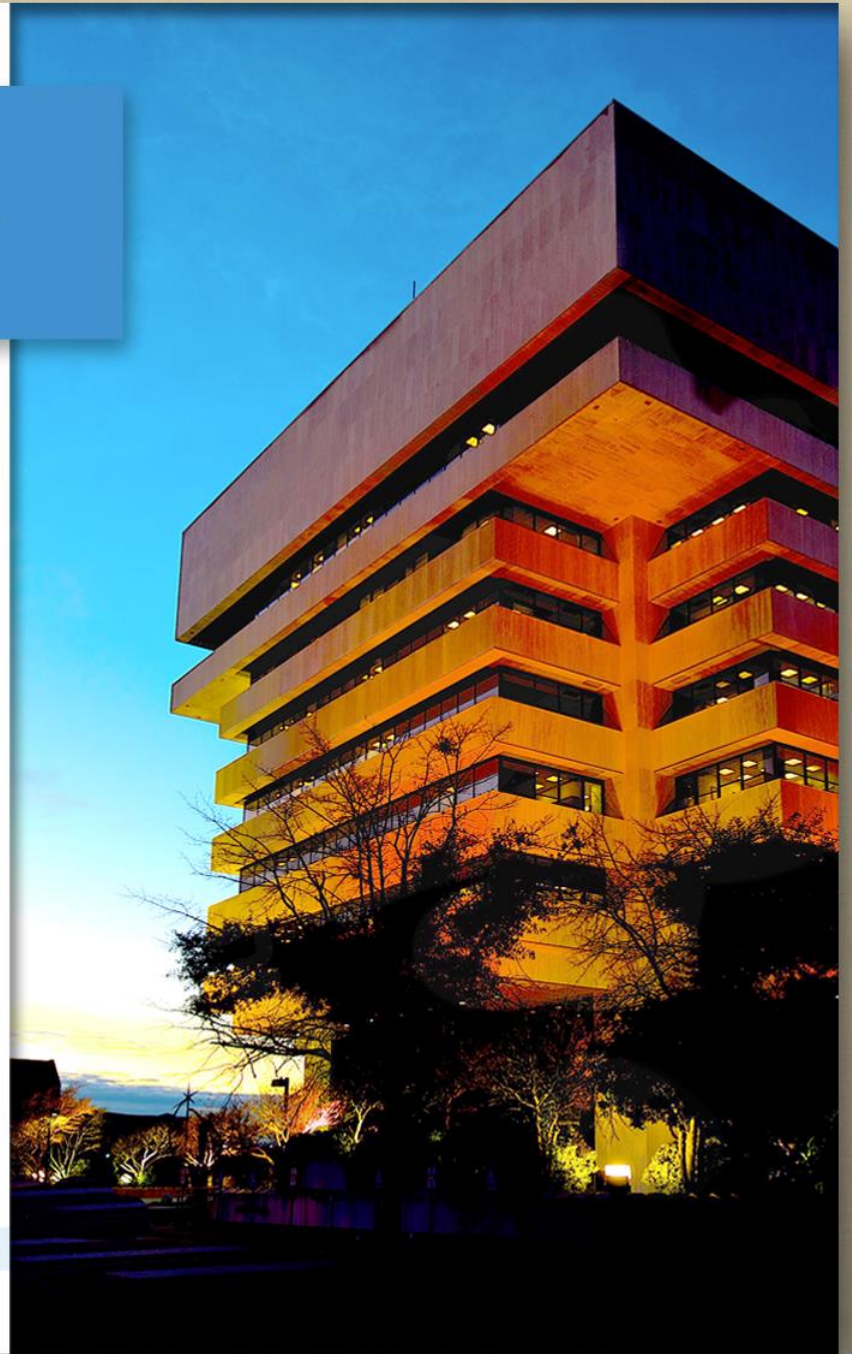


HAMPTON VA

PANHANDLING

BRANDI A. LAW
DEPUTY CITY ATTORNEY



HISTORY

- 2007: City staff and citizen stakeholder committee considered panhandling issue.
 - Recommended aggressive solicitation ordinance.
 - Public Education Campaign
 - Encouraged businesses to enforce no trespassing and no solicitation policies.
- 2010: Adopted ordinance prohibiting solicitation in the right of way.
 - In response to state code change.

