

Minutes

Proposed Ordinance on Use of Public Parks and Spaces

The City of Daytona Beach, Florida

Monday, July 9, 2018

Minutes of the Proposed Ordinance on Use of Public Parks and Spaces Workshop of the City Commission of The City of Daytona Beach, Florida, held on Monday, July 9, 2018 at 4:00 p.m., City Hall, City Commission Chambers, 301 S. Ridgewood Avenue, Daytona Beach, Florida.

Attendance.

Commissioner Ruth Trager	Present
Commissioner Aaron Delgado	Present
Commissioner Kelly White	Present
Commissioner Robert Gilliland	Present
Commissioner Dannette Henry	Present
Commissioner Paula Reed	Present
Mayor Derrick Henry	Present

Also Present:

James V. Chisholm, City Manager
Robert Jagger, City Attorney
Letitia LaMagna, City Clerk

1. Welcome

Mayor Henry welcomed everyone to the workshop and stated the City Attorney will introduce the presenter.

2. Presentations

Robert Jagger, City Attorney, stated that Mr. Michael Kahn, a First Amendment Legal Expert, that has represented the City of St. Augustine’s Panhandling Ordinance. He will make a presentation for potential use of his services on behalf of Daytona Beach.

Michael Kahn, Attorney, thanked them for the opportunity to present to them. He presented resumes to the City Clerk for the record. He has practice in first amendment law for 31 years. He has taught and lectured on it. He has written and rewritten about 30 different Ordinances relating to first amendment issues. He listed the Ordinances he has done for the City of St. Augustine. He rarely has had to go to court to defend his Ordinance although he is always prepared to do so. He is here specifically for a proposed panhandling Ordinance. In St. Augustine they were overrun with panhandlers. Panhandlers have Constitutional protected rights. In drafting an Ordinance you have to take particular care to protect their rights. He stated however, there are secondary effects to panhandling. What he has done is provided a copy of a proposed Ordinance for Daytona Beach. He listed two cases that reflect issues with

panhandling. There is a clear way to take into account these cases and their decisions and to work within them. He listed some of the issues that St. Augustine had with panhandling. He stated the Police Chief in St. Augustine was very happy with it and that it was a difference of "night and day". It is based on distances. There were two parameters, prohibiting panhandling or solicitation around schools. We established 100 foot buffers against solicitation. The second one was 20 foot buffer around a variety of different places such as ATMs, egress and ingress of shops, cabs or bus stops, etc. When you apply those on a GIS mapping you end up with a percentage of the town that allows such solicitation and a portion that does not allow it. He creates comprehensive records in support of these types of Ordinances. Daytona will create a record that consists of cases that are present in the Ordinance and of testimony of affected people in the community regarding panhandling. They will testify under oath and the adverse secondary effects. He will interview the Police Chief and the traffic police and include their testimony. The Chief of Police of St. Augustine and the physician from St. Augustine are willing to come down and testify to your record as well. St. Augustine's experiences will become part of your testimony. He explained the reasons why creating an extensive record are important. It enable Judges to understand why your Ordinance is the way it is. He gave an example of how creating a record this way helped in other Ordinances he had written when challenged. He described the process he would use. He would meet with the City Manager, City Attorney, the Commission and I.T. for the GIS mapping. He passed out copies of his resume and his experience. He passed out copies of the St. Augustine ordinance. He explained the maps he used for the St. Augustine Ordinance. It shows where one can or cannot solicit. You try to protect everyone's right including the solicitor. The Ordinance regulates time, place, and manner of solicitation. He passed out copies of the St. Augustine map. His representation would include two reading of the Ordinance. He would work with Mr. Jagger on when they would provide the testimony. He has forwarded his representative agreement to both Mr. Jagger and Mr. Chisholm. He explained how he would charge for services. He works hard to protect everyone's right while reducing the secondary adverse effects of panhandling. He thanked them for the time and invitation.

3. Discussion

Mayor Henry thanked Mr. Kahn for his presentation. We need to do something in the most sensitive of ways to protect the rights of everyone involved including visitors and residents. People are not feeling safe and are feeling like they can't enjoy our public spaces. This is why we have asked you here tonight. He opened the floor to the Commissioners.

