

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE No.: 9:22-cv-8095**

CRAIG KERSH, MICHAEL FIELDS,  
ROY KERSH, and JAMES R. SOARES

Plaintiffs,

v.

CITY OF LAKE WORTH BEACH, FLA.,

Defendant.

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND DAMAGES**

**INTRODUCTION**

1. Plaintiffs CRAIG KERSH, MICHAEL FIELDS, ROY KERSH, and JAMES R. SOARES need assistance from others to help meet their basic needs, including access to food, clothing, shelter, and housing. They reside (or resided at all pertinent times) in the City of Lake Worth Beach, Florida, and either hold signs with messages conveying their need for assistance from vehicles on public roadways or stand on public sidewalks making oral requests for assistance to passersby throughout the City.

2. Defendant CITY OF LAKE WORTH BEACH, FLA. (“City” or “Defendant”) adopted ordinances prohibiting individuals from engaging in charitable solicitation in traditional public fora. § 15-91, Code of Ordinances, City of Lake Worth Florida (“Panhandling Ordinance”) (Ex. 1), and § 19-14, Code of Ordinances, Lake Worth Beach City Code (“Right of Way Ordinance”). (Ex. 2).

3. Law enforcement officers from the Palm Beach County Sheriff's Office (PBSO), at the direction of the City, have arrested Plaintiffs (collectively) over 200 times for engaging in protected speech in these public fora.

4. Panhandling is defined in § 15-90(b)(1) as “any solicitation made in person requesting an immediate donation of money or other thing of value.” (Ex. 1.)

5. The Right of Way Ordinance applies to “any person . . . who seeks any donation of any kind.” (Ex. 2, § 19-14(a).)

6. These ordinances regulate charitable solicitation, which is protected speech under the First Amendment.

7. Individuals engaging in other forms of speech—such as asking for directions, encouraging people to join a church, or directing people to a local business—may do so without fear of arrest as such activity is not prohibited under the Ordinances.

8. Because the ordinances single out certain forms of speech, they are content-based restrictions subject to strict scrutiny. Because they are not narrowly tailored to achieve any compelling government interest, nor are they the least restrictive means of advancing any such interest, they are an unconstitutional restriction of free speech.

9. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983 for violations of their First Amendment rights under the United States Constitution.

10. As the result of the City's adoption and enforcement of § 15-91 and § 19-14 (collectively, the “Challenged Ordinances”), Plaintiffs have been hindered in the exercise of their First Amendment rights, face a continuing threat of arrest for their panhandling activities constituting First Amendment protected expression, and have suffered damages.

11. Plaintiffs challenge the constitutional validity of § 15-91 and § 19-14, both facially and as-applied to them by Defendant and its agents engaging in state functions pursuant to official policy, practice, or custom of the City.

12. Plaintiffs seek injunctive relief against future enforcement of the Challenged Ordinances, declaratory relief, and damages against the City for injury caused by past enforcement.

### **JURISDICTION**

13. This action seeks declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 for past and ongoing injury to Plaintiffs' First Amendment rights.

14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 1343(a)(3) & (4) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202.

### **VENUE**

15. Venue is proper in the Southern District of Florida, West Palm Beach Division, pursuant to 28 U.S.C. § 1391(b). Plaintiffs reside (or resided at all pertinent times), and all of the acts and omissions complained of herein occurred and will continue to occur, in the West Palm Beach Division of the Southern District of Florida.

### **PLAINTIFFS**

16. Plaintiff CRAIG KERSH ("C. KERSH") is a resident of Lake Worth Beach, Florida, and has lived in the City for about 30 years. He currently does not have permanent housing. He frequently sleeps in public parks or other public areas in the City of Lake Worth Beach. C. KERSH solicits donations from passersby, including basic necessities such as food, water, clothing, hygiene products, and sometimes cash. At the direction of the City, PBSO deputies have repeatedly arrested, cited, and warned C. KERSH for holding signs soliciting charitable donations on public roadways in the City.

C. KERSH has been arrested 70 times under the Right of Way Ordinance for holding signs requesting charitable donations in the City. As a result, and because of his fear of arrest and prosecution for a violation of the Right of Way Ordinance, C. KERSH has reduced the time and frequency during which he solicits donations in the City. He wants and needs to continue to solicit donations for his survival.

17. Plaintiff MICHAEL FIELDS ("FIELDS") is a resident of Lake Worth Beach, Florida, and has lived in the City for about two years. He currently does not have permanent housing. He frequently sleeps in public parks or other public areas in the City. FIELDS solicits donations from passersby, including basic necessities such as food, water, clothing, hygiene products, and sometimes cash. At the direction of the City, FIELDS also has been repeatedly arrested, cited, and warned by PBSO deputies while holding a sign alongside roadways in the City while asking for charity. FIELDS has been arrested 72 times under the Right of Way Ordinance for holding signs requesting charitable donations in the City. As a result, and because of his fear of arrest and prosecution for a violation of the Right of Way Ordinance, FIELDS reduced the time and frequency during which he solicits donations in the City. He wants and needs to continue to solicit donations for his survival.

18. Plaintiff ROY KERSH ("R. KERSH") is a resident of Palm Beach County, Florida, and resided in the City of Lake Worth Beach, for over 30 years. He briefly entered a temporary 90 day shelter program located in West Palm Beach, Florida, but returned to the City after completion of that program in January 2022. He currently does not have permanent housing, frequently sleeping in public parks or other public areas in the City of Lake Worth Beach. PBSO deputies have repeatedly arrested, cited, and warned R. KERSH for holding a sign asking for money or other help from drivers in vehicles in the

City. R. KERSH has been arrested 59 times under the Right of Way Ordinance for holding signs requesting charitable donations in the City. As a result, and because of his fear of arrest and prosecution for a violation of the Right of Way Ordinance, R. KERSH had ceased soliciting donations in the City. The negative impact of the Ordinance and the City's relentless enforcement had resulted in R. KERSH temporarily leaving the City but he has since returned to the City to resume seeking life-sustaining charitable donations. He wants to be allowed to solicit for donations for his survival.

19. Plaintiff JAMES R. SOARES ("SOARES") is a resident of Palm Beach County, Florida, and has lived in the City of Lake Worth Beach for almost two years. He currently does not have permanent housing. When he cannot find shelter, he sometimes sleeps in public parks or other public areas in the City. SOARES solicits work from truck drivers unloading their deliveries to businesses located in the downtown area of the City. In exchange for work he receives cash, sometimes he also receives items including basic necessities such as food, water, clothing, or hygiene products. At the direction of the City, SOARES has been warned by PBSO deputies while holding a sign or making oral requests for work on public property to truck drivers in the City. SOARES was threatened with arrest for violating the City's Panhandling Ordinance. As a result, and because of his fear of arrest and prosecution for a violation of the Panhandling Ordinance, SOARES has reduced the time and frequency during which he solicits for work or donations in the City. He wants and needs to continue to solicit donations for his survival.

#### **DEFENDANT**

20. The City of Lake Worth Beach is a municipal entity organized under the laws of the State of Florida with the capacity to sue and be sued.

21. Enforcement of the Challenged Ordinances has been delegated by the City to PBSO through a Law Enforcement Service Agreement with the Sheriff of PBSO, effective October 1, 2008.

22. The City is sued for injunctive and declaratory relief, and damages, on the basis of the acts of officials, agents and employees of the City taken pursuant to official policy, practice, or custom.

23. At all relevant times, Defendant and their employees and agents were acting under color of state law.

## **FACTUAL ALLEGATIONS**

### ***The City's Efforts to Ban Panhandling***

24. Since 2014, the City has engaged in efforts to suppress individuals experiencing homelessness from engaging in charitable solicitation, often referred to as "panhandling."

25. In November 2014, the City enacted the Panhandling Ordinance, which placed numerous and broad restrictions on panhandling within the City limits, including an outright ban on panhandling within 15 feet of sidewalk cafes, entrances or exits to commercial buildings, at bus stops or public transportation facilities, parking lots or garages or pay stations, and a blanket ban throughout the City on five behaviors they deem "aggressive" panhandling. (Ex. 1.)

