THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alton Waggoner Lafayette "Teri" Heishman Hannah Lebovits Kawana Scott Plaintiffs, v. The City of Dallas, Texas, Edgardo Garcia, in his official capacity, David Pughes, in his official capacity, Defendants.	)	Case No. _____ Jury Trial Demanded

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a First Amendment lawsuit challenging an ordinance recently enacted by the City of Dallas, codified as § 28-61.1 of the Dallas City Code ("the Ordinance"), facially and as applied. The City Council passed the Ordinance to prevent poor people from asking for money on medians and other areas alongside Dallas's roadways. This not only violates the First Amendment rights of some of the City's most vulnerable citizens, but also sweeps far beyond its intended reach to encroach upon the rights of any person in Dallas who uses medians and areas adjacent to the street to engage in protected First Amendment activities. A copy of the Ordinance is attached as Exhibit A.

2. The Ordinance is the product of a years-long effort orchestrated by Dallas councilmembers to score political points by attacking people engaged in the unpopular speech of requesting financial help. It rests upon a manufactured, post-hoc public safety justification unsupported by any evidence demonstrating that people engaging in expressive activities on areas affected by the Ordinance pose any threat to pedestrian and roadway safety. The history of the Ordinance's passage, statements by Councilmembers, its myriad exceptions, and plan for enforcement together reveal that the City's actual target is poor people who solicit donations on the streets.

3. Section 28-61.1 prohibits any person from "stand[ing] or walk[ing] on a median that measures six feet or less . . . or in an area designated as a clear zone." Ex. A at 2. A clear zone, among other areas, includes "the area four feet from the face of the curb" on a curbed street and "10 feet from the edge of the travel lane" on an uncurbed street. On its face, then, the Ordinance criminalizes anyone in Dallas who uses medians and other areas next to the roadway to exercise their First Amendment rights.

4. Plaintiffs are individuals who, while standing on areas affected by the Ordinance, regularly solicit donations, provide donations and support to poor individuals, and engage in political speech. In adopting § 28-61.1, the City of Dallas is threatening criminal sanctions against Plaintiffs if they engage in core expressive activity in crucial public forums across the city. Such a broad, punitive restriction on speech violates the First Amendment.

5. The Ordinance is a targeted attack on poor people who solicit donations, so-called "panhandlers," and those who try to assist them. For over a year and half, the Dallas City Council engaged in a coordinated campaign to erase panhandlers from the streets of Dallas.

6. Recognizing that such a targeted attack would violate the First Amendment's prohibition on content discrimination, the City manufactured an unjustified "public safety" rationale for § 28-61.1, and attempted to disguise the Ordinance's real purpose by criminalizing a broad array of speech. Similar attacks on homeless people have been struck down across the country in recent years. *See, e.g.*, *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1221 (10th Cir. 2021); *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1068–69 (10th Cir. 2020), cert. denied sub nom. *City of Oklahoma City, Oklahoma v. McCraw*, 141 S. Ct. 1738 (2021); *Cutting v. City of Portland, Maine*, 802 F.3d 79, 88–89 (1st Cir. 2015).

7. The City passed § 28-61.1 despite being confronted with contradictory evidence from City Attorney Christopher Caso showing the Ordinance would likely exacerbate the harms associated with homelessness. As the City Attorney explained, "[C]riminalization of panhandling often results in unpaid citations and outstanding warrants—limiting an individual's ability to obtain a driver's license, housing, or employment, and indirectly increasing or impacting homelessness." Ex. C (Feb. 3, 2021, City Council Presentation) at 13

8. Plaintiffs seek a judgment against the City under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 enjoining the City from enforcing the Ordinance and a declaration that the Ordinance violates Plaintiffs' First Amendment rights.

II. JURISDICTION AND VENUE

9. This is a civil rights action arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, federal question jurisdiction.

10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claim occurred in this district.

III. PARTIES

11. Plaintiff Alton Waggoner is a 68-year-old veteran who has been homeless for approximately two years and currently resides in Dallas. He solicits donations from pedestrians and drivers to afford the basic necessities of life. He has previously been fined $450, an amount he still cannot afford, for simply soliciting donations to survive.

12. Plaintiff Lafayette "Teri" Heishman is a 67-year-old veteran with disabilities who has been in and out of homelessness for several years. Ms. Heishman currently resides in housing subsidized by the Veterans Administration in Dallas, but still struggles to meet the necessities of life. She solicits donations to survive but has been cited by the Dallas Police Department six times for behaviors associated with homelessness.