Commissioner Gilliland asked about the areas around playgrounds and daycares.

Mr. Kahn stated you could do that. It was part of St. Augustine's testimony. You have to be sensitive at the end to what percentage of your town is open to solicitation.

Commissioner Gilliland stated they ran into this their sexual predatory Ordinance. They put together such a long list of places that it created a situation where they could never live on beachside. They learned they had to be careful in how wide they cast that net. He asked if the street performer Ordinance was challenged.

Mr. Kahn stated in 32 years he has only had to defend his Ordinances once. He was the person that defended it. It has been cited all over the country.

Commissioner Gilliland explained about the nudity ordinance.

Mr. Kahn stated he is familiar with that and the secondary adverse effects. So you have experience with this process.

Commissioner Trager asked if this included day care, any schools of any age.

Mr. Kahn stated it can. The Commission is going to decide that. That will be an open discussion.

Commissioner Trager asked if that would include blocking entries even if they aren't asking for money.

Mr. Kahn stated yes and gave examples of significant or important government interest including preserving ingress and egress and preserving quality of life.

Mayor Henry asked about how much of the City should be preserved for a "free speech zone"

Mr. Kahn stated you don't dabble with first amendment law. The majority of the City is going to be available for solicitation.

Commissioner Gilliland stated if you take Beach Street...if you take 20 feet...it would be interesting to see on GIS Map on how much of that would be covered in Beach Street. It seems that the courts have judged to protect the solicitors instead of the homeowners, business owners, residents and visitors.

Mr. Kahn stated that is because they haven't created the type of record that he creates for this Ordinance and the adverse secondary effects. The courts are in flux right now. The courts historically have deferred to municipal interests it just doesn't look that way.

Commissioner Gilliland stated we have 65,000 residents and over 10 million that come through Volusia County.

Commissioner Reed asked how long it takes to put this type of Ordinance together.

Mr. Kahn stated the St. Augustine took him about two to three months to get to first reading. That has a lot to do with the dynamic and his interviews. He is Commission driven. He discussed his fees and how he works.

Commissioner Reed clarified that the flat fee would go up to two reading and after that it would go to an hourly fee.

Mr. Kahn stated that is correct. Most of his work is done in two readings. Most of the work is intensive in order to get his testimony and record together.

Commissioner Reed asked if who all he would interview and if he would interview the Fire Department.

Mr. Kahn stated yes and he would interview public works, grounds maintenance as well.

Commissioner Delgado asked how his Ordinance would distinguish between sign spinners on the street corners.

Mr. Kahn asked how Commissioner Delgado associated that with solicitation.

Commissioner Delgado stated if you are building a record of secondary effects to justify the Ordinance...he asked aren't those type activities going to factor into that.

Mr. Kahn stated solicitation is defined in the Ordinance as asking someone to contribute to their welfare or the welfare of another charitable organization. An advertiser...that is not covered under this type of solicitation.

Commissioner Delgado asked if there wouldn't be secondary adverse effects for sign spinning.

Mr. Kahn stated you have to be careful and very specific. There is on overlap of secondary effects but you can feature those effects in two separate Ordinances. It won't affect the Ordinances Constitutionality.

Commissioner Delgado stated he is concerned how the record is going to show the secondary adverse effects. He asked for an example of the medical testimony.

Mr. Kahn stated the testimony including the public urination and defecation that could be specifically tied to panhandling and the adverse effects on children, elderly, etc. This is if this exists in Daytona Beach. We would have to find evidence of that. St. Augustine's evidence can buttress you record. You can use studies from another city.

Commissioner Delgado questioned how panhandling is going to have a distinct adverse effect versus loitering and congregating.

Mr. Kahn you are going to have to show the link in the secondary effect. There is a second classification of aggressive panhandling. The fact that there are panhandlers and homeless...he doesn't have to parse out what the panhandlers do. You don't have to cure everything, but you are lessening the adverse effects.

Commissioner Delgado asked if he was able to show panhandling caused these adverse effects in St. Augustine.

Mr. Kahn stated yes through the testimony.

Mayor Henry asked him to explain the citation through the enforcement.