26. In 2016, the City considered adoption of the now repealed Palm Beach County ordinance prohibiting solicitation on public roads. The City Commission delayed the vote on adopting the County's ordinance, which prohibited a person from going on a public road for the purpose of displaying information of any kind, distributing materials or goods or soliciting charitable contributions of any kind.

27. The Palm Beach County Sheriff also urged the City to pass an ordinance to prohibit right-of-way panhandling and solicitation.

28. In 2017, the City enacted the Right of Way Ordinance prohibiting right-of-way soliciting and canvassing. (Ex. 2.)

29. The City Commission sets final policy on the creation and adoption of City ordinances.

30. The Panhandling and Right of Way Ordinances are official policies of the City.

31. On August 30, 2018, numerous civil rights organizations, including Southern Legal Counsel, the ACLU of Florida, the National Law Center on Homelessness & Poverty, the National Lawyers Guild South Florida, Florida Legal Services, and Legal Aid Service of Broward County, sent a letter to the City advising that the Challenged Ordinances and other sections of the City code were unconstitutional content-based restrictions on speech that do not survive strict scrutiny. These organizations requested that the City cease enforcement, repeal the ordinances, and develop constructive approaches to address the issues of homelessness and poverty.

32. The City has continued to enforce the Challenged Ordinances.

### ***The Panhandling Ordinance***

33. The Panhandling Ordinance prohibits “panhandling” in any of the enumerated locations contained in the ordinance, and prohibits “aggressive panhandling” in any location in the entire city. (Ex. 1, at 2-3, § 15-91.)

34. For purposes of enforcing the prohibited acts enumerated in § 15-91(a), the City defines “panhandling” as “(1) any solicitation made in person requesting an immediate donation of money or other thing of value for oneself or another person; or (2)

any solicitation which seeks a donation where the person solicited receives an item of little or no monetary value in exchange and where a reasonable person would understand that the transaction is in substance a donation.” (*Id.* at 2, § 15-90(b).)

35. The Panhandling Ordinance singles out for restriction a single subject matter of speech: requests for immediate donations.

36. The Panhandling Ordinance prohibits panhandling on, in, or at any “bus stop or any transportation facility” or “public transportation vehicle” in the city; any “area within fifteen (15) feet, in any direction, of a sidewalk café, an automatic teller machine, the entrance or exit of a commercial or government building” in the city; and any “parking lot, parking garage, or parking pay station owned or operated by the city.” (*Id.* at 2-3, § 15-91(a).)

37. The City further defines “aggressive panhandling or solicitation” within the Panhandling Ordinance as “(1) approaching or speaking to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with either imminent bodily injury or the commission of a criminal act upon the person or another person, or upon property in the person’s immediate possession; (2) continuing to request money or something else of value after the person solicited has given a negative response to the initial request; (3) blocking, either individually or as part of a group of persons, the passage of a solicited person; (4) touching a solicited person without explicit permission; or (5) engaging in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.” (*Id.* at 2, § 15-90(a).)

38. The Panhandling Ordinance prohibits what it defines as aggressive panhandling “in any location in the city.” (*Id.* at 3, § 15-91(b).)



39. The City's definition of "aggressive panhandling or solicitation" includes descriptions of behavior that are not inherently aggressive; for example, making an additional request for money or something else of value after the receiving a negative response, (*id.* at 2, § 15-90(a)(2)), or blocking the passage of a solicited person or group of persons. (*Id.*, § 15-90(a)(3).)

40. The Panhandling Ordinance prohibits a person from making a request for money from explaining why they need the money. An individual experiencing homelessness cannot, after being ignored, explain that they lost their job or home, for example. (*Id.*, § 15-90(a)(2).)

41. The Panhandling Ordinance regulates expressive conduct that is protected by the First Amendment. Even an alleged "aggressive" panhandler conveys messages related to need and deprivation.

42. The City claims that the Panhandling Ordinance's purpose is preserving access to and enjoyment of public spaces, protecting commercial interests, and preventing people and businesses from "disturbing or disruptive" speech. (*Id.* at 1.)

43. The Whereas clauses to the Panhandling Ordinance assert the City's purported interests in adopting the 2014 Panhandling Ordinance, which state:

- a. "the City Commission finds that an increase in aggressive panhandling, begging and solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses and has contributed to the loss of access to and enjoyment of public places and also loss of customers for businesses in the City;"
- b. "the City Commission finds that the presence of individuals who solicit money from other individuals at or near outdoor cafes, automated teller

machines, entrances/exits to and from buildings and parking areas is especially troublesome because these solicited individuals cannot readily escape from unwanted solicitation;”

- c. “the City Commission finds that the current city ordinances are inadequate in protecting the health, safety and welfare of the resident and visitors of the City in preventing the fear and intimidation that accompanies certain types of begging, panhandling and solicitation in certain locations within the City;”
- d. “the City Commission finds that any individual that begs, panhandles or solicits under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity by unwanted touching, detaining, impeding or intimidation which causes fear or apprehension in another individual constitutes a threat to the public health, welfare and safety of the citizens and visitors of the City.” (*Id.* at 1.)

44. The City does not cite to or rely on any statistics, data, studies, or reports to support their justifications. (*Id.*)

45. The City’s purported interests are not compelling interests.

46. The City did not undertake to address the problems it identified with less intrusive tools readily available.

47. Palm Beach County Sheriff’s deputies have warned individuals engaged in charitable solicitation to stop panhandling under threat of arrest. Plaintiffs are aware of at least two other individuals who have been arrested for violations of the Panhandling Ordinance. Both served a night in jail and were assessed court costs and fees.

### ***The Right of Way Ordinance***

48. For purposes of enforcing the prohibited acts enumerated in § 19-14, the City defines “right-of-way canvasser or solicitor” as “any person who sells or offers for sale any thing or service of any kind, or who seeks any donation of any kind, or who personally hands to or seeks to transmit by hand or receive by hand any thing or service of any kind, whether or not payment in exchange is required or requested, to any person who operates or occupies a motor vehicle of any kind, which vehicle is engaged in travel on or within any portion of any of the streets or roadways in the city, whether or not such vehicle is temporarily stopped in the travel lanes of the road.” (Ex. 2, at 2-3, § 19-14(a).)

49. The Right of Way Ordinance prohibits three different types of speech an individual may engage in while standing on any portion of the designated right-of-ways. It prohibits any person from:

- (a) selling or offering for sale any thing or service of any kind;
- (b) seeking any donation of any kind; and
- (c) handing, or seeking to transmit or receive by hand, any thing or service of any kind, to any person who operates or occupies a motor vehicle of any kind.

*(Id.)*

50. The first two provisions of the Right of Way Ordinance single out for restriction particular topics of speech: requests for donations and offers for sale.

51. These two provisions do not prevent pedestrians and occupants of vehicles from engaging in any other kind of speech or exchange – e.g., asking for directions, discussing who to vote for in the upcoming election, or holding a large and colorful sign –

regardless of how time consuming, distracting to the driver, or disruptive to other traffic the interaction may be.

52. The third provision of the Right of Way Ordinance, which prohibits any hand to hand transmissions between pedestrians and occupants of motor vehicles, effectively bans panhandling along the City's major roadways.

53. The Right of Way Ordinance prohibits right-of-way soliciting and canvassing in the following locations:

a. Interstate 95 (I-95) northbound and southbound on and off ramps at Sixth Avenue South;

b. Interstate 95 (I-95) northbound and southbound on and off ramps at 10th Avenue North;

c. Lake Worth Road and the CSX railway (located west of the Interstate 95 (I-95) overpass at Lake Worth Road);

d. Intersection of 10th Avenue North and North Dixie Highway; and

e. Intersection of 6th Avenue South and South Dixie Highway. (*Id.* at 5, § 19-14(c).)