13. Plaintiff Hannah Lebovits is a 30-year-old professor at the University of Texas, Arlington and resides in Dallas, Texas. Dr. Lebovits uses areas affected by the Ordinance as part of her research and her personal commitment to helping individuals experiencing homelessness.

14. Plaintiff Kawana Scott is a 30-year-old political activist who currently resides in the Dallas metropolitan area. She frequently uses areas affected by the Ordinance to advocate for issues she cares about. The Ordinance criminalizes these foundational First Amendment freedoms.

15. Defendant City of Dallas ("Dallas" or "the City") is a municipal corporation chartered under the laws of the State of Texas. Plaintiffs challenge an Ordinance enacted by the City of Dallas.

16. Defendant Edgardo Garcia is the Chief of the Dallas Police Department and is sued in his official capacity. Chief Garcia is an enforcement actor authorized by §§ 28-18 and 28-153 of the Dallas City Code to enforce the challenged ordinance.

17. Defendant David Pughes is the Interim City Marshal of the Dallas City Marshal's office and is sued in his official capacity as acting director of that office. Interim Marshal Pughes is an enforcement actor authorized by § 13-10 of the Dallas City Code to enforce the challenged ordinance.

IV. FACTUAL ALLEGATIONS

18. On October 26, 2022, the City of Dallas enacted a new ordinance, codified as § 28-61.1 in the Dallas City Code ("§ 28-61.1" or "the Ordinance"), that makes it a criminal offense, punishable by a fine of up to $500, if a person:

> [S]tands or walks on a median that measures six feet or less, in areas where no median exists for roadways designated as divided roadways, or in an area designated as a clear zone.

Ex. A at 2. The Ordinance defines a clear zone as the:

> unobstructed, traversable area provided beyond the edge of the through travelled way for the recovery of errant vehicles. On a curbed street, the clear zone is the area four feet from the face of the curb. On an uncurbed street, the clear zone is 10 feet from the edge of the travel lane. A clear zone includes shoulders, bicycle lanes, and auxiliary lanes, except auxiliary lanes that function like through lanes. However, a clear zone does not include areas adjacent to the back of the curb where a paved sidewalk exists.

Id.

19. The Ordinance contains a variety of exceptions, including for people crossing the street in the most direct route possible, responding to emergency situations, performing certain approved road work, or those who have prior authorization from the city. *Id.* at 3. It also allows individuals to be within a clear zone if they are on a paved sidewalk adjacent to the curb. *Id.*

20. While the precise scope of areas affected is unclear, the Ordinance clearly criminalizes First Amendment activities on medians, some street corners, and all unpaved areas adjacent to the street. But, without justifying why these areas are any safer than raised medians, it permits standing on paved sidewalks even if this means standing right next to a traffic lane.

21. In conjunction with § 28-61.1, the City Council approved a separate ordinance amending § 13-10 of the City Code to give the Dallas City Marshals authority to enforce § 28-61.1. A copy of this ordinance is attached as Exhibit B. Dallas City Marshals are sworn law enforcement officers, but largely perform duties related to the operation of the Dallas Municipal Court and city jail. In recent years, and as explained below, the Marshals have taken a proactive role in criminally punishing homeless people in conjunction with Dallas's Office of Homeless Solutions.

22. On its face, § 28-61.1 prohibits Plaintiffs and numerous others from using areas surrounding Dallas's streets that are critical to Plaintiffs' expressive activity. In crafting such a broad and sweeping Ordinance, Dallas has not only undermined the rights of poor people who panhandle, but also prohibited a vast array of protected First Amendment activities in traditional public forums.

A. The Dallas City Council and City Attorney Designed Section 28-61.1 to Target Panhandling

23. For years, the City of Dallas has been regarded as a notoriously harsh enforcer of criminal laws prohibiting activities associated with panhandling and homelessness. For example, in 2016, Dallas was included in the National Law Center on Homelessness & Poverty's "Hall of Shame" because the city had "issued over 11,000 citations for sleeping in public" from January 2012 to November 2015 and "2,000 citations for panhandling in 2015 alone."[1] This was nothing new: as early as 2006, two nonprofits that work extensively with homeless populations labeled

[1] NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 29 (2016).

