

Exhibit 1

Plaintiffs' Response to Notice of Repeal of Contested Portions of Ordinance No. 70, 1995

Landow, et al. v City of Fort Collins
Civil No. 15-cv-0281-WJM-KMT

AGENDA ITEM SUMMARY

February 27, 2015

City Council

STAFF

Jerry Schiager, Police Deputy Chief
John Hutto, Police Chief

SUBJECT

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 Panhandling.

EXECUTIVE SUMMARY

This is an emergency ordinance to repeal certain provisions to the City's panhandling ordinance found in City Code Section 17-127. On February 10th a class-action lawsuit was filed in federal court against the City challenging certain provisions in that ordinance. The purpose of this emergency ordinance is to moot, for now, much of the lawsuit, in order to give City staff and the Council more time to review the challenged provisions, to consider any changes to them, to conduct any needed public outreach and for staff to present to Council for future consideration an ordinance to possibly reinstate these repealed provisions or to consider amendments to them.

STAFF RECOMMENDATION

Staff recommends adoption of the Emergency Ordinance.

BACKGROUND / DISCUSSION

In 1995, the City Council adopted Ordinance No. 70, 1995, adding Section 17-127 to the City Code to impose reasonable time, place and manner restrictions on certain aggressive panhandling conduct that was then occurring and has continued to occur within the City during the past 20 years. On February 10, 2015, five individual plaintiffs and Greenpeace, Inc. (the "Plaintiffs") filed in Colorado Federal District Court in Civil Action No. 15-cv-0281 a class-action lawsuit against the City (the "Lawsuit"). The Plaintiffs challenge in the Lawsuit the constitutionality of seven specific time, place and manner panhandling restrictions in City Code Section 17-127, as found in subsections (a)(1), (b)(1), (b)(5), (b)(6), (b)(8), (b)(9), (b)(10) and (b)(11), and have asked the Court to preliminarily and permanently enjoin the City's enforcement of these challenged provisions (the "Challenged Provisions").

In order to provide the City with more time to review and possibly consider amendments to these Challenged Provisions, and to avoid the substantial time and resource demands placed on the City that will result from the Lawsuit, this emergency ordinance will repeal the Challenged Provisions and direct City staff to continue its review of the Challenged Provisions, to conduct any needed public outreach concerning them, and to prepare and present to Council future ordinances to reinstate the Challenged Provisions as now existing or as they may be proposed for amendment. This repeal of the Challenged Provisions will have the effect of mooting much of the Lawsuit.

Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency. The emergency in this matter is to immediately

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reduce, if not eliminate, the substantial time and resource demands that the City will experience in responding to and defending against the claims the Plaintiffs' have asserted against the Challenged Provisions in the Lawsuit.

CITY FINANCIAL IMPACTS

Adoption of this ordinance should significantly reduce some of the time and resources that the City would otherwise need to expend in responding to and defending the Lawsuit.

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 PANHANDLING

WHEREAS, in 1995, the City Council adopted Ordinance No. 70, 1995, adding Section 17-127 to the City Code to impose reasonable time, place and manner restrictions on certain aggressive panhandling conduct that was then occurring and has continued to occur within the City during the past 20 years; and

WHEREAS, on February 10, 2015, five individual plaintiffs and Greenpeace, Inc. (the “Plaintiffs”) filed in Colorado Federal District Court in Civil Action No. 15-cv-0281 a class-action lawsuit against the City (the “Lawsuit”); and

WHEREAS, the Plaintiffs challenge in the Lawsuit the constitutionality of seven specific time, place and manner panhandling restrictions in City Code Section 17-127, as found in subsections (a)(1), (b)(1), (b)(5), (b)(6), (b)(8), (b)(9), (b)(10) and (b)(11), and have asked the Court to preliminarily and permanently enjoin the City’s enforcement of these challenged provisions (the “Challenged Provisions”); and

WHEREAS, the Plaintiffs do not, however, challenge the constitutionality of the four other time, place and manner panhandling restrictions in City Code Section 17-127, as found in subsections (b)(2), (b)(3), (b)(4) and (b)(7); and