54. Further, "for purposes of enforcement, the above identified intersections shall include any area within one hundred (100) feet from the lateral curb or boundary line of the intersection; and shall also include the entire length of the Interstate 95 (I-95) on and off ramps at 6th Avenue South and 10th Avenue North." (*Id.*) The Right of Way Ordinance excludes "any person who merely holds or displays a sign lawfully permitted to be displayed by a person as long as there is no entry by such person or sign into any portion of the roadway." (*Id.*) The Right of Way Ordinance does not define or explain what sign(s) are "lawfully permitted to be displayed."

55. The City and PBSO have enforced the Right of Way Ordinance against individuals who were solely holding signs conveying the message that they need help.

56. The Right of Way Ordinance states the City's intent that this section "takes precedence over and prohibits any authorized or permitted activity under chapter 19, article VI, of this Code, regarding the authorized and permitted use of pedestrian and vehicular rights-of-way and other public property." (*Id.* at 5, § 19-14(e).)

57. The Right of Way Ordinance provides that "it shall be the duty of any law enforcement officer authorized to enforce the laws of the state to enforce the provisions of this section against any person found in violation." (*Id.*, § 19-14(f)(1).)

58. Penalties for violating the ordinance are set forth in § 19-14(f)(2), which states "any violation of any of the provisions of this section shall be prosecuted as a misdemeanor of the second degree and punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment in an authored facility for not more than sixty (60) days." (*Id.* at 6.)

59. A violation of the ordinance may also be subjected to "other legal or equitable remedies available under law for the enforcement of this section and related penalties, including without limitation, code enforcement" (*id.*, § 19-14(f)(3)), and enforcement under state statutes (*id.* at 5, § 19-14(d).).

60. Since 2019, more than 382 people have been arrested for a violation of the Right of Way Ordinance.

61. Of those 382 arrests, at least 361 were individuals experiencing homelessness, who used a homeless shelter as an address, or who did not have a home address listed on their arrest report.

62. The City claims that the Right of Way Ordinance’s purpose is to protect public safety and traffic safety. (*Id.* at 4, § 19-14(b)(13).)

63. The Right of Way Ordinance’s “Findings; Purpose; Intent” states that the City Commission desires to adopt the Right of Way Ordinance because “canvassers and solicitors pose a danger to themselves and the public at large by interfering with the safe movement of normal vehicular traffic.” (*Id.* at 3, § 19-14(b)(1).) The City bases its safety concerns on (i) a 2017 Smart Growth American report; (ii) a Florida Department of Highway Safety and Motor Vehicles 2015 Traffic Crash Statistics Report; (iii) a 2008 USDOT National Highway Traffic Safety Administration report; and (iv) a Palm Beach County Metropolitan Planning Organization’s Bicycle and Pedestrian Safety Team commissioned study. (*Id.*, § 19-14(b)(2)-(7).)

64. These studies and reports do not support that “canvassers and solicitors pose a danger to themselves and the public at large by interfering with the safe movement of normal vehicular traffic.”

65. Other information that the City indicates it relies on also does not support its stated interest in public safety.

66. The City did not undertake to address the problems it identified with less intrusive tools readily available.

***Challenged Ordinances are Not Least Restrictive Means***

67. The City has other mechanisms by which it prohibits the conduct targeted by the Ordinances without infringing upon protected speech.

68. Lake Worth Beach City Code § 19-84, *Hindering use of vehicular rights-of-way prohibited*, already prohibits the obstruction of any vehicular right-of-way and endangering the safe movement of traffic. It provides: “(a) it is unlawful for any person or

persons to willfully obstruct the free, convenient, and normal use of any vehicular right-of-way by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, or by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles traveling thereon; (b) In addition to the conditions above described, the city expressly declares that creation or maintenance of conditions affecting directly or indirectly the safe or free use and enjoyment of vehicular rights-of-way by the public to be a nuisance and violation of this article.”

69. Lake Worth Beach City Code § 19-83, *Conducting business within the pedestrian and vehicular rights-of-way prohibited*, already prohibits selling or offering for sale anything on a right-of-way. It provides: “unlawful for any person to conduct, solicit or attempt to solicit business or business, or exhibit for sale, offer for sale, deliver, or sell any service, goods, ware and/or merchandise from, in, and/or on any vehicular right-of-way, pedestrian right-of-way.”

70. Lake Worth Beach City Code § 21-34, *Hazardous parking*, already prohibits vehicles from stopping in a traffic lane or obstructing traffic. It provides: “It shall be unlawful for any person to stand or park a motor vehicle in the manner hereinafter described, except when necessary to avoid conflict with other traffic or when so directed by a police officer: ... (f) In a lane or way for moving traffic so as to obstruct traffic.”

71. Lake Worth Beach City Code § 15-8, *Disorderly Conduct*, and § 15-10, *Disturbance of the Peace*, already prohibit disturbing the peace of another by violence; engaging in assault, striking, threatening, or frightening another; engaging in threatening or violent behavior; creating a hazardous or physically offensive condition; and addressing abusive language to any person.

72. Further, touching a solicited person without explicit permission could be charged as battery under § 784.03, Fla. Stat. (2021), and using threatening language or engaging in conduct that would cause a reasonable person to feel threatened with bodily injury or a criminal act could be charged as assault under § 784.011, Fla. Stat. (2021).

73. Thus, the conduct targeted by the Challenged Ordinances could be prohibited by existing Lake Worth Beach ordinances and Florida Statutes without infringing upon the right to free speech.

### ***Plaintiffs' Allegations***

#### **Craig Kersh**

74. Plaintiff C. KERSH has lived in the City of Lake Worth Beach for 30 years.

75. C. KERSH does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps outside in public parks or other public areas.

76. C. KERSH accepts jobs offered to him from vehicles passing by while he is soliciting for charitable donations, otherwise he does not have a traditional job.

77. C. KERSH engages in charitable solicitation on public streets, medians, roadways, or sidewalks in public areas frequented by drivers at or near off-ramps to I-95 on 10th Ave N in the City of Lake Worth Beach, holding a sign that reads "Homeless, out of work. Please help. Thank you, God Bless," or something similar.

78. A recent sign read, "1 week clean, just kicked dope, signed up for every program available. Thank you for everything you've done for me."

79. C. KERSH intends his sign to convey to passersby that he is in need of help. He wants to express that he is grateful for the assistance he has received and hopes that he is able to help others as well with his signs.



80. C. KERSH typically receives food, care packages containing water, hygiene products and clothing items, or gift cards. Sometimes, passersby give C. KERSH cash.

81. C. KERSH has regularly been warned by PBSO deputies that he cannot ask for charity. C. KERSH has been told that he is violating the City's ordinance prohibiting panhandling and solicitation. C. KERSH has been told that he cannot ask for charity on public streets, medians, or sidewalks near the off-ramps to I-95 in the City.

82. C. KERSH has been arrested 70 times for violating the Right of Way Ordinance while requesting charity on right of ways. He is concerned about the amount of money that has been levied against him with each ordinance violation and arrest. He has had \$7,353.00 in court fees levied against him which causes him significant anxiety and fear, as he cannot afford to pay these fees and must solicit charitable donations to meet his basic needs. As a result of enforcement of the Right of Way Ordinance, C. KERSH has served three days in jail, one of which was a one day sentence to be served concurrently on three separate charges.

83. C. KERSH does not obstruct traffic or otherwise interfere with traffic on any road when engaging in solicitation. He only walks into the road when traffic is stopped and it is safe to do so. C. KERSH has not been responsible for any incidents, accidents, or harm while exercising his right to engage in constitutionally protected speech and expression.

84. C. KERSH has been arrested for holding a sign on the side of the road without any intrusion onto the roadway or any interference with vehicular traffic.