HISTORY CONT.

- 2016:
 - February - Repealed ROW Solicitation Ordinance in response to 4th Circuit caselaw (*Reynolds v Middleton*).
 - June – Adopted enhanced trespassing ordinance.



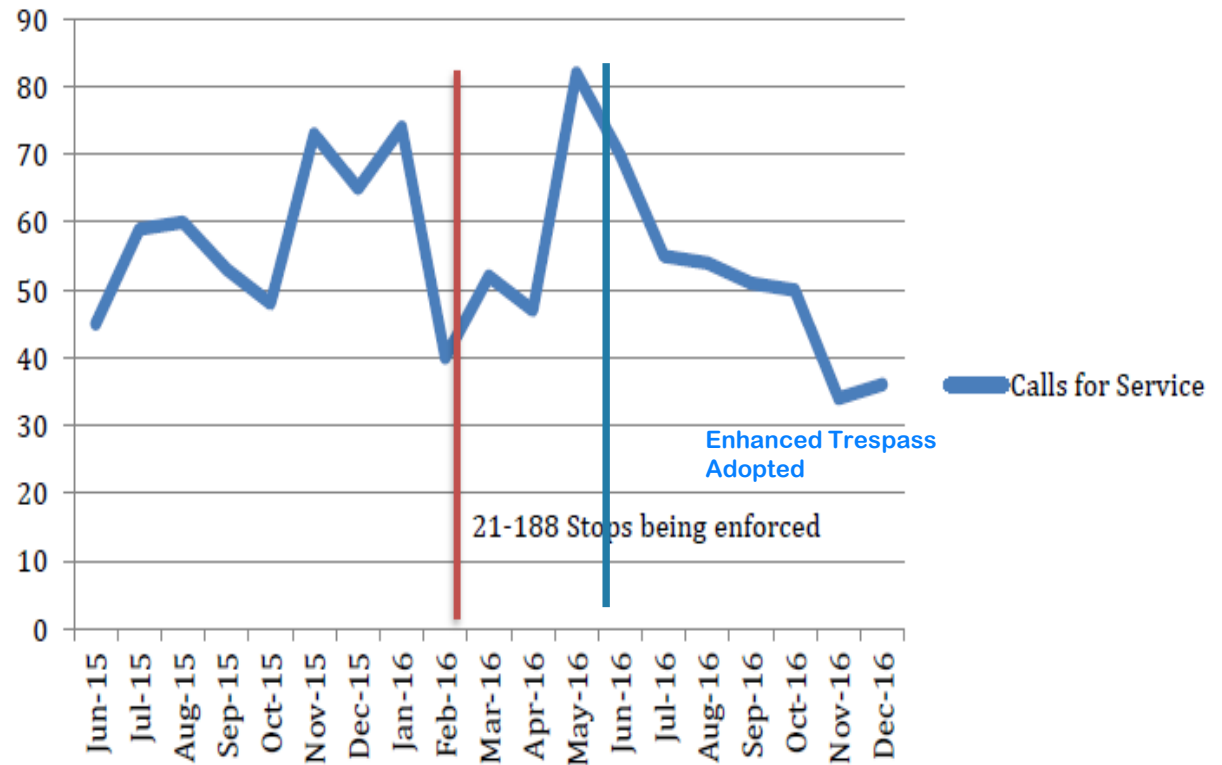
TRESPASS

- Seventeen separate business owners have signed trespass authorizations, including:
 - Walmart
 - Peninsula Town Center
 - Coliseum Corner
 - Coliseum Marketplace
 - Power Plant
 - Queen's Plaza
- Once letters are signed, officers can ban people from property for engaging in panhandling if against the rules of the business.
- Next step is summons for trespass.