Dallas the sixth "meanest" city in the country because of the large number of ordinances on its books that punish behaviors associated with homelessness and feeding the homeless.[2]

24. Finding its existing anti-panhandling laws both ineffective and unenforceable, the City of Dallas launched a coordinated effort to rid its streets of panhandlers. The culmination of this effort was an ordinance that was designed and enacted to target panhandlers without constitutionally adequate justification.

i. The February 3, 2021, meeting demonstrated City Council's open opposition to panhandling

25. Frustrated with the fact that its prior efforts to criminally punish panhandling were not yielding the results it wanted, City Council held a briefing on February 3, 2021, to address "panhandling, solicitation, and available strategies." Ex. C (Feb. 3, 2021, City Council Presentation).

26. City Attorney Christopher Caso spoke about the City's past approaches to panhandling and potential changes to the City's laws and policies that could address an array of complaints from councilmembers. Caso recognized the harmful impact that such ordinances have on Dallas's homeless population, *id.* at 13, and made clear, "[e]nforcement which specifically targets panhandling likely violates the First Amendment," *id.* at 8.

27. Attorney Caso offered potential alternatives to a new ordinance prohibiting solicitation such as "Same-Day Pay Programs," physically modifying medians to deter solicitations, increasing available supportive strategies, and providing vouchers for necessities like food and shelter. *Id.* at 13–18.

[2] THE NATIONAL COALITION FOR THE HOMELESS & THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, A DREAM DENIED: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 31–32 (2006).

28. Despite the warning that any law targeting panhandling would likely face a constitutional challenge, councilmembers repeatedly expressed their desire for an ordinance punishing panhandling and made statements expressing significant animus toward those panhandling to survive. As then-Councilmember Lee Kleinman saw it, panhandling was "a criminal activity that we're doing virtually no enforcement on."[3] He explained, "We've gotta get some enforcement because the compassionate side just isn't working . . . . [I]n our neighborhoods we see them just destroyed by folks that are taking advantage . . . [I]t's gotta be stronger than this . . . . And we need to get some heavy-handed ordinances in here so we can have some enforcement."[4]

29. Councilmembers were aware of the constitutional limits on panhandling bans but wanted to criminalize the activity anyway. Councilmember Kleinman put this intention plainly:

> [T]he courts have struck down many ordinances with regards to free speech and the ability to solicit, but . . . most of those courts are on the west coast . . . , in the Ninth Circuit, and in the Fifth Circuit, those cases have not come forward, so my attitude is that until our courts, the courts that oversee our jurisdictions, come forward to destroy that argument, we should just continue to enforce them. I'm sorry—the compassion of people of North Dallas just has a limit.[5]

Not only did his statement reflect a disregard for the First Amendment rights of poor people trying to survive, but it was also misleading on the law. *See, e.g.*, *Gbalazeh v. City of Dallas, Tex.*, 394 F. Supp. 3d 666, 673 (N.D. Tex. 2019); *Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 669–70 (E.D. La. 2017); *Jornaleros de Las Palmas v. City of League City*, 945 F. Supp. 2d 779, 798 (S.D. Tex. 2013).

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[3] Dallas City Council, *21-17 Panhandling and Solicitation, Overview and Available Strategies*, DALLAS CITY NEWS NETWORK at 36:56 (Feb. 3, 2021), https://dallastx.swagit.com/play/02032021-715.
[4] *Id.* at 39:32–4:00.
[5] *Id.* at 38:30–39:14.

30. Running through the councilmembers' comments was a series of false, harmful, and misleading statements about people who panhandle. As part of the February 3 presentation, the Office of Homeless Solutions ("OHS") reported that, based on city data and studies from around the country, the majority of people who panhandle are poor, struggle to fulfill "basic needs, such as food or shelter," are largely considered homeless or housing insecure, and earn "anywhere from $20–$300 daily" while panhandling. Ex. C at 6 (Feb. 3, 2021, City Council Presentation).

31. Relying only on their own experiences, second-hand anecdotes, and outright fabrications, councilmembers expressed their disagreement with OHS's findings. For example, some accused panhandlers of being part of an organized for-profit operation taking advantage of residents. Councilmember Casey Thomas stated, "This is a huge problem, I'm not gonna minimize it. . . , it is a very big problem. . . . that we all deal with. . . . [S]ocial services is not gonna be effective when you got a organized racket of individuals . . . who are not in need of help, but they're doing this as a profession."[6] Councilmember Kleinman went so far as to suggest bringing RICO cases against individuals suspected of being part of these fictional organizations.[7]

