

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

BOBBY HONICUTT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:15-CV-3515
)	
CITY OF SPRINGFIELD, MISSOURI,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Bobby Honicutt alleges as follows:

INTRODUCTION

1. Springfield resident Bobby Honicutt and his family are facing difficult financial times. Since the recession, Honicutt has been unable to secure regular, full-time work. His wife has a serious medical condition that requires expensive prescription medication and other medical treatment, and she cannot work. Honicutt made the difficult decision to panhandle to help his family meet its expenses.
2. Honicutt's efforts have been stymied by § 78.2 of the Springfield City Code, conflicting interpretations of the ordinance by Springfield officials, and the inability to get a response from his representative about the conflict. Having already been threatened with citation for engaging in expressive activity protected by the First Amendment, Honicutt has now decided to refrain from such expressive conduct because he recognizes a citation would only compound the problems he faces.
3. Subsequent to the enactment of § 78.2, the Supreme Court of the United States announced its opinions in two First Amendment cases—*McCullen v. Coakley*, 134 S. Ct.

2518 (2014), and *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015)—that demonstrate § 78.2 cannot withstand First Amendment scrutiny. Moreover, as evidenced by the contradictory interpretations of § 78.2 by city officials, § 78.2 fails to provide reasonable notice of precisely what expressive activity it prohibits, which encourages arbitrary or discriminatory enforcement and violates the Due Process Clause of the Fourteenth Amendment. For these reasons, Honicutt challenges § 78.2 both on its face and as applied to him.

PARTIES

4. Plaintiff, Bobby Honicutt, is a citizen of Missouri who resides in Springfield.
5. Defendant City of Springfield, Missouri, is a municipal corporation and political subdivision of the State of Missouri.

JURISDICTION AND VENUE

6. Honicutt brings this claim pursuant to 42 U.S.C. § 1983; the Free Speech Clause of the First Amendment to the United States Constitution, incorporated as against States and their municipal divisions through the Fourteenth Amendment; and the Due Process Clause of the Fourteenth Amendment.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) because Defendant is located in Greene County, Missouri, and its actions giving rise to the claim in this suit occurred in Greene County.
8. Venue is proper in the Southern Division pursuant to Local Rule 3.1(a)(3)(a).

FACTS

9. On January 27, 2014, Springfield enacted Council Bill 2013-320, which expanded Springfield's restrictions, entitled "Aggressive Solicitation," to prohibit *any* solicitation

“within 5 feet of a curb edge, sidewalk, shoulder, intersection median, or highway off ramp” and to restrict panhandling on public streets, sidewalks, alleys, parks, and other public places. A signed copy of the Council Bill is attached as Exhibit 1 and incorporated herein.

10. The ordinance is codified as § 78.2 of the Springfield City Code.
11. Honicutt and his family are facing difficult financial times.
12. In October 2015, Honicutt made the difficult decision to panhandle to help his family meet its expenses.
13. Having never before panhandled and wanting to abide by the law, Honicutt sought out information about panhandling restrictions by visiting Springfield’s City Hall.
14. At City Hall, Honicutt was given a one-page document that purports to describe Springfield’s ordinance. It states:

Panhandlers can quietly hold a solicitation sign anywhere in the city as long as they are not in a median, intersection, or on a shoulder; they do not block an entrance, or obstruct pedestrian traffic, and the do not verbally request donations.

To verbally solicit money, panhandlers must be at least 20 feet away from a doorway or sidewalk café and at least 5 feet from a road or sidewalk.

Aggressive panhandling includes repeatedly asking a person for money despite being rebuffed, or making physical contact while soliciting.