85. C. KERSH has experienced a loss of both time and income as a result of the City's Right of Way Ordinance.

86. As a direct consequence of the enforcement actions taken by Defendant pursuant to the Right of Way Ordinance, C. KERSH has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

87. C. KERSH cannot seek life-sustaining charitable donations without constant fear of arrest. He continues to hold signs on public sidewalks and in public streets near I-95 off-ramps in the City, as a means of communicating with fellow citizens. He fears that he will continue to suffer violations of his rights when he engages in this protected speech, and that he will be prevented from seeking soliciting charitable donations by being threatened with arrest, cited, and/or arrested by PBSO deputies under the Right of Way Ordinance.

88. C. KERSH has observed that enforcement of the Right of Way Ordinance increased during the first year and a half of the COVID-19 pandemic. He believes that the treatment he has received from the deputies has worsened because the arresting deputies were no longer allowed to transport individuals to jail for violating the ordinance because of the pandemic, and instead were instructed to issue Notices to Appear.

89. As a result, and because of his fear of continued arrest and prosecution for a violation of the Right of Way Ordinance, C. KERSH has reduced the frequency and adjusted the times of day during which he solicits for charitable donations in the City.

90. C. KERSH would like to continue to ask for charity without risking arrest.

**Michael Fields**

91. Plaintiff FIELDS has lived in the City of Lake Worth Beach for two years.

92. FIELDS does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps outside in public parks or other public areas.

93. FIELDS does not have a traditional job and does not receive food stamps.

94. FIELDS engages in charitable solicitation on public streets, medians, roadways, or sidewalks in public areas frequented by drivers at or near off-ramps to I-95 on 10th Ave N in the City, holding a sign that reads "Hard times. Hungry and homeless," or something similar.

95. FIELDS intends his sign to convey to passersby that he is in need of help. FIELDS wants to feel visible to passersby, whether they can give to him or not.

96. FIELDS typically receives food, care packages containing water, hygiene products and clothing items, or gift cards. Sometimes, passersby give FIELDS cash.

97. FIELDS has regularly been warned by PBSO deputies that he cannot ask for charity. FIELDS has been told that he is violating the Right of Way Ordinance prohibiting panhandling in right of ways. FIELDS has been told that he cannot ask for charity on public streets, medians, or sidewalks near the off-ramps to I-95 in the City.

98. FIELDS has been arrested 72 times for violating the Right of Way Ordinance while soliciting charity on right of ways.

99. FIELDS is concerned about the amount of money that has been levied against him with each ordinance violation and arrest. He has had \$5,642.28 in court fees levied against him, which causes him significant anxiety and fear, as he cannot afford to pay these fees and must solicit charitable donations to meet his basic needs.

100. As a result of enforcement of the Right of Way Ordinance banning charitable solicitation, FIELDS has served 34 days in jail, one of which was a 30-day sentence to be served concurrently on seven separate charges, another was a 2-day sentence on to be served concurrently on eight separate charges, and one was a 1-day sentence to be served concurrently on six separate charges.

101. FIELDS does not obstruct traffic or otherwise interfere with traffic on any road when engaging in solicitation. He only walks into the road when traffic is stopped and it is safe to do so. FIELDS has not been responsible for any incidents, accidents, or harm while exercising his right to engage in constitutionally protected speech and expression.

102. FIELDS has been arrested for holding a sign on the side of the road without any intrusion onto the roadway or any interference with vehicular traffic.

103. In November 2021, a deputy from the Palm Beach County Sheriff placed FIELDS under arrest for violating the Right of Way Ordinance. He was later released from handcuffs and issued a Notice to Appear.

104. As a direct consequence of the enforcement actions taken by Defendant pursuant to the Right of Way Ordinance, FIELDS has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

105. FIELDS has experienced a loss of both time and income as a result of the City's Right of Way Ordinance.

106. FIELDS cannot seek life-sustaining charitable donations without constant fear of arrest. He continues to hold signs on public sidewalks and in public streets near I-95 off-ramps in Lake Worth Beach, as a means of communicating with fellow citizens. He fears that he will continue to suffer violations of his rights when he engages in this protected speech, and that he will be prevented from seeking soliciting charitable donations by being threatened with arrest, cited, and/or arrested by Palm Beach County Sherriff's deputies under the Right of Way Ordinance.

107. FIELDS believes that each day he must choose between being able to eat and risking arrest for violating the Right of Way Ordinance.

108. As a result, and because of his fear of continued arrest and prosecution for a violation of the Right of Way Ordinance, FIELDS has reduced the frequency and adjusted the times of day with which he solicits for charitable donations in the City of Lake Worth Beach.

109. FIELDS would like to continue to ask for charity without risking arrest.

**Roy Kersh**

110. Plaintiff R. KERSH has lived in the City of Lake Worth Beach for 30 years.

111. R. KERSH does not have a fixed address. When he cannot find shelter, he will sleep outside in public parks or other public areas.

112. R. KERSH recently started receiving food stamps.

113. R. KERSH engages in charitable solicitation on public streets, medians, roadways, or sidewalks in public areas frequented by drivers at or near off-ramps to I-95 on 10th Ave N in the City of Lake Worth Beach, holding a sign that reads "1 week clean, very hungry. God Bless," or something similar.

114. R. KERSH intends his sign to convey to passersby that he needs assistance and anything could help.

115. R. KERSH typically would receive food, care packages containing water, hygiene products and clothing items, or gift cards. Sometimes, passersby give R. KERSH cash or offer him day jobs to make money. His message communicates his need for help to fellow citizens, and one such citizen who saw his sign offered him a part-time job.

116. R. KERSH has regularly been warned by Sheriff's deputies that he cannot ask for charity. R. KERSH has been told that he is violating the Right of Way Ordinance

prohibiting panhandling. R. KERSH has been told that he cannot ask for charity on public streets, medians, or sidewalks near the off-ramps to I-95 in the City of Lake Worth Beach.

117. R. KERSH has been arrested 59 times for violating the Right of Way Ordinance while soliciting charity on right of ways.

118. He is concerned about the amount of money that has been levied against him with each ordinance violation and arrest. He has had \$4,954.96 in court fees levied against him which causes him significant anxiety and fear, as he cannot afford to pay these fees and must solicit charitable donations to meet his basic needs. As a result of enforcement of the Right of Way Ordinance banning charitable solicitation, R. KERSH has served two days in jail.

119. R. KERSH does not intend to obstruct traffic or otherwise interfere with traffic on any road when engaging in solicitation. He only walks into the road when traffic is stopped and it is safe to do so. R. KERSH has not been responsible for any incidents, accidents, or harm while exercising his right to engage in constitutionally protected speech and expression.

120. R. KERSH has been arrested for holding a sign on the side of the road without any intrusion onto the roadway or any interference with vehicular traffic.

121. As a direct consequence of the enforcement actions taken by Defendant pursuant to the Right of Way Ordinance, R. KERSH has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

122. R. KERSH temporarily left the City of Lake Worth Beach in September 2021 to avoid the negative impacts of this Right of Way Ordinance. After completing a program, he returned to the City in January 2022, as he was unable to find affordable housing.

123. Upon his return to the City of Lake Worth Beach, R. KERSH resumed holding his signs in public areas to solicit charitable donations because he sees it as a means of communicating with fellow citizens. He is concerned that he will continue to suffer the same violations of his rights and that he will be prevented from seeking charitable donations by being threatened with arrest, cited, and/or arrested by Palm Beach County Sheriff's deputies under the Right of Way Ordinance.

124. R. KERSH has experienced a loss of both time and income as a result of the Right of Way Ordinance.

125. R. KERSH cannot seek life-sustaining charitable donations without constant fear of arrest. He continues to hold signs on public sidewalks and in public streets near I-95 off-ramps in Lake Worth Beach, as a means of communicating with fellow citizens. He fears that he will continue to suffer violations of his rights when he engages in this protected speech, and that he will be prevented from seeking soliciting charitable donations by being threatened with arrest, cited, and/or arrested by Palm Beach County Sherriff's deputies under the Right of Way Ordinance.

126. R. KERSH believes that each day he must choose between being able to eat and risking arrest for violating the Right of Way Ordinance.