32. Councilmembers also claimed that homeless individuals did not seek social services because panhandling was just too profitable. Councilmember Kleinman speculated, "[W]hen our Office of Homeless Solutions goes into these intersections and meets with people and does cleanups and offers services, they are not accepted. . . . Why would someone go into . . . a shelter, or a supportive housing situation, when they can make $300 a day on the street?"[8] Similarly, Councilmember McGough stated, "My recollection is that . . . really it was just too profitable to panhandle."[9] Councilmember Arnold agreed, "It is frustrating when you try to help

[6] *Id.* at 1:29:59–30:34.
[7] *Id.* at 37:50–38:10.
[8] *Id.* at 36:22–36:44.
[9] *Id.* at 1:04:30–38.

and, and the folks tell you they don't want the help. I've had that experience. . . . And so, we want to help, we want to be humane about it, but it has to be a balancing act, you know."[10]

33. Councilmember Mendelsohn shared these same sentiments even more pointedly: "Here we're talking about people who are resistant to the social services, they're never going there to redeem them, this is not a viable option."[11] She elaborated, "Some of [this] is just fantasyland. . . .[W]here you say people are there for basic needs, food and water, that is not what's happening in our district. Residents will offer food and water and it will be rejected. They only want money."[12] Councilmember Mendelsohn later suggested that panhandling is more lucrative than being a city councilmember and that if people stopped giving money, "they would go away. They would, they would get a job, they would find some other way to subsist."[13]

34. In a moment of candor, Councilmember Mendelsohn stated, "[T]he notion that these are only people that deserve compassion is incorrect."[14]

35. Over the course of the lengthy discussion of panhandling, no person provided statistics, evidence, or data on traffic safety problems associated with panhandling. Nor is there any empirical evidence of traffic accidents, pedestrian injuries, or other problems associated with people standing on medians or other affected areas adjacent to the street.

36. At the conclusion of the meeting, Councilmember Kleinman requested that the City Attorney and his office "prepare the amendments with regards to banning all solicitation" as well as expanding enforcement power to the Marshal's Office.[15]

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[10] *Id.* at 1:32:38–33:06.
[11] *Id.* at 1:38:30–40.
[12] *Id.* at 55:43–56:23.
[13] *Id.* at 1:41:20–42:08.
[14] *Id.* at 1:40:54–41:20.
[15] *Id.* at 1:45:40–46:00.

37. The councilmembers' statements reflect both a resentment towards those who panhandle and a misleading view of the reality many housing insecure people face in Dallas. Many poor individuals, including Plaintiffs, do not utilize shelters or social services for a variety of legitimate reasons that criminal punishment will only exacerbate. Ex. F (Decl. of Alton Waggoner) at ¶¶ 7, 10–11. For example, as OHS's findings support, many homeless individuals struggle with mental health in ways that make confined living spaces impossible for them to manage. *Id.* at ¶ 10; Ex. C at 6 (Feb. 3, 2021, City Council Presentation). Others, like Plaintiff Waggoner, are unable to access shelters that require identification because of suspended licenses tracing back to the very same enforcement threatened here. Ex. F (Waggoner Decl.) at ¶¶ 7, 10; *see also* Ex. C at 13 ("Criminalization of panhandling often . . . limit[s] an individual's ability to obtain a driver's license."). Many individuals who panhandle have tried, or are actively trying, to obtain services and support, but are unable to do so. Ex. F (Waggoner Decl.) at ¶¶ 7, 10–11; Ex. H (Decl. of Hannah Lebovits) at ¶¶ 12–13. As the City Attorney acknowledged, criminal punishment only pushes housing insecure individuals further to the margins, making panhandling more necessary and social services less accessible. *See also id.* at ¶ 20.

ii. The October 25, 2021, meeting solidified plans to outlaw panhandling through section 28-61.1

38. Eight months later, on October 25, 2021, City Council again addressed the issue of panhandling. At a meeting of the Government Performance & Financial Management Committee ("GPFM Committee"), councilmembers heard a presentation from several City departments on the "panhandling deflection program," a multi-disciplinary approach that included social services, public education, and law enforcement.[16] "Creat[ing] an offense for standing in a median" was

[16] Dallas City Council, *Government Performance & Financial Management Committee*, DALLAS CITY NEWS NETWORK (Oct. 25, 2021), https://dallastx.swagit.com/play/10262021-529.

included as part of OHS's presentation to the GPFM Committee. Ex. D at 3 (Oct. 25, 2021, GPFM Presentation).