15. In light of the guidance from City Hall, Honicutt concluded that passive panhandling, such as silently holding a solicitation sign, would be the best route to avoid running afoul of the law.
16. On November 7, 2015, Honicutt panhandled on a public sidewalk at the northeast corner of Kearney Street and Grant Street in Springfield.
17. Honicutt held a sign that read:

TRYING TO
SUPPORT MY
SICK WIFE
Please Help
18. Honicutt was approached by a Springfield police officer.
19. The Springfield police officer told Honicutt that he was violating a city ordinance by soliciting on a public sidewalk.
20. Honicutt showed the Springfield police officer the written guidance Honicutt had been provided at City Hall, and they read it together.
21. Honicutt opined to the Springfield police officer that, according to the guidance, only aggressive panhandling is prohibited on sidewalks.
22. The Springfield police officer responded that the ordinance clearly prohibits any solicitation on sidewalks.
23. The Springfield police officer told Honicutt that he must stop panhandling or the police officer would give him a ticket that Honicutt could fight in court.
24. Honicutt determined that he could not afford to receive a ticket and face the possibility of a fine or incarceration, so he stopped soliciting.

25. The Springfield police officer also told Honicutt that the police officer would be returning to make sure that Honicutt had not resumed soliciting.
26. On November 9, 2015, Honicutt contacted, by letter and e-mail, his zone representative on the Springfield City Council, Justin Burnett, explaining his situation and experience being prevented from soliciting, as well as asking for a meeting with Burnett and City Attorney. Honicutt has received no response.
27. Pursuant to § 1-7 of the Code of Ordinances, each violation of the challenged ordinance “shall be punished by a fine of not more than \$1,000.00 or by imprisonment in jail for a period not exceeding 180 days, or both such fine and imprisonment.”
28. Because Honicutt is unwilling to risk imposition of a fine or imprisonment, he temporarily refrained from soliciting after November 7, 2015.
29. Honicutt attempted to panhandle *and* comply with the Ordinance twice after November 7, 2015, but it was a futile exercise. He could not effectively seek or receive donations from persons traveling down public roads. Furthermore, because the police officer’s instruction to him and the interpretation of the Ordinance from City Hall were in conflict, he was unsure if he was in compliance despite his best efforts.
30. In addition, Honicutt learned that Defendant had charged a local attorney, Roger Jones, with violation of the Ordinance because he stood at a busy intersection with a sign and accepted donations on behalf of the American Cancer Society.
31. Because of his fear of citation or arrest, Honicutt has since refrained from soliciting after his two largely unsuccessful efforts.
32. But for § 78.2, Honicutt would engage in the expressive conduct of soliciting on sidewalks both by holding a sign and by verbally requesting contributions.

- 33. The chilling effect of § 78.2 on Honicutt's expressive activity is based on his reasonable belief that he will be subject to arrest and/or prosecution under the Ordinance.
- 34. On November 7, 2015, Honicutt received multiple donations before the Springfield police officer threatened him with citation.
- 35. Honicutt has been harmed by not receiving the donations he would have received on November 7, 2015, and thereafter, had he be able to panhandle.
- 36. In addition, absent injunctive relief from this Court, Honicutt could still be cited and prosecuted for a violation of § 78.2 based on his expressive activity on November 7, 2015.
- 37. At all times relevant to this Complaint, Defendant acts under color of law.

THE CHALLENGED ORDINANCE

- 38. Section 78.2, in relevant part, provides that "[i]t shall be unlawful for any person to solicit money or other things of value or to solicit the sale of goods or services ... [b]y spoken, written[,] or printed appeal within five feet of a curb edge, sidewalk, shoulder, intersection median, or highway off ramp."
- 39. Section 78.2 further provides that "[i]t shall be unlawful to panhandle in any manner[.]"
- 40. Section 78.2 defines "panhandling" as "any verbal solicitation made in person upon any public street, sidewalk, alley, park or other public place, in which a person requests an immediate donation of any item of value, monetary or otherwise from another person[.]"
- 41. Section 78.2 defines "solicit" as "request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value." And, the section further notes that "[t]he solicitation may

be, without limitation, by the spoken, written or printed word or by other means of communication.”

42. Honicutt reasonably fears that his solicitation on public sidewalks in Springfield of contributions—whether by spoken word or the passive holding of a sign—will be considered panhandling, solicitation, or both, and, thus subject him to citation and the possibility of being fined, imprisoned, or both.