Panhandling calls for service increased following repeal of ROW Ordinance, but decreased after adoption of trespass enhancements.

Panhandling Calls for Service



LAW

- Panhandling is considered First Amendment Free Speech Activity.
- Streets, sidewalks and medians are considered traditional public forums.

Content Neutral v. Content Based

- Effect of *Reed v. Gilbert* (U.S. Sup. Ct June 2015). Expanded what is considered “Content-Based.”
- Content Neutral Test = narrowly tailored to serve a significant government interest and leaves open alternative channels for communication.
- Content Based Test = Least restrictive means available and furthers a compelling government interest.

Post Reed Aftermath

- *Norton v. Springfield*, (7th Cir. Aug 2015)
 - Pre-*Reed* upheld panhandling ordinance, on rehearing, applied *Reed* standard and struck ordinance.
- *Pindak v. Dart, Sheriff of Cook County*, (N. D. Ill. Aug 2015)
 - Deputy liable for interfering with First Amendment rights of Panhandler by telling him he was not allowed to panhandle (consistent with City's Ordinance).
- *F.F. Cosmetics FL, Inc. v. City of Miami Beach*, (S.D. Fl. Aug 2015)
 - Struck City Ordinance prohibiting solicitation in ROW.


Post Reed Aftermath

- *Cutting v. Portland, Maine*, (1st Cir. Sep. 2015)
 - Struck ordinance prohibiting standing, sitting, staying, driving, or parking on all median traffic strips in city.
- *Browne v. City of Grand Junction*, (D. Colorado Sep. 2015)
 - Struck ordinance that prohibited aggressive panhandling and panhandling after dark.
- *McLaughlin v. City of Lowell* and *Thayer v. City of Worcester* (D. Massachusetts Oct.-Nov. 2015)
 - Struck ordinances prohibiting panhandling in downtown areas, standing on the median and aggressive panhandling, including panhandling in a manner intended to or likely to cause a reasonable person to fear bodily harm and continuing to ask after receiving a negative response.
 - *Thayer* decided on remand order from U.S. Sup. Ct. directing it to be decided in light of *Reed*.
 - In *McLaughlin*, the Court held that economic revitalization was too “inchoate” to outweigh the core First Amendment interests involved in panhandling. The existence of even minor counterexamples of “valid” panhandling within the definitions of prohibited behavior meant that the ordinance was not narrowly tailored.

Post Reed Aftermath

- *City of Lakewood v. Willis* (Sup. Ct. Washington July 2016)
 - Overturned conviction of violating ordinance which prohibited “begging” on onramps and at major intersections.
- *Homeless Helping Homeless v. City of Tampa* (M.D. Florida August 2016)
 - Struck ordinance banning solicitation of donations or payment in portions of Tampa.

OUTREACH

- Outreach and re-direction of panhandling (addiction, mental illness & economic dislocation are major causes of homelessness).
 - Working with Community Partners.
 - Educate the public to redirect donations to charitable organizations.
- 

Existing Criminal Ordinances

State Code

- Possession of illegal substance.
- Pedestrian Impeding Traffic
- Littering
- Loitering on DMV Prop.
- Fraud

City Code

- Trespass
- Drunk or Drinking in Public
- Disorderly Conduct
- Assault and Battery
- Obstructing Free Passage
- Urinating in Public

Aggressive Panhandling

Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation, without the person's consent;
- (2) Approaching or following the person being solicited, if that conduct is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation; and
- (5) Intentionally or recklessly using obscene or abusive language or gestures: (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation.

Aggressive Panhandling – Post *Reed*

- Courts have found to be content – based (including on direction of the U.S. Sup. Ct. in *Thayer*).
- Action is covered by other criminal ordinances (assault, blocking passage, etc.).
- In *McLaughlin*, the judge held that a municipality cannot single out “aggressive panhandling” behavior as distinct from other speech-related aggressive behavior.

RECOMMENDATIONS

- Outreach and Education
- Repeal Aggressive Panhandling Ordinance.