39. Councilmember Gay Donnell Willis asked specifically about how ordinances would fit into the program: "I wanted to ask the City Attorney about the . . . proposed ordinances and creating the offense for standing in a median, and then also about the prohibition of solicitation of occupants in vehicles, and so even though this would be a pilot, . . . is that something we would go on and do?"[17] A member of the City Attorney's Office explained that the City needed to take additional steps to protect a future ordinance against anticipated constitutional challenge:

> The standing in the median, it's six feet or less [and] to survive constitutional challenges, we would need to do some study to—to show evidence that we do need that as . . . a public safety reason. So I think we would need work on that before we can add that to the books but we have other ordinances that we can enforce at this time.[18]

40. This comment laid bare the City's plan: at the time, the City had no evidence of any traffic safety problem that would provide a constitutionally sufficient basis for § 28-61.1. Instead, the City sought to craft an ordinance that would prohibit panhandling and then, after the fact, conjure a purported justification that it hoped could withstand constitutional scrutiny.

41. However, the data the City presented at later meetings undermined, rather than supported, § 28-61.1's supposed safety justification. The discussion around the Ordinance that followed the October 25, 2021, meeting only relied on generic statistics about pedestrian safety without demonstrating the Ordinance at issue would help keep Dallas's pedestrians or drivers safe.

iii. Subsequent meetings failed to support the Ordinance's "traffic safety" justification.

[17] *Id.* at 3:11:20–11:48.
[18] *Id.* at 3:12:00–12:31.

42. To manufacture a justification for the Ordinance, the Transportation and Infrastructure ("TI") Committee held a briefing the following April.[19] Councilmembers on that committee quickly understood that this ordinance was the City's attempt to punish panhandling.

43. For example, Councilmember Mendelsohn began the committee's discussion by clarifying that this was the same ordinance the GPFM Committee had discussed as part of its panhandling deflection program. Councilmember Mendelsohn, without any evidence, commented on the dangerousness of panhandling, but also echoed the concerns raised in earlier sessions, asking, "How does this affect the solicitations that happen like Fill the Boot for the firefighters or any of the religious organizations that are soliciting at the streets?"[20] Seeking to assure her that the ordinance would not prohibit her favored categories of speech, a representative from the City Attorney's office replied, "[The Ordinance] would not apply if someone had permission from the city to be there, so presumably they could ask for permission and still continue to do that."[21]

44. Similarly, Councilmember Tennell Atkins referred to the proposed ordinance as "the one about the panhandling" and expressed concerns about youth sports teams collecting money for their team fundraisers.[22] The TI Committee Chair, Councilmember Omar Narvaez, also expressed concern that "a regular pedestrian" might be subject to a $500 fine for being in a "pedestrian island" of less than six feet.[23]

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[19] Dallas City Council, *April 18, 2022, Transportation & Infrastructure*, DALLAS CITY NEWS NETWORK at 2:40:30 (Apr. 18, 2022), https://dallastx.swagit.com/play/04182022-541.
[20] *Id.* at 2:19:11–2:19:43.
[21] *Id.* at 2:19:45–2:19:57. The Assistant City Attorney description of the permit mechanism in the Ordinance is further evidence that the City's main objective is picking and choosing which speakers have a voice. *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 763–64 (1988) ("[E]ven if the government may constitutionally impose content-neutral prohibitions on a particular manner of speech, it may not *condition* that speech on obtaining a license or permit from a government official in that official's boundless discretion.").
[22] Dallas City Council, *April 18, 2022, Transportation & Infrastructure*, DALLAS CITY NEWS NETWORK at 2:20:26–36 (Apr. 18, 2022), https://dallastx.swagit.com/play/04182022-541.
[23] *Id.* at 2:27:15–40.

45. Towards the end of the meeting, Councilmember Mendelsohn once again made explicit what other councilmembers implied. She stated, "Just reading [the ordinance], it doesn't say the fullness of what I think the discussion has been. . . . This was actually the intent of the panhandling work we did over two-plus years."[24]

46. Councilmember Narvaez recognized the legal problem such statements could pose. He observed that the City Attorneys looked uncomfortable at the mention of panhandling and clarified that their discomfort was "because we don't have a panhandling ordinance because the Supreme Court said that you can't ban panhandling and so that's why we are looking at this more as a safety concern."[25]

47. The Department of Transportation ("DOT") Director also attended the meeting. Councilmembers asked the DOT Director questions about the studies, data, and methodologies relied upon to formulate the Ordinance's public safety justification. Councilmembers did not receive answers to these straightforward questions until five months later, on September 15, 2022, in a memorandum from DOT. Even with several months to acquire the data, DOT only provided references to general road design guidance suggesting medians should be greater than six feet in width to provide adequate pedestrian refuge. However, DOT provided no evidence that narrower medians pose a safety risk, that instances of pedestrian or driver injuries near shorter medians occur with any regularity, if at all, or whether a safety problem exists in these areas in the first place.