COUNT I: FIRST AMENDMENT

*§ 78.2 is Unconstitutional
under the Free Speech Clause of the First Amendment*

43. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
44. Section 78.2 violates the Free Speech Clause of the First Amendment to the Constitution, on its face and as applied, because it impermissibly curtails Plaintiff’s expressive activities.
45. Solicitation of immediate donations for money or other items of value is an expressive communication subject to First Amendment protection.
46. Section 78.2 is a content-based regulation because it prohibits certain types of speech based on the content thereof and makes impermissible distinctions based on the function or purpose of the regulated speech.
47. Section 78.2 applies to certain types of solicitation (for example, for money), but not to other types of solicitation (for example, to be included on a mailing list).
48. Section 78.2 applies to certain types of signs (for example, those seeking contributions), but not other types of signs (for example, those inviting passersby to an event).

49. Section 78.2 applies to the distribution of certain types of literature (for example, a handbill seeking contributions), but not to other types of literature (for example, a handbill seeking support in an election).
50. Section 78.2 applies, by its own plain language, to traditional and designated public fora, as well as nonpublic fora and private property.
51. Section 78.2 is facially invalid because it prohibits a substantial amount of protected speech.
52. Plaintiff has been chilled from engaging in any solicitation or panhandling because of his reasonable fear of citation, arrest, or prosecution.
53. Springfield has no significant or compelling interest that can justify the necessity of § 78.2.
54. Section 78.2 is not narrowly tailored to achieve a significant government interest.
55. Section 78.2 is not the least restrictive means to achieve a compelling government interest.
56. Section 78.2 does not leave open ample alternative avenues of communication for Plaintiff to convey his message.
57. Section 78.2 is underinclusive because, for example, it does not restrict other types of expressive conduct between individuals on public sidewalks.
58. Section 78.2 is overinclusive because, for example, it covers some types of communication, based on its content, function, and/or purpose, in all public fora within Springfield.

COUNT II: DUE PROCESS

§ 78.2 is Void for Vagueness

59. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
60. Section 78.2 fails to provide persons of ordinary intelligence a reasonable opportunity to understand what, if any, panhandling and soliciting is permissible on public sidewalks and other traditional public fora in Springfield.
61. The vagueness of § 78.2 encourages arbitrary or discriminatory enforcement.

WHEREFORE, Plaintiff prays this Court:

- a. Upon motion, grant a temporary restraining order and a preliminary injunction preventing the enforcement of § 78.2;
- b. Grant a permanent injunction preventing the enforcement of § 78.2;
- c. Enter a declaration that § 78.2 is unconstitutional on its face and as applied to Plaintiff;
- d. Award Plaintiff nominal and actual damages;
- e. Award costs and attorneys' fees pursuant to 42 U.S.C. Sect. 1988; and
- f. Allow such other and further relief as this Court finds just.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827
Jessie Steffan, #64861
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St. Louis, Missouri 63108
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Attorneys for Plaintiff

One-rdg. _____
P. Hrngs. 12-16-13
Pgs. 6
Filed: 12-10-13

Sponsored by: Burlison, Fisk
Hosmer, Seifried

First Reading: December 16, 2013

Second Reading: January 27, 2014

AMENDED

COUNCIL BILL NO. 2013-320

GENERAL ORDINANCE NO. 6096

AN ORDINANCE

1 AMENDING the Springfield City Code, Chapter 78, Offenses and Miscellaneous
2 Provisions, Article I, In General, by adopting a new subsection
3 prohibiting panhandling within twenty feet of the entrance to any
4 business.
5
6

7 WHEREAS, the Park Central Square Task Force (Task Force) was charged with
8 researching and making recommendations to the City Manager regarding issues in the
9 downtown area, including reviewing current ordinances related to this geographic area;
10 and
11

12 WHEREAS, the Task Force recommended amending the City Code to add
13 Kansas City's code language regarding panhandling.
14

15 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
16 SPRINGFIELD, MISSOURI, as follows, that:
17

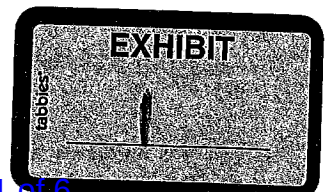
18 NOTE: Sections being added are underlined and sections being deleted are
19 ~~stricken~~.
20