127. As a result, and because of his fear of continued arrest and prosecution for a violation of the Right of Way Ordinance, R. KERSH has reduced the frequency and adjusted the times of day with which he solicits for charitable donations in the City of Lake Worth Beach.

128. R. KERSH would like to continue to ask for charity without risking arrest.

**James R. Soares**

129. Plaintiff SOARES has lived in the City of Lake Worth Beach for almost two years.

130. SOARES does not have a fixed address, and when he cannot find a place to sleep inside, he sleeps outside in public parks or other public areas.

131. SOARES cannot work a traditional job due to a disability and does not currently receive food stamps.

132. SOARES engages in charitable solicitation on public sidewalks or parking lots of areas frequented by truck drivers at or near businesses in the downtown area of the City.

133. SOARES has previously held a sign on public sidewalks, directed at trucks unloading merchandise that read "Need help, need work" or something similar. He stopped holding a sign to solicit for work because he was warned multiple times by PBSO that he was violating the Panhandling Ordinance.

134. SOARES has also been notified by certain downtown businesses, who previously allowed him to solicit truck drivers that were making deliveries to them, that they were pressured by PBSO to no longer allow him to solicit on their private property.

135. Since being warned, SOARES has only done oral requests for work from truck drivers because he believes it makes him less visible to PBSO harassment.

136. SOARES intends his requests to convey to drivers or passersby that he is in need of help.

137. SOARES sometimes receives cash, food, care packages containing water, hygiene products and clothing items, or gift cards.



138. As a direct consequence of the enforcement actions taken by Defendant pursuant to the Panhandling Ordinance, SOARES has been chilled in the exercise of his constitutionally protected rights to free speech and expression in quintessential public fora.

139. SOARES has experienced a loss of both time and income as a result of the City's Panhandling Ordinance.

140. SOARES continues to orally request assistance and work from drivers on public sidewalks and in parking lots in downtown Lake Worth Beach, as a means of communicating with fellow citizens. He fears he will be prevented from seeking work and charitable donations by being threatened with arrest, cited, and/or arrested by Palm Beach County Sherriff's deputies under the Panhandling Ordinance.

141. As a result, and because of his fear of continued arrest and prosecution for a violation of the Panhandling Ordinance, SOARES has reduced the frequency and adjusted the times of day with which he solicits work or charitable donations in the City of Lake Worth Beach.

142. SOARES would like to continue to ask for charity without risking arrest.

**FIRST CLAIM FOR RELIEF – PANHANDLING ORDINANCE  
VIOLATES FIRST AMENDMENT OF U.S. CONSTITUTION**

143. The allegations of paragraphs 1 through 142 are incorporated into the Claim for Relief as though fully set forth herein.

144. The Panhandling Ordinance, § 15-91 of the Lake Worth Beach City Code, is an unconstitutional infringement, on its face and as applied to Plaintiffs, of Plaintiffs' affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

145. At all times relevant hereto, the Lake Worth Beach City Commission was the final policymaker for the City for the purpose of adopting ordinances regulating constitutionally protected speech, expressive conduct, and assembly within the boundaries of the City.

146. Requests for donations are recognized as speech entitled to First Amendment protection.

147. The City's streets, sidewalks, medians, and roadways are traditional public fora that hold a special position in terms of First Amendment protection because of their historic role as places of discussion and debate.

148. The Panhandling Ordinance seeks to limit constitutionally protected speech and manners of expression based on the subject matter of the speech in traditional public fora.

149. The Panhandling Ordinance is an impermissible content-based restriction on speech. It singles out specific subject matter— requests for charity— for differential treatment and only applies its regulatory scheme to that subject matter.

150. Because the Panhandling Ordinance treats charitable solicitation differently than other types of speech, it discriminates against a single type of message.

151. For example, a person can solicit signatures on a petition right next to a sidewalk café, but could not ask for a donation of food. A person could ask a passerby to vote for a particular candidate two or more times, but could not ask that passerby for spare change more than once.

152. The City has not demonstrated why an individual holding a sign requesting charity in any one of the proscribed locations is more dangerous than an individual standing in that same place holding a sign that says "Vote for [any particular candidate]."

153. These provisions are content-based and subject to strict scrutiny.

154. These provisions are not narrowly tailored to serve a compelling government interest, nor are they the least restrictive means of serving any compelling government interest.

155. The City has not provided a compelling interest to justify restricting peaceful requests for charity.

156. Peaceful requests for money do not inherently threaten public safety.

157. The Panhandling Ordinance is over inclusive, in that it sweeps into its ambit protected speech that poses no threat to public safety such as asking for money after dark or while standing within 15 feet of an exit or entrance to a commercially zoned building.

158. The Panhandling Ordinance is also under inclusive, in that it singles out requests for donations from other types of speech, that would be equally problematic if exercised in an “aggressive” manner.

159. The City also has other mechanisms by which it prohibits violent or threatening conduct that are not related to protected speech. Ordinances prohibiting battery, assault, disorderly conduct, and breach of the peace already cover behavior that is disruptive and harmful to the public without intruding on protected speech interests.

160. By depriving individuals of the use of traditional public forums to engage in expressive activity, the Panhandling Ordinance forces individuals to take their speech to other locations that are less effective channels for communicating protected speech. By doing so, they do not leave open reasonable alternative channels for protected speech.

161. The Palm Beach County Sheriff's Office, acting in coordination with and at the direction of the City, have warned Plaintiff SOARES to stop engaging in peaceful request for charity under threat of arrest for violating the Panhandling Ordinance.

162. The City and its agents enforce the Panhandling Ordinance through threats of arrest and warnings to prohibit Plaintiff SOARES and other homeless individuals from engaging in charitable solicitation in traditional public fora.

163. Plaintiff SOARES has a credible threat of future prosecution under the Panhandling Ordinance through arrest by the Palm Beach County Sheriff's Office.

164. The City and their agent's enforcement of the Panhandling Ordinance is the direct and proximate cause of the violations of Plaintiff SOARES's constitutional rights.

165. Violations of the Panhandling Ordinance have subjected Plaintiff SOARES to penalties for engaging in protected speech in traditional public fora, and the Ordinances have had a chilling effect on SOARES's constitutionally protected expression.

166. Plaintiff SOARES has suffered damages including emotional distress, fear, humiliation, loss of opportunity to request and receive charitable donations, and loss of the constitutional right to engage in protected First Amendment activity.

167. An injunction is required as damages alone are not an adequate remedy at law. Damages alone cannot adequately compensate Plaintiff SOARES for the ongoing loss of his constitutional rights. SOARES has suffered, and continues to suffer, irreparable harm and has been damaged as a direct result of Defendant's enforcement of the Panhandling Ordinances.

**SECOND CLAIM FOR RELIEF - RIGHT OF WAY ORDINANCE  
VIOLATES THE FIRST AMENDMENT OF U.S. CONSTITUTION**

168. The allegations of paragraphs 1 through 142 are incorporated into the Claim for Relief as though fully set forth herein.

169. The Right of Way Ordinance, § 19-14 of the Lake Worth Beach City Code, is an unconstitutional infringement, on its face and as applied to Plaintiffs, of Plaintiffs' affirmative rights to freedom of speech and expression secured by the First Amendment to the U.S. Constitution.

170. At all times relevant hereto, the Lake Worth Beach City Commission was the final policymaker for the City for the purpose of adopting ordinances regulating constitutionally protected speech, expressive conduct, and assembly within the boundaries of the City.

171. Requests for donations are recognized as speech entitled to First Amendment protection.

172. The City's streets, sidewalks, medians, and roadways are traditional public fora that hold a special position in terms of First Amendment protection because of their historic role as places of discussion and debate.

173. The Right of Way Ordinance seeks to limit constitutionally protected speech and manners of expression based on subject matter of the speech in traditional public fora.

174. The Right of Way Ordinance is an impermissible content-based restriction on speech. It singles out specific subject matter— requests for charity and offers to sell— for differential treatment and only applies its regulatory scheme to that subject matter.

