SLEEPING IN PUBLIC:

Why can't the City make it illegal to sleep on public property?

Enforcement of no camping ordinances have been held to violate the 8th amendment prohibition on cruel and unusual punishment under U.S. Supreme Court decisions. Robinson v. California, 370 U.S. 660 (1962); Powell v. Texas, 392 U.S. 514 (1968).

The reasoning is that when adequate shelter space exists, individuals have a choice about whether or not to sleep in public. However, when adequate shelter space does not exist, there is no meaningful distinction between the status of being homeless and the conduct of sleeping in public.

Sleeping is a life-sustaining activity and Courts recognize that humans are not in perpetual motion, they must stop, sit, or lie down eventually. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes them for being homeless. Jones v. City of Los Angeles, 444 F.3d 1118.

The City of St. Augustine's ordinance provides that no person shall sleep, camp or inhabit public property from 10:00 p.m. until 6:00 a.m. The City's ordinance provides, however, that it shall not be enforced against persons defined as homeless unless such homeless persons have access to a supervised publicly or privately operated shelter designed to provide temporary living accommodations. (Sec. 22-12). Our ordinance mirrors the requirements set out by various court cases.

SIT-LIE ORDINANCES

What about just preventing the sitting and laying on the benches or sidewalks?

The "no sit-lie" ordinances are also being found unconstitutional. In Anderson v. City of Portland, 2009 WL 2386056 (July 31, 2009), the court found that citing homeless people for sitting or lying down in public criminalizes the non-voluntary condition of homelessness.

The City can and does enforce its ordinances related to the willful obstruction of public ways and passages (Sec. 18-56) for persons sitting or lying on sidewalks if it blocks pedestrians or access to businesses.

VAGRANCY AND LOITERING:

Why can't the city create and enforce no loitering or vagrancy laws?

The U.S. Supreme Court invalidated vagrancy ordinances in 1972 (Papachristou v. City of Jacksonville) and invalidated loitering ordinances in 1999 (Chicago v. Morales). The Court found that these types of ordinances criminalize normally innocent behavior and violated due process by encouraging arbitrary and erratic arrests leaving unbridled discretion in the hands of the police.

SEIZURE OF PROPERTY OR RIGHT TO BELONGINGS IN PUBLIC

Are the homeless allowed to have bags and junk accumulated around them on public property?

The US S. Ct. in Robinson v. California, 370 U.S. 660 (1962) held that punishment of a person for his involuntary status such as homelessness was cruel and unusual in violation of the 8th Amendment.

In addition, the 4th Amendment prohibits "unreasonable searches and seizures." A search or seizure is unreasonable if the government's legitimate interests in the search or seizure outweigh the individual's legitimate expectation of privacy in the object of the search. The more difficult question is whether an individual has a legitimate privacy interest in property that is seized in a public area. Pottinger v. City of Miami, 810 F. Supp. 1551, 1571 (S.D. Fla. 1992). The Pottinger Court held the property of homeless individuals is due no less protection under the 4th Amendment than that of the rest of society and seizing the property or disallowing possession would penalize a person based on that status.

PANHANDLING:

Solicitation, panhandling, and begging are activities protected by the 1st Amendment of the U.S. Constitution. While local government can regulate 1st amendment activity under proper time, place, manner restrictions, those regulations may not be based on the content of the speech. Reed v. Town of Gilbert, 576 U.S. 155 (2015). Local government ordinances across the nation came under scrutiny after the Reed decision. Generalized ordinances were found unconstitutional as being content-based in violation of the 1st Amendment. See Thayer v. City of Worcester, Cutting v. City of Portland, Norton v City of Springfield, McLaughlin v. City of Lowell, Browne v. City of Grand Junction, Homeless Helping Homeless, Inc. v. City of Tampa. In all cases, the regulations were found to be content-based regulation of speech and unconstitutional.

The City may regulate 1st Amendment protected activities with proper time, place, manner restriction and aggressive panhandling is not protected speech. Aggressive panhandling by coercion, harassment, or intimidation remains illegal.

In 2017, the City conducted studies and documented the conditions in St. Augustine as it related to panhandling activities. The City made findings regarding the nuisance activities and the need to protect the safety and welfare of citizens, business owners, and visitors as well as the City's significant interest in preventing crime and preserving City aesthetics. Following these finding, in 2018, the City passed proper time, place, manner regulations which are content-neutral and narrowly tailored to prevent aggressive panhandling and provide for prohibited areas for solicitation. (Sec. 18-8).

Why can't we just outlaw begging and panhandling?

The U.S. Supreme Ct. 2015 decision in Reed v. Town of Gilbert protects begging and panhandling as 1st Amendment activities. The City can regulate 1st Amendment activity with proper regulations and findings. Local government ordinances across the nation came under scrutiny after the Reed decision. Generalized ordinances were found unconstitutional as being content-based in violation of the 1st Amendment. See Thayer v. City of Worcester, Cutting v. City of Portland, Norton v City of Springfield, McLaughlin v. City of Lowell, Browne v. City of Grand Junction. In all cases, the regulations were found to be content-based regulation of speech and unconstitutional.

However, the City cannot simply prohibit an entire geographic area such as an historic downtown without the fact-based findings and based on distances from certain activities such as ATM machines, parking meters, or entrances to businesses. Homeless Helping Homeless, Inc. v. City of Tampa.

In 2018, the City did pass these regulations to prevent aggressive panhandling and providing areas where solicitation is prohibited. These prohibitions include 20 feet from entrances to commercially zoned properties, ATM's, parking meters, and 100 feet from daycares or schools. These regulations, found at Section 18-8, are being enforced.

What is the risk if the City just outlawed panhandling throughout the City?

When the court finds that a regulation fails the constitutional test, plaintiffs are entitled to damages as well as attorney's fees and costs. In the case of Thayer v. City of Worcestor attorneys sought $1.8 million in fees and costs alone.