21 Section 1 – The Springfield City Code, Chapter 78, Offenses and Miscellaneous
22 Provisions, Article I, In General, is hereby amended as follows:
23

24 **Sec. 78-2. Aggressive solicitation.**
25

26 (a) *Intent.*
27

28 (1) This section is intended to protect citizens from the fear and
29 intimidation accompanying certain kinds of solicitation that are
30 unwelcome. Aggressive solicitation usually includes approaching or
31 following pedestrians, repetitive soliciting despite refusals, the use of
32 abusive or profane language to cause fear and intimidation, unwanted
33 physical contact, or intentional blocking of pedestrian and vehicular traffic.



34 The council finds that the presence of individuals who solicit money from
35 persons at or near banks or automated teller machines or in public
36 transportation vehicles is especially troublesome because of the enhanced
37 fear of crime in those confined environments. Such activity carries with it
38 an implicit threat to both persons and property.

39
40 (2) The law is not intended to limit any person from exercising their
41 constitutional right to solicit funds, picket, protest or engage in other
42 constitutionally protected activities.

43
44 (b) *Definitions.* For purposes of this section, the following definitions shall
45 apply:

46
47 *Aggressive manner* means:

48
49 (1) Intentionally or recklessly making any physical contact with or touching
50 another person in the course of the solicitation without the person's
51 consent with the intent to intimidate;

52
53 (2) Following the person being solicited, if that conduct is:

54 a. Intended to or is likely to cause a reasonable person to fear
55 imminent bodily harm or the commission of a criminal act upon
56 property in the person's possession; or

57 b. Intended to or is reasonably likely to intimidate the person being
58 solicited into responding affirmatively to the solicitation;

59
60 (3) Continuing to solicit within five feet of the person being solicited after
61 the person has made a negative response, if continuing the solicitation is:

62 a. Intended to or is likely to cause a reasonable person to fear
63 imminent bodily harm or the commission of a criminal act upon
64 property in the person's possession; or

65 b. Intended to or is reasonably likely to intimidate the person being
66 solicited into responding affirmatively to the solicitation;

67
68 (4) Intentionally or recklessly blocking the safe or free passage of the
69 person being solicited with intent to intimidate, or requiring the person or
70 the driver of a vehicle to take evasive action to avoid physical contact with
71 the person making the solicitation. Acts authorized as an exercise of one's
72 constitutional right to picket or legally protest, and acts authorized by a
73 permit issued pursuant to this Code, shall not constitute obstruction of
74 pedestrian or vehicular traffic;

75
76 (5) Intentionally or recklessly using obscene or abusive language or
77 gestures intended to or likely to cause a reasonable person to fear
78 imminent bodily harm or the commission of a criminal act upon property in

79 the person's possession, or words intended to or reasonably likely to
80 intimidate the person into responding affirmatively to the solicitation; or
81

- 82 (6) Approaching the person being solicited in a manner that is:
83 a. Intended to or is likely to cause a reasonable person to fear
84 imminent bodily harm or the commission of a criminal act upon
85 property in the person's possession; or
86 b. Intended to or is reasonably likely to intimidate the person being
87 solicited into responding affirmatively to the solicitation.
88

89 *Automated teller machine* means a device, linked to a financial institution's
90 account records, which is able to carry out transactions, including but not limited
91 to account transfers, deposits, cash withdrawals, balance inquiries, and
92 mortgage and loan payments.
93

94 *Automated teller machine facility* means the area comprised of one or
95 more automated teller machines and any adjacent space which is made available
96 to banking customers after regular banking hours.
97

98 *Bank* means any banking corporation, credit union or savings and loan
99 licensed by the state or the United States of America.
100

101 *Intimidate* means to engage in conduct, which would make a reasonable
102 person fearful or feel compelled.
103

104 *Panhandling means any verbal solicitation made in person upon any*
105 *public street, sidewalk, alley, park or other public place, in which a person*
106 *requests an immediate donation of any item of value, monetary or otherwise from*
107 *another person, and includes but is not limited to seeking donations of any item*
108 *of value, monetary or otherwise:*
109

110 *a. By spoken appeal; and*
111

112 *b. Where the person being solicited receives an item of little or no*
113 *monetary value in exchange for a donation, under circumstances*
114 *where a reasonable person would understand that the transaction*
115 *is in substance a donation.*
116

117
118
119 *Public area* means an area to which the public or a substantial group of
120 persons has access, and includes but is not limited to alleys, bridges, buildings,
121 driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open
122 to the general public, and the doorways and entrances to buildings and
123 dwellings, and the grounds enclosing them.
124

Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written or printed word or by other means of communication.