175. Because the Right of Way ordinance treats these topics differently than other types of speech, it discriminates against a single type of message.

176. For example, a person could ask a driver for directions, but could not ask for a donation of food. A person could offer to buy a passerby's vehicle, but could not offer to sell that passerby a bottle of water.

177. The City has not demonstrated why an individual standing on the side of the road holding a sign that says "Homeless – anything helps" is more dangerous than an individual standing in that same place holding a sign that says "Vote for [any particular candidate]."

178. These provisions are content-based and subject to strict scrutiny.

179. These provisions are not narrowly tailored to serve a compelling government interest, nor are they the least restrictive means of serving any compelling government interest.

180. The City has not provided a compelling interest to justify restricting peaceful requests for money.

181. Peaceful requests for money do not inherently threaten public safety.

182. The Right of Way Ordinance is over inclusive, in that it sweeps into its ambit protected speech that poses no threat to public safety, such as asking for money while on a median or on a sidewalk along the roadway.

183. The Right of Way Ordinance is also under inclusive, in that it singles out requests for donations from other types of speech, such as protest, that would be equally dangerous if it were to create a traffic hazard.

184. The City has other mechanisms by which it prohibits conduct presenting a traffic hazard. Ordinances prohibiting the obstruction of rights of way already restrict

behavior that hinders the safe movement of traffic without intruding on protected speech interests.

185. The Right of Way Ordinance's provision banning hand-to-hand transmissions of any kind with any person operating a motor vehicle on or within any portion of any of the streets or roadways in the city, whether or not such vehicle is stopped, is not a reasonable time, place, and manner restriction in that it is not narrowly tailored to serve the City's alleged significant government interest in traffic safety.

186. The Right of Way Ordinance prohibits hand to hand transmissions even when the vehicle is stopped and the individual seeking the donation is on the sidewalk and never enters the roadway.

187. This provision of the Right of Way Ordinance is both over inclusive and under inclusive. It is overinclusive in that it penalizes individuals engaging in conduct that does not pose a risk to pedestrian or traffic safety, and it is underinclusive in that it penalizes only the pedestrian and not the driver.

188. The Right of Way Ordinance fails under both strict scrutiny and intermediate scrutiny, as it does not further the City's alleged interests in pedestrian and traffic safety, and it is not the least restrictive means of achieving those interests.

189. The City has means available to it that are less intrusive on speech.

190. The studies and reports referenced in the Right of Way Ordinance, which the City allegedly relied upon in crafting and enacting the ordinance, provide a number of detailed and well-researched countermeasures for addressing issues related to pedestrian safety.

191. The City's purported interests in traffic safety and reducing pedestrian fatalities are not furthered by completely banning from the targeted intersections only

those the City defines as “solicitors and canvassers” while permitting other forms of speech and expression in those same locations, regardless of how distracting they may be to drivers or their interference with the movement of vehicular traffic.

192. By depriving individuals of the use of traditional public forums to engage in expressive activity, the Right of Way Ordinance force individuals to take their speech to other locations that are less effective channels for communicating protected speech. By doing so, they do not leave open reasonable alternative channels for protected speech.

193. The Palm Beach County Sheriff’s Office, acting in coordination with and at the direction of the City, have arrested Plaintiffs C. KERSH, FIELDS, and R. KERSH over 200 times under the Right of Way Ordinance.

194. The City and its agents continue to enforce the the Right of Way Ordinance to prohibit Plaintiffs and other homeless individuals from engaging in charitable solicitation in traditional public fora.

195. Plaintiffs have a credible threat of future prosecution under the Right of Way Ordinance through arrest by the Palm Beach County Sheriff’s Office.

196. The City and their agent’s enforcement of the Right of Way Ordinance is the direct and proximate cause of the violations of Plaintiffs’ constitutional rights.

197. Violations of the Right of Way Ordinance have subjected Plaintiffs to penalties for engaging in protected speech in traditional public fora, and the ordinances have had a chilling effect on Plaintiffs’ constitutionally protected expression.

198. Plaintiffs have suffered damages including emotional distress, fear, humiliation, assessment of financial penalties, loss of liberty, loss of opportunity to request and receive charitable donations, and loss of the constitutional right to engage in protected First Amendment activity.



199. An injunction is required as damages alone are not an adequate remedy at law. Damages alone cannot adequately compensate Plaintiffs for the ongoing loss of their constitutional rights. Plaintiffs have suffered, and continue to suffer, irreparable harm and have been damaged as a direct result of Defendant's enforcement of this the challenged ordinances.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

- A. Declare that the Panhandling Ordinance, §§ 15-90 and 15-91, is unconstitutional, both facially and as-applied, in violation of the First Amendment of the U.S. Constitution;
- B. Declare that the Right of Way Ordinance, § 19-14, is unconstitutional, both facially and as-applied, in violation of the First Amendment of the U.S. Constitution;
- C. Issue a preliminary and permanent injunction preventing Defendant City, and its officers, agents, and employees, from enforcing the Right of Way and Panhandling Ordinances;
- D. Award compensatory damages to Plaintiffs against Defendant City;
- E. Award nominal damages to Plaintiffs against Defendant City;
- F. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and
- G. Award such other relief as this Court deems just and proper.

### **JURY DEMAND**

Plaintiff demands trial by jury on all counts alleged above.

Dated: June 29, 2022

Respectfully submitted,

/s/ Simone Chriss

**Simone Chriss**, Fla. Bar No. 124062

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(561) 350-0369

**ATTORNEYS FOR PLAINTIFFS**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS CRAIG KERSH, MICHAEL FIELDS, ROY KE DEFENDANTS CITY OF LAKE WORTH BEACH, FLA.

(b) County of Residence of First Listed Plaintiff Palm Beach (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Palm Beach (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) see attached NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Form with checkboxes for Basis of Jurisdiction (Federal Question, Diversity) and Citizenship of Principal Parties (Citizen of This State, Citizen of Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid of checkboxes for Nature of Suit categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER: see attached

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Challenge under the First Amendment of U.S. Constitution to City's panhandling and right of way ordinances. LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ TBD CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 07/29/2022 SIGNATURE OF ATTORNEY OF RECORD Simone Christ

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE No.: 9:22-cv-8095**

CRAIG KERSH, MICHAEL FIELDS,  
ROY KERSH, and JAMES R. SOARES

Plaintiffs,

v.

CITY OF LAKE WORTH BEACH, FLA.,

Defendant.

---

Full Plaintiffs List

CRAIG KERSH, MICHAEL FIELDS, ROY KERSH, and JAMES R. SOARES

Full Plaintiff Attorney List

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



CRAIG KERSH, MICHAEL FIELDS, ROY KERSH, and JAMES R. SOARES

Plaintiff(s)

v.

CITY OF LAKE WORTH BEACH, FLA.,

Defendant(s)

Civil Action No. 9:22-cv-8095

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) City of Lake Worth Beach, Florida Mayor, Betty Resch 7 North Dixie Highway, Lake Worth Beach, Florida 33460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Simone Chriss, Chelsea Dunn, and Jodi Siegel, Southern Legal Counsel, 1229 NW 12th Ave, Gainesville, FL 32601; Sabarish P. Neelakanta, SPN Law, LLC, Harvey Building, 224 Datura Street, Suite 904, West Palm Beach, FL 33401.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. 9:22-cv-8095

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**



ORDINANCE NO. 2014-34 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 15, "OFFENSES – MISCELLANEOUS"; BY ENACTING ARTICLE VI, "PANHANDLING", ESTABLISHING REGULATIONS ON PANHANDLING AND AGGRESSIVE PANHANDLING; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, the City Commission recognizes an individual's first amendment right of free speech and that panhandling has been determined to be protected speech; and

WHEREAS, the City Commission finds that an increase in aggressive panhandling, begging and solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses and has contributed to the loss of access to and enjoyment of public places and also loss of customers for businesses in the City; and

WHEREAS, the City Commission finds that aggressive panhandling, begging and solicitation usually includes approaching or following pedestrians, repetitive requests for money, use of abusive or profane language, unwanted physical contact and intentional blocking of pedestrian traffic; and