Mr. Kahn stated he could in broad sense...for 10 days after the passage of the Ordinance they distributed literature on the Ordinance. After that 10 day period they started arresting people. He doesn't want to expand on that because he doesn't want to misspeak. Chief Fox has been willing to come down and talk to the City Commission.

Commissioner White asked how many of the First Amendment Ordinance he worked on addressed panhandling.

Mr. Kahn stated Daytona will be the third specific ordinance. The same adverse effects are used in each one. That evidence is portable and has commonality. It is the same type of analysis that invades all First Amendment Ordinances.

Mayor Henry turned the discussion back to the Commission.

Mr. Jagger stated he and the City Manager had received a proposed contract.

Mayor Henry asked if the Commission was interested in pursuing.

Commissioner Gilliland stated he would like to have him look at our existing Ordinances to make sure there isn't a conflict. He is in favor of moving forward with this.

Mr. Jagger stated we have existing panhandling Ordinance that would have to be repealed and replaced.

Commissioner Delgado questioned why we would undertake a new study here if the evidence in portable and can be used as part of our evidence. He feels like this is a very challenging area of the law and he believes big cities like Orlando would have already jumped on this if it was as easy as it is being presented here. He wants to hear more about how it is going in St. Augustine. He wonders what it will look like in practice. All of this leads him back to First Step Shelter and he would rather see the money being spent on this used for the shelter to move it further and faster along.

Mayor Henry stated it would behoove us to have our Chief Capri have a conversation with Chief Fox in St. Augustine.

Craig Capri, Chief of Police, stated he knows Chief Fox personally and has been discussing this with him. He was the one that actually got in touch with Mr. Kahn because he saw the success St. Augustine has had. We have a major problem and it's out of control. He doesn't think there is a price they could put on improving the quality of life of the residents, visitors, and business owners. We have had about half a dozen people hit while panhandling and some of those were fatal. It's a fair Ordinance and it represents people across the board.

Commissioner Gilliland stated he understands Commissioner Delgado's view but he would like to see a Daytona Beach specific study and Daytona Beach measurables.

Commissioner Henry stated she agrees with Commissioner Gilliland.

Jim Morris, Deputy City Manager, stated we would take St. Augustine's record and supplement it with the City of Daytona Beach's record.

Commissioner Reed stated she would like to see this go forward. There are so many complaints we have to do something.

Commissioner Trager stated she thinks they need the local experiences in the record.

Commissioner White stated the difference between our tourist corridor and St. Augustine's is a large portion of ours in on the beachside and a lot of the secondary adverse effects are on the beach. She asked how they would work with Volusia County.

Mr. Jagger stated he would be glad to look at it but the beach is outside our jurisdiction. Also those issues may be outside of panhandling and may be homeless issues at large.

Chief Capri, stated don't get focused on homeless. A lot of these panhandlers are professional frauds and cons. This Ordinance would address this.

Commissioner Delgado stated we need to make it meaningful and we need to empower law enforcement.

Mr. Jagger stated if we make it all the way to trial we can collect costs but this is fine and it is \$100 per incidence.

Commissioner Delgado asked if they could fine higher.

Mr. Jagger stated yes, we wouldn't be allowed to fine higher than what the State allows but we could charge a higher fee than that.

Mayor Henry stated he would like something that addresses specific City of Daytona Beach issues. We see it, we live it. Whatever we come away with as an expenditure is reasonable because of the impact on the quality of life. He is looking forward to quickly moving forward.

4. ADJOURNMENT

There being no further discussion or comments the meeting was adjourned at 5:39 p.m.


DERRICK L. HENRY
Mayor

ATTEST:


LETITIA LAMAGNA
City Clerk

Adopted: November 7, 2018

RECORD REQUIRED TO APPEAL: In accordance with Florida Statute 286.0105 if you should decide to appeal any decision the City Commission makes about any matter at this meeting, you will need a record of the proceedings. You are responsible for providing this record. You may hire a court reporter to make a verbatim transcript, or you may buy a CD of the meeting for \$2.00 at the City Clerk's office. CDs are only made upon request. The City is not responsible for any mechanical failure of the recording equipment.