

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-0281-WJM-KMT

ABBY LANDOW,
JEFFREY ALAN,
SUSAN WYMER,
LAWRENCE BEALL,
GREENPEACE INC., and
NANCY YORK,
Plaintiffs

v.

CITY OF FORT COLLINS,
Defendant.

NOTICE OF REPEAL OF CONTESTED PORTIONS OF ORDINANCE NO. 70, 1995

Defendant City of Fort Collins, by and through its attorneys, J. Andrew Nathan and Heidi J. Hugdahl of Nathan, Bremer, Dumm & Myers P.C., and John R. Duval, of the Fort Collins City Attorney's Office, submits its Notice of Repeal of Contested Portions of Ordinance No. 70, 1995.

Procedural Background

1. On February 10, 2015, Plaintiffs filed their Motion for Temporary Restraining Order and Preliminary Injunction.
2. This Court denied Plaintiffs' Motion for Temporary Restraining Order, but set the matter for a Preliminary Injunction Hearing on March 2, 2015. The Court also issued a briefing schedule.

3. On February 13, 2015, this Court issued a Notice of Disclosure—advising that Judge Martinez had been a member of the Legal Panel for the American Civil Liberties Union of Colorado from approximately September 2006 to March 2010.

4. Defendant timely filed its Response in Opposition to Plaintiffs’ Temporary Restraining Order and Preliminary Injunction, on February 18, 2015.

5. On February 23, 2015, Defendant filed its Motion for Judicial Recusal.

6. Early on February 25, 2015, this Court Vacated the Preliminary Injunction Hearing.

7. Plaintiffs timely filed their Reply in Support of Motion for Temporary Restraining Order and Preliminary Injunction, on February 25, 2015.

8. Additionally, on February 25, 2015, Plaintiffs filed their Response to Defendant’s Motion for Judicial Recusal.

9. The Court has not ruled on the pending Motion for Judicial Recusal and the Preliminary Injunction Hearing has not been reset.

Portions of the Ordinance at Issue

10. In relevant part Ordinance No. 70, 1995 defines panhandle as:¹

“knowingly approach, accost, or stop another person in a public place and solicit that person, whether by spoken words, bodily gestures, written signs or other means, for a gift of money or thing of value.”

Ordinance No. 70, 1995 also states:

“It shall be unlawful for any person to panhandle if such panhandling occurs if the panhandling occurs:

¹ For ease of reference attached is a copy of Ordinance No 70, 1995 Of the Council of the City of Fort Collins Amending Section 17-126 of the City Code and Adding Section 17-127 to the City Code Pertaining to Panhandling. (Ex. A)

- (1) Any time from one-half hour after sunset to one-half hour before sunrise;
- (2) In a manner that involves the person panhandling knowingly engaging in conduct toward the person solicited that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety;
- (3) In a manner that involves the person panhandling knowingly directing fighting words to the person solicited;
- (4) In a manner that involves the person panhandling knowingly touching or grabbing the person solicited;
- (5) In a manner that involves the person panhandling knowingly continuing to request the person solicited for a gift of money or thing of value after the person solicited has refused the panhandler's initial request;
- (6) In a manner that involves the person panhandling knowingly soliciting an at-risk person;
- (7) On a sidewalk or other passage way in a public place used by pedestrians and is done in a manner that obstructs the passage of the person solicited or that requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person;
- (8) Within 100 feet of an automatic teller machine or of a bus stop;
- (9) On a public bus;
- (10) In a parking garage, parking lot or other parking facility; or
- (11) When the person solicited is entering or exiting a parked vehicle, in a motor vehicle stopped on a street, or present within the patio or sidewalk serving area of a retail business establishment that serves food and/or drink.

11. As more fully set forth in the pleadings filed, Plaintiffs are challenging subsections (1), (5), (6), (8), (9), (10) and (11) of the Ordinance. Plaintiffs did not challenge subsections (2), (3), (4) and (7).

12. On February 25, 2015, the Fort Collins City Council passed

EMERGENCY ORDINANCE NO. 040, 2015
OF THE COUNCIL OF THE CITY OF FORT COLLINS
TO REPEAL CERTAIN PROVISIONS OF CITY CODE SECTION 17-127
PERTAINING TO PANHANDLING²

13. Ordinance No. 040, 2015 repeals the seven contested portions of Ordinance No. 70, 1995, thereby leaving in place the four uncontested portions of Ordinance No. 70, 1995, (now (1), (2), (3) and (4) of Ordinance No. 040, 2015).

14. Defendant wishes to advise this Court and Counsel for Plaintiffs of passage of the above Ordinance. The new Ordinance takes effect immediately,³ and repeals the contested portions of the Ordinance that are at issue. As such whether a Preliminary Injunction should issue is moot, at this time, and therefore a Preliminary Injunction Hearing is unnecessary.

Respectfully submitted this 27th day of February, 2015.

s/ Heidi J. Hugdahl

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² Attached is a copy of the Signed Ordinance. (Ex. B).

³ See Article II, Section 7, City of Fort Collins Charter.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2015, I electronically filed the foregoing **Notice of Repeal of Contested Portions of Ordinance No. 70, 1995** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following at their e-mail addresses:.

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