WHEREAS, the City Commission finds that the presence of individuals who solicit money from other individuals at or near outdoor cafes, automated teller machines, entrances/exits to and from buildings and parking areas is especially troublesome because these solicited individuals cannot readily escape from unwanted solicitation; and

WHEREAS, the City Commission finds that the current city ordinances are inadequate in protecting the health, safety and welfare of the resident and visitors of the City in preventing the fear and intimidation that accompanies certain types of begging, panhandling and solicitation in certain locations within the City; and

WHEREAS, the City Commission finds that any individual that begs, panhandles or solicits under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity by unwanted touching, detaining, impeding or intimidation which causes fear or apprehension in another individual constitutes a threat to the public health, welfare and safety of the citizens and visitors of the City; and

WHEREAS, the City Commission finds establishing an ordinance to address and prevent such begging, panhandling and soliciting will serve to protect the public health, welfare and safety of the citizens and visitors of the City and serves a valid public purpose.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, that:



Section 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

Section 2. Chapter 15, "Offenses – Miscellaneous" is hereby amended by enacting Article VI, "Panhandling" to read as follows:

## ARTICLE VI. PANHANDLING

### Sec. 15-90. Definitions.

#### Definitions as used in this Article.

(a) Aggressive panhandling or solicitation means:

(1) approaching or speaking to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with either imminent bodily injury or the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(2) continuing to request money or something else of value after the person solicited has given a negative response to the initial request;

(3) blocking, either individually or as part of a group of persons, the passage of a solicited person;

(4) touching a solicited person without explicit permission; or,

(5) engaging in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

(b) Panhandling means:

(1) any solicitation made in person requesting an immediate donation of money or other thing of value for oneself or another person; or

(2) any solicitation which seeks a donation where the person solicited receives an item of little or no monetary value in exchange and where a reasonable person would understand that the transaction is in substance a donation.

Panhandling does not mean the act of passively standing or sitting, performing music, or singing with a sign or other indication that a donation is being sought, but without any vocal request other than a response to an inquiry by another person.

### Sec. 15-91. Prohibited Acts Regarding Panhandling.

(a) It shall be unlawful to engage in the act of panhandling when either the solicitation occurs or the person being solicited is located in, on, or at any of the following locations:

(1) bus stop or any public transportation facility;

(2) public transportation vehicle;

(3) area within fifteen feet (15'), in any direction, of a sidewalk café, as defined in the code;



- (4) parking lot, parking garage, or parking pay station owned or operated by the city;
- (5) area within fifteen feet (15'), in any direction, of an automatic teller machine;
- (6) area within fifteen feet (15'), in any direction, of the entrance or exit of a commercial or governmental building;
- (7) private property, unless the person panhandling has permission from the owner of such property.

(b) It shall be unlawful to engage in the act of Aggressive Panhandling in any location in the city.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective on ten (10) days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Amoroso, seconded by Commissioner Szerdi, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	AYE
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 21<sup>st</sup> day of October, 2014.

Pg. 4, Ord. 2014-34

The passage of this Ordinance on second reading was moved by Commissioner Amoroso, seconded by Commissioner Szerdi, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	ABSENT
Commissioner Andy Amoroso	AYE
Commissioner John Szerdi	AYE

The Mayor thereupon declared this Ordinance duly passed and enacted on the 4<sup>th</sup> day of November, 2014.

LAKE WORTH CITY COMMISSION

By: *Pam Triolo*  
Pam Triolo, Mayor

ATTEST:

*Pamela J. Lopez*  
Pamela J. Lopez, City Clerk



STATE OF FLORIDA )  
COUNTY OF PALM BEACH ) SS  
CITY OF LAKE WORTH BEACH )

I hereby certify the foregoing to be a true and correct copy of Ordinance 2014-34

In Witness whereof, I have hereunto set my hand and affixed the official seal of the City of Lake Worth Beach, Florida.  
3/10/22 Date *[Signature]* City Clerk

2017-11

ORDINANCE NO. 2017-11 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 19, "STREETS AND SIDEWALKS", ARTICLE 1, "IN GENERAL", BY CREATING SECTION 19-14, TO BE ENTITLED "RIGHT-OF-WAY SOLICITORS AND CANVASSERS"; PROHIBITING SOLICITATIONS IN AND UPON CERTAIN RIGHTS-OF-WAY WITHIN THE CITY; PROVIDING FOR DEFINITIONS; FINDINGS AND INTENT; ENFORCEMENT AND PENALTIES; CODIFICATION; CONFLICTS; SEVERABILITY; AND, AN EFFECTIVE DATE.

**WHEREAS**, the City Commission of the City of Lake Worth has a significant interest in protecting the health, safety and welfare of the pedestrians and drivers in the City and ensuring the free flow of traffic within the City; and

**WHEREAS**, the City Commission finds that a dangerous condition exists when person(s) approach vehicles and vehicular travel lanes to solicit employment, business, or charitable contributions from drivers traveling on major streets and roadways; and

**WHEREAS**, according to the Department of Highway Safety and Motor Vehicles 2015 annual report on traffic crash facts, in Palm Beach County in 2015, there were 604 pedestrians involved in motor vehicles accidents of which 529 were injured and of which 35 of those were fatally injured; and

**WHEREAS**, State, county and city transportation agencies design public roadways for the safe and efficient movement of motor vehicles and pedestrians on such roadways; and

**WHEREAS**, the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways ("Florida Greenbook") does not include provisions for any kind of transaction to take place between motor vehicles and pedestrians sitting or standing close to the travel lanes of public roads; and

**WHEREAS**, the Florida Greenbook requires that planning and design of new streets and highways include provisions that minimize vehicle and pedestrian conflicts and recommends that pedestrian pathways be placed as far from roadways as practical because of the inherently dangerous nature of vehicles and pedestrians in close proximity to each other; and

**WHEREAS**, under section 337.406, Florida Statutes, the Florida Legislature has determined that the failure to prohibit activities in the right-of-way such as the free distribution or sale, or display or solicitation for free distribution or sale, of any merchandise, goods, property or services; the solicitation for charitable purposes; and the display of advertising of any sort, will endanger the health, safety, and



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general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities; and

**WHEREAS**, medians are part of the roadways and are designed to separate opposing traffic channels and direct traffic and provide a vehicle refuse area for an errant vehicles; and

**WHEREAS**, the City's law enforcement agency, Palm Beach County Sheriff Office, has analyzed each of the major roadways within the City and has determined that certain intersections, as specified herein, pose the greatest threat to public safety and the free flow of traffic in connection with the activities of right-of-way solicitors and canvassers; and

**WHEREAS**, the distribution of any thing and/or solicitation of any thing to and from a motor vehicle can also create other safety and nuisance concerns for the residents and guests of the City; and

**WHEREAS**, the City seeks to provide for the safety of its citizens by regulating the use of public roadway intersections within the City; and

**WHEREAS**, the City Commission of the City of Lake Worth deems it to be in the best interests of the citizens and residents of the City and serves a valid public purpose to prohibit right-of-way solicitors and canvassers at certain intersections located within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA, that:**

**Section 1:** That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

**Section 2:** Chapter 19, Article I, of the Code of Ordinances of the City of Lake Worth, is hereby amended by the creation of Section 19-14, to be entitled "Right-of-Way Solicitors and Canvassers", as follows:

**Sec. 19-14. - Right-of-Way Solicitors and Canvassers**

(A) Definitions. For the purposes of this section, "right-of-way canvasser or solicitor" shall mean any person who sells or offers for sale any thing or service of any kind, or who seeks any donation of any kind, or who personally hands to or seeks to transmit by hand or receive by hand any thing or service of any kind, whether or not payment in exchange is required or requested, to any person who operates or occupies a motor vehicle of any kind, which vehicle is engaged in travel on or within any portion of any of the streets or roadways in the City, whether or not such vehicle is temporarily stopped in the travel lanes

of the road. The term shall not apply to any person who merely holds or displays a sign lawfully permitted to be displayed by a person as long as there is no entry by such person or sign into any portion of the roadway. Further, this term shall not apply to official citations or notices provided pursuant to governmental authority.