48. The September 15, 2022, memorandum similarly provided no justification for the Ordinance's many exceptions. Presumably, though, if medians less than six feet and other "clear zones" are not safe for Plaintiffs, they would also be unsafe for people using these spaces under

[24] *Id.* at 2:30:41–2:33:16.
[25] *Id.* at 2:33:18–44

the Ordinance's exceptions. For example, the memorandum assured committee members that the Ordinance would not make it illegal to cross the road using a median, even though the City's data revealed that crossing at unmarked intersections posed the most significant risk to pedestrian safety. Similarly, the memorandum clarified that the people with prior authorization could use medians and other regulated areas for city-approved activities. But there was no justification for why city-approved speech is somehow safer than the expressive activities of Plaintiffs and others without city approval.

49. A week after the TI Committee meeting, on April 25, 2022, the GPFM Committee once again considered the Ordinance as part of the "Panhandling Diversion Program" [26] launched in October 2021.[27] Prior to the meeting, OHS submitted a memo titled "Update—Office of Homeless Solutions Panhandling Diversion." The Ordinance was included as an example of "progress made on this [the panhandling] initiative," and was referenced in one of OHS's PowerPoint slides as an upcoming step OHS would be taking to combat panhandling.

50. OHS provided similar briefings and presentations on May 23,[28] June 27,[29] and October 24 of this year.[30] In each briefing, the Ordinance was presented as more than merely a

[26] Councilmembers and City staff use "panhandling diversion" and "panhandling deflection" interchangeably. *Compare infra* note 27 *with infra* note 16 (referring to same program as both diversion and deflection).
[27] Memorandum from Christine Crossley, Director of Office of Homeless Solutions, to Government Performance & Finance Committee, on Update – Office of Homeless Solutions Panhandling Diversion at 1 (Apr. 25, 2022) available at: https://dallascityhall.com/government/Council%20Meeting%20Documents/Panhandling-Diversion-Update_GPFM_Briefing_042522.pdf
[28] Memorandum from Christine Crossley, Director of Office of Homeless Solutions, to Government Performance & Finance Committee, on Update – Office of Homeless Solutions Panhandling Diversion at 1 (May 20, 2022), accessible at https://dallastx.swagit.com/play/05232022-583
[29] Christine Crossley et al., *Panhandling Deflection Program Update*, DALLAS CITY NEWS NETWORK at 7, (June 27, 2022), https://dallastx.swagit.com/play/06272022-529
[30] Memorandum from Christine Crossley, Director of Office of Homeless Solutions, to Government Performance & Finance Committee, on Update – Office of Homeless Solutions

pedestrian safety measure. Rather, it was part of a coordinated campaign to target, track, and cite people who panhandle on street curbs and medians.

51. At no point during any of the four times the Ordinance was before the GPFM Committee between April 25 and October 24, 2022, did any person from DOT provide data, studies, or other evidence supporting the public safety justification for the ordinance. The Ordinance was only ever "briefed by memorandum" for the whole Committee, meaning it was only discussed if a councilmember asked a specific question. The Committee heard no presentation or other review of any data or studies underlying the barebones safety justification.

52. Ten days before the Ordinance's passage, the City Manager provided a briefing to a third committee, Public Safety, about the Ordinance. The briefing did not shed light on any concrete safety concerns. Instead, it focused on an ordinance passed in conjunction with § 28-61.1. This complimentary ordinance, codified as § 13-10 of the Dallas City Code, gave the City Marshal authority to "enforce Sections 28-61.1 and 28.63.3 of the Dallas City Code," Dallas's anti-panhandling ordinances. The City proposed this amendment to the Marshal's authority "as part of the city's comprehensive strategic plan to address the needs of the unsheltered population and address illegal solicitation[.]" Ex. E at 1(Oct. 7, 2022, Public Safety Briefing Memorandum).

B. The Full City Council's Consideration of the Ordinance Demonstrated Section 28-61.1's Anti-Panhandling Intent

53. City Council formally discussed and voted on the Ordinance on October 26, 2022, passing it by a vote of 14-1. In addition to § 28-61.1, the City Council passed the amendment to § 13-10 without a record vote.