WHEREAS, the Court initially scheduled a hearing on the Plaintiffs’ motion for a preliminary injunction for March 2, 2015, at 2:00 pm, but the Court has recently vacated this hearing date; and

WHEREAS, it is nevertheless expected that the Court will soon reschedule this preliminary injunction hearing for a date in the very near future; and

WHEREAS, the City Council has determined, after consultation with the City’s legal counsel, that it is in the City’s best interest for the Council to have more time to review the Challenged Provisions and to consider possible future amendments without having to address at the same time the Plaintiffs’ claims in the Lawsuit concerning the Challenged Provisions under the legal constraints and tight deadlines imposed in this kind of civil litigation; and

WHEREAS, in order to provide the City with more time for such review and possible reconsideration of these Challenged Provisions, and to avoid the substantial time and resource demands placed on the City that will result from the Lawsuit, the City Council has elected to repeal the Challenged Provisions and to direct City staff to continue its review of the Challenged Provisions, to conduct any needed public outreach concerning them, and to prepare and present to Council future ordinances to reinstate the Challenged Provisions as now existing or as they may be proposed for amendment; and

WHEREAS, Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds that an emergency exists for the immediate adoption of this Ordinance under Article II, Section 6 of the City Charter to immediately reduce, if not eliminate, the substantial time and resource demands that the City will experience in responding to and defending against the claims the Plaintiffs have asserted against the Challenged Provisions in the Lawsuit.

Section 2. That Chapter 17 of the Code of the City of Fort Collins is hereby amended by repealing subsections (a)(1), (b)(1), (b)(5), (b)(6), (b)(8), (b)(9), (b)(10) and (b)(11) of Code Section 17-127, as follows:

Sec. 17-127. Panhandling.

(a) When used in this Section, the following words, terms and phrases shall have the meanings ascribed to them in this Subsection (a):

~~(1) — *At risk person* shall mean a natural person who is sixty (60) years of age or older, under eighteen (18) years of age, or who is a person with a disability. A *person with a disability* shall mean, for purposes of this Paragraph (1), a natural person of any age who suffers from one (1) or more substantial physical or mental impairments that render the person significantly less able to defend against criminal acts directed toward such person than he or she would be without such physical or mental impairments. A *substantial physical or mental impairment* shall be deemed to include, without limitation, the loss of, or the loss of use of, a hand or foot; loss of, or severe diminishment of, eyesight; loss of, or severe diminishment of, hearing; loss of, or severe diminishment in, the ability to walk; and any developmental disability, psychological disorder, mental illness or neurological condition that substantially impairs a person's ability to function physically or that substantially impairs a person's judgment or capacity to recognize reality or to control behavior.~~

(2) *Knowingly* shall mean, with respect to the conduct or circumstances described in this Section, that a person is aware that such person's conduct is of that nature or that the circumstances exist. With respect to a result of such conduct, this means that a person is aware that such person's conduct is practically certain to cause the result.

(3) *Obscene* shall mean a blatantly offensive description of an ultimate sexual act or solicitation to commit an ultimate sexual act, whether or not such ultimate

sexual act is normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(43) *Obstruct* shall mean to render impassible or to render passage unreasonably inconvenient or hazardous.

(54) *Panhandle* shall mean to 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.

(b) It shall be unlawful for any person to panhandle if such panhandling occurs:

~~(1) — Any time from one half (½) hour after sunset to one half (½) hour before sunrise;~~

(21) 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;

(32) In a manner that involves the person panhandling knowingly directing fighting words to the person solicited;

(43) In a manner that involves the person panhandling knowingly touching or grabbing the person solicited; **or**

~~(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;~~

(74) 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 one hundred (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 motor 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.~~

Section 3. That the City Clerk is hereby directed to cause the publication of this Ordinance in the Fort Collins Coloradoan no later than March 6, 2015.

Introduced, considered favorably by at least five (5) members of the Council of the City of Fort Collins and finally passed as an emergency ordinance and ordered published this 27th day of February, 2015.

Mayor

ATTEST:

City Clerk