(B) Findings; purpose; intent.

1. The City Commission of the City of Lake Worth desires to adopt an ordinance restricting right-of-way canvassers and solicitors from certain intersections located in the City because such canvassers and solicitors pose a danger to themselves and the public at large by interfering with the safe movement of normal vehicular traffic; and

2. According to a 2017 report by Smart Growth America, a national group that advocates for smart development, since 2009, pedestrians in Florida are more likely to be struck by vehicles than elsewhere in the United States;

3. According to the Smart Growth America report, the metropolitan areas from Miami to West Palm Beach are one of the most dangerous metropolitan areas for pedestrians with 1,508 pedestrian fatalities from 2005-2014; and

4. According to the Florida Department of Highway Safety and Motor Vehicles 2015 Florida Traffic Crash Statistics Report, 632 pedestrians were killed on Florida roadways in 2015; 35 of those pedestrians were killed on roadways in Palm Beach County; and

5. As reported in the USDOT National Highway Traffic Safety Administration's June 2008 National Pedestrian Crash Report, the Lake Worth experienced 2 pedestrian crash deaths in 2006 alone; and

6. Based upon statistics collected by the U.S. Department of Transportation, Federal Highway Administration, Florida pedestrian fatalities are on the rise; and

7. According to a Palm Beach County Metropolitan Planning Organization's Bicycle and Pedestrian Safety Team commissioned study, Lake Worth Road (from Jog Road east into downtown Lake Worth) is a corridor of concern based on crash data involving pedestrians and bicyclists in Palm Beach County from 2010 to 2014 with central Palm Beach County being the most intense for pedestrian crashes in the past five years; and

8. Numerous types of right-of-way canvassers and solicitors may seek to operate within the City of Lake Worth, including, but not limited to, children, adolescents and adults who seek to collect money for school and



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community activities; vendors who sell flowers, newspapers and other products; and, people who seek donations or distribute written information; and

9. Right-of-way canvassers and solicitors approach motorists and passengers in motor vehicles engaged in travel on roads, and are particularly susceptible and vulnerable to serious injury, or death due to the speed and number of motorists who operate vehicles on busy roads within the city; and

10. Roadways are primarily designed for vehicular traffic and are not suited to safely accommodate right-of way canvassers and solicitors; and

11. The presence of right-of-way canvassers and solicitors interferes with the safe movement of normal vehicular traffic; and

12. The road network in the City is substantially burdened by a high volume of traffic, roadway and adjacent construction and road design which frequently includes vehicle turns and movements that demand a driver's strict attention; and

13. It is the intention of the City Commission to use the least restrictive means to advance the significant governmental interests of traffic safety and public safety and, consequently, the Palm Beach County Sheriff's Office analyzed each of the major roads within the City and determined that the intersections listed in subsection (C) below present an increased and significant danger for use by distracted drivers, pedestrians and right-of-way canvassers and solicitors and pose the greatest threat to traffic and public safety in reference to activities and use by right-of-way canvassers and solicitors, and therefore the City Commission has determined that such activities and use by right-of way canvassers and solicitors shall be prohibited at the intersections listed in subsection (C); and

14. It is the finding of the City Commission that many other alternative channels of communication (other than right-of-way canvassing and solicitation at the prohibited intersections) exist for persons who seek to exercise their First Amendment freedoms, such as, but by no means limited to, solicitation of funds or distribution of literature through the mail or at alternate locations (such as houses of worship, shopping areas and special events); the sale and/or distribution of newspapers through home or office delivery, vending machines and retail stores; other authorized and permitted business, charitable and other activities under the City's code; and the sale of goods and services at retail stores, through the internet and from vending machines; and

15. The City Commission desires to preserve and protect the personal safety and quality of life of its residents and of those who use streets within

the City, both pedestrians and motorists alike; and

16. The City Commission has reviewed the proposed regulations provided by this section and finds that such regulations accomplish the purposes intended while utilizing the least restrictive means; and

17. The City Commission finds that it is in the best interests of the residents of the City to adopt this section.

(C) Prohibited intersections. It shall be unlawful for any person to act as a right-of-way canvasser or solicitor at the intersections of:

1. Interstate 95 (I-95) northbound and southbound on and off ramps at Sixth Avenue South;
2. Interstate 95 (I-95) northbound and southbound on and off ramps at 10<sup>th</sup> Avenue North;
3. Lake Worth Road and the CSX railway (located west of the Interstate 95 (I-95) overpass at Lake Worth Road);
4. Intersection of 10<sup>th</sup> Avenue North and North Dixie Highway; and,
5. Intersection of 6<sup>th</sup> Avenue South and South Dixie Highway.

For purposes of enforcement, the above identified intersections shall include any area within 100 feet from the lateral curb or boundary line of the intersection; and, shall also include the entire length of the Interstate 95 (I-95) on and off ramps at 6<sup>th</sup> Avenue South and 10<sup>th</sup> Avenue North.

(D) Chapter 316, Florida Statutes. The enforcement of this section shall not, in any way, preclude the enforcement of Section 316.130(5), Florida Statutes, as applicable.

(E) Precedence. It is the intent of this section that the prohibition herein for persons acting as right-of-way canvassers or solicitors at the identified intersections takes precedence over and prohibits any authorized or permitted activity under Chapter 19, Article VI, of this code, regarding the authorized and permitted use of pedestrian and vehicular rights-of-way and other public property.

(F) Enforcement and Penalties.

1. It shall be the duty of any law enforcement officer authorized to enforce the laws of the state to enforce the provisions of this section against any person found in violation.



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2. Any violation of any of the provisions of this section shall be prosecuted as a misdemeanor of the second degree and punished by a fine of not more than five hundred dollars (\$500.00) and/or imprisonment in an authorized facility for not more than sixty (60) days.
3. Notwithstanding the foregoing, the enforcement provisions and penalty provisions provided for in this section are not exclusive. The city may pursue any other legal or equitable remedies available under law for the enforcement of this section and related penalties, including without limitation, code enforcement.

**Section 3:** If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected thereby. In the event of a subsequent change in applicable law, so the provision which had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding under this ordinance.

**Section 4:** That any ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**Section 5:** That it is the intention of the City Commission, and It is hereby ordained, that the provisions of this ordinance shall become and made a part of the Code of the City of Lake Worth; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6:** This ordinance shall become effective ten (10) days after passage.

The passage of this ordinance on first reading was moved by Commissioner Amoroso, seconded by Commissioner Hardy, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Omari Hardy	AYE
Commissioner Andy Amoroso	AYE
Commissioner Herman Robinson	AYE

The Mayor thereupon declares this ordinance duly passed on first reading on the 6<sup>th</sup> day of May, 2017.

The passage of this ordinance on second reading was moved by Vice Mayor Maxwell, seconded by Commissioner Hardy, and upon being put to a vote, the vote was as follows:



Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Omari Hardy	AYE
Commissioner Andy Amoroso	ABSENT
Commissioner Herman Robinson	AYE

The Mayor thereupon declared this ordinance duly passed on the 20<sup>th</sup> day of June, 2017.

CITY OF LAKE WORTH, FLORIDA

  
 \_\_\_\_\_  
 Pam Triolo, Mayor

ATTEST:

  
 \_\_\_\_\_  
 Deborah M. Andrea, City Clerk



STATE OF FLORIDA )  
 COUNTY OF PALM BEACH ) SS  
 CITY OF LAKE WORTH BEACH )  
 I hereby certify the foregoing to be a true and correct copy  
 of Ordinance 2017-11

\_\_\_\_\_  
 In Witness whereof, I have hereunto set my hand and affixed  
 the official seal of the City of Lake Worth Beach, Florida.  
4/5/22 \_\_\_\_\_  
 Date City Clerk