Panhandling Deflection at 2 (Oct. 21, 2022), https://dallascityhall.com/government/Council%20Meeting%20Documents/Panhandling-Diversion-Program-Update_GPFM_102422.pdf

i. Panhandling remained the focus of the discussions surrounding the Ordinance

54. As the City Council deliberated, Councilmembers repeatedly acknowledged the Ordinance began as a panhandling measure. Councilmember Adam Bazaldua called the Ordinance's newfound "traffic safety" justification "disingenuous." [31] He went on to identify the Ordinance as an "effort to criminalize poverty, an effort to criminalize panhandling, something we know we can't do."[32] Importantly, he observed what the plain language of the Ordinance makes clear: "We have many carve outs in the ordinance that is being proposed that has made it very clear we are not going to be enforcing this on average residents."[33]

55. Councilmember Mendelsohn addressed Councilmember Bazaldua's concerns, recognizing the Ordinance "was included in the panhandling conversation" but explaining that "what happened is [the Ordinance] evolved. That is why it went to Transportation and that is why it went to Public Safety."[34] For all her demurring, however, Councilmember Mendelsohn had boasted just a few months before, "This [Ordinance] was actually the intent of the panhandling work we did over two-plus years."[35]

56. Councilmember Narvaez agreed that the Ordinance was initially written in response to the question, "how do we target and do anti-panhandling." Later in the meeting, Councilmember Narvaez worried about "the spirit of where [the Ordinance] started,"—a targeted attack on people who panhandle—but concluded that, "in the spirit of trying something different," he would vote in favor of the Ordinance. He claimed he would reevaluate his position as data became available

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[31] Dallas City Council, *October 26, 2022, City Council Agenda Meetings*, Item 16 (Part 2 of 2), DALLAS CITY NEWS NETWORK at 16:32–17:35 (Oct. 26, 2022), https://dallastx.swagit.com/play/10262022-855
[32] *Id.* at 19:44–19:55.
[33] *Id.* at 20:00–20:25.
[34] *Id.* at 30:00–31:01
[35] April 18, 2022, Transportation and Infrastructure, *supra* note 24

on who was targeted for enforcement under the Ordinance.[36] He expressed hope that his colleagues would scrutinize the Ordinance to ensure it was not "just a political move, which is where it started and why it happened."[37]

57. Those tasked with enforcing the new Ordinance, the Dallas City Marshal's Office, similarly recognized the Ordinance as a panhandling measure. When asked about how his Office would enforce the Ordinance, the Interim City Marshal immediately described enforcement in terms of poor people panhandling. He explained the City would send out marshals as part of their daily responsibilities, but that marshals would respond with "OHS and Crisis Intervention, just like we do on encampment situations now."[38] He further described the Ordinance as an "opportunity" for his office to offer "services" when issuing citations referring people to Dallas's Community Courts.[39] In short, the Marshal made clear his understanding that this was an anti-panhandling ordinance to be enforced against people panhandling.

58. Councilmember Paula Blackmon recognized the focus on punishing panhandling in the Marshal's description. She responded, "[N]ow I'm confused because I thought we were trying to prevent pedestrian fatalities, but now you've kind of brought in a wholistic approach to something."[40] Councilmember Blackmon neither asked for nor received clarification from the Marshal on her confusion about the relevance of panhandling to a supposed public safety ordinance. But the Marshal's enforcement plan was consistent with previous meetings, where councilmembers sought to expand the enforcement authority of the Marshal's Office to assist OHS

[36] Dallas City Council, *October 26, 2022, City Council Agenda Meetings*, Item 16 (Part 2 of 2), DALLAS CITY NEWS NETWORK at 1:00:15–24 (Oct. 26, 2022)
[37] *Id.* at 1:00:41–1:01:02.
[38] *Id.* at 26:00–26:53.
[39] *Id.* at 27:03–27:27.
[40] *Id.* at 28:10–32.

in telling people panhandling violates the law. *See* Ex. E at 1 (Oct. 7, 2022, Public Safety Briefing Memo).

59. Beyond explicit statements regarding panhandling and homelessness, many councilmembers also made sweeping generalizations about people struggling with mental illness and addiction who were unwelcome in their communities. For example, Councilmember Willis said the Ordinance would help deal with "individuals who are clearly high, hallucinating, having issues, they don't really know where they are."[41] Towards the end of the meeting, she reiterated that the focus of the Ordinance would be to handle those individuals who "could be mentally ill, drug addicted, [and] hallucinating."[42] Councilmember Mendelsohn echoed these sentiments, saying the Ordinance would help manage people who are on medians "daily who this has become a place that they are experiencing life."[43]

ii. The purported public safety justification lacks specificity, support, and credibility

60. The City Council's consideration of the public safety justifications underpinning the Ordinance also revealed another of the Ordinance's fatal flaws from a First Amendment perspective. Both DOT and Dallas police officials presented generic statistics to City Council regarding pedestrian safety. These data only demonstrate that the real pedestrian safety risks in Dallas come from pedestrians crossing the street at unsafe locations or cars failing to yield to pedestrians. The Ordinance addresses neither of these actually urgent public safety concerns.

