within 20 ft from atm, parking meter, public parking, restaurant, bus stop</p>
Lexington, KY	2017 Sec. 18-94. - Pedestrians approaching vehicles or being upon median, prohibited	<p>bans jaywalking and prohibits pedestrians being in the medians or approaching cars. It initially applied to all roads, but after several council members had expressed concerns about folks not being able to cross the street to talk to their neighbors, the ordinance was changed only to apply to the city's major or "arterial" roads.</p> <p>prohibits people from crossing 75 major Lexington streets except at crosswalks, traffic lights or at intersections if there is no light or crosswalk. Under the new ordinance, people are not allowed in medians on those 75 major roadways.</p>