(c) *Prohibited acts.* It shall be unlawful for any person to solicit money or other things of value or to solicit the sale of goods or services:

(1) In an aggressive manner in a public area.

(2) In any public transportation vehicle or bus.

~~(3) Within 15 feet of any entrance or exit of any bank or check-cashing business or within 15 feet of any automated teller machine during the hours of operation of such bank or automated teller machine without the consent of the owner or other person legally in possession of such facilities; provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility.~~

~~(4)~~ (3) On private property if the owner, tenant or lawful occupant has asked the person not to solicit on the property or has posted a sign clearly indicating that solicitations are not welcome on the property.

~~(4)~~ By spoken, written or printed appeal within 5 feet of a curb edge, sidewalk, shoulder, intersection median, or highway off ramp.

(d) It shall be unlawful to panhandle in any manner, including within 20 feet, in any direction, from any entrance or exit to any:

(1) Office or office building;

(2) Commercial establishment engaged in the sale of goods or services;

(3) Bank, credit union, check cashing business, automated teller machine, or other financial institution;

(4) Single or multi-family residence or residential complex; or

(5) Within 20 feet of any outdoor dining area, outdoor restaurant, or outdoor café.

~~(d)~~ (e) *Construction and severability.*

(1) This section is not intended to proscribe any demand for payment for services rendered or goods delivered.

(2) This section is not intended to create a result through enforcement that is absurd, impossible or unreasonable. This section should be held inapplicable in any cases where its application would be unconstitutional under the constitution of the state or the Constitution of the United States of America.

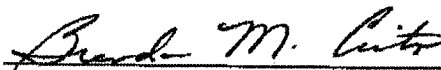
Section 2 – Severability Clause. If any section, subsection, sentence, clause of phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses, or phrases be declared invalid.

Section 3 – Savings Clause. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or cause of action occurred or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

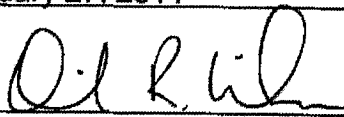
Section 4 – This ordinance shall be in full force and effect from and after passage.

Passed at meeting: January 27, 2014


Mayor

Attest: , City Clerk

Filed as Ordinance: January 27, 2014

Approved as to form: , City Attorney

Approved for Council action: , City Manager

EXPLANATION TO COUNCIL BILL NO. 2013-_____

FILED: 12-10-13

ORIGINATING DEPARTMENT: City Manager

PURPOSE: To amend the Springfield City Code, Chapter 78, Offenses and Miscellaneous Provisions, Article I, In General, by adopting a new subsection prohibiting panhandling within twenty feet of the entrance to any business.

BACKGROUND INFORMATION: The Park Central Square Task Force (Task Force) was charged with researching and making recommendations to the City Manager regarding issues in the downtown area. The Task Force reviewed current ordinances to determine if any updates were needed. On November 20, 2013, the Task Force presented an update to the Plans and Policies Council Committee. The Task Force recommended amending the City Code to include certain provisions from the Kansas City Code of Ordinances prohibiting all panhandling within twenty feet of the entrance or exit to any office, commercial establishment, single or multi-family residential complex, or within twenty feet of any outdoor café, restaurant, or dining area. The Task Force originally proposed that the amendment apply only to the downtown area. The Plans and Policies Committee requested that the City Attorney's Office draft an amendment that would apply city wide and include an additional provision prohibiting panhandling on traffic medians.

REMARKS:

Submitted and approved by:



Greg Burris, City Manager