61. For example, when asked to provide data on the public safety rationale for the ordinance, the DOT Director stated, "We had 68 pedestrian fatalities in 2021 and year to date in

[41] *Id.* at 39:23–30.
[42] *Id.* at 58:02–05.
[43] *Id.* at 54:47–55:01.

2022, 53 fatalities and when we compare it to last year, we are higher by two fatalities for the same period last year. . . and this ordinance will help us in that effort to try and reverse that."[44]

62. When pressed further on whether these fatalities occurred on medians or in clear zones, the areas the Ordinance targets, the Director stated he would need to get data from the Dallas Police Department ("DPD") or "further review of the reports, but I am aware of at least two of them related to being in the sidewalk or on the median." [45] He went on to state that he did not have any data on pedestrian injuries caused by being on the median.[46] Importantly, the little data he did provide failed to clarify whether the two pedestrian deaths occurred while the person was walking on the sidewalk or using the median to cross the street, both of which are permitted under the Ordinance's exceptions.

63. When asked about the Ordinance's effect on driver safety, a DPD representative described reports finding that 45 pedestrians had been killed so far in 2022, but only one was attributable to a pedestrian stepping off a median, but again, not standing on the median.[47]

64. Regarding the possibility of people on medians distracting drivers, the DPD representative said the police department did not have "supporting information nor is it documented that any driver inattention or distraction was caused by subjects on the median."[48]

65. The text accompanying the Ordinance similarly fails to provide a foundation for the traffic safety claims. In the preamble to the Ordinance, the drafters referenced "a study of pedestrian fatalities in the City of Dallas [which] found that the vast majority of pedestrian fatalities occur when the pedestrian enters the roadway at a point that is not designated for crossing

[44] *Id.* at 2:07–2:44.
[45] *Id.* at 3:02–3:15.
[46] *Id.* at 3:15–3:27.
[47] *Id.* at 37:00–37:42.
[48] *Id.* at 37:39–38:00

or standing." Ex. A at 1. While it is not clear what "study" the drafters were referring to, the most likely source is the "Crash Data Analysis 2015–2019" the City conducted as part of its "Vision Zero Action Plan."

66. Both the crash data and broader action plan, however, demonstrate the Ordinance's ineffectiveness at addressing public safety. The crash data only underscores what DPD and DOT made clear to the City Council—the overwhelming majority of traffic accidents occur because of factors completely unrelated to pedestrians occupying medians or sidewalks.[49] The top six causes listed in the City's analysis are speeding, driving under the influence, failure to drive in a single lane, pedestrians failing to yield to a vehicle, failure to yield when turning left, and running a red light.[50] Across the 25 leading contributors to severe roadway crashes, *none* of the categories plausibly involve injuries due to pedestrians occupying medians.[51]

67. In fact, the Ordinance's approach to traffic safety—through criminally punishing pedestrians occupying public spaces—contradicts the roadway safety approach the City endorsed in its Vision Zero Action plan. The City developed this action plan based on "wide-ranging analysis of data as well as public input" and "derived [the plan] from verified best practices" from a variety of sources.[52] In the plan, the City recognizes that "the transportation system must be designed to accommodate human vulnerability" and so "plac[es] more responsibility on the system designers than on individual road users."[53] The plan recommends a variety of infrastructure

[49] *Dallas Vision Zero Action Plan: Crash & Survey Data Analysis* at 22 (2022), https://dallascityhall.com/departments/transportation/Documents/VisionZeroDataAnalysis_080822_FINAL.pdf
[50] *Id.*
[51] *Id.*
[52] City of Dallas, *Vision Zero Action Plan* at 5 (2022), https://dallascityhall.com/departments/transportation/Documents/FINAL-Vision%20Zero%20Action%20Plan%20%28high%20res%29.pdf
[53] *Id.* at 6.

improvements to make pedestrian crossings safer, reduce traffic speeds, and improve city street infrastructure.[54] The 36-page report does not describe any public safety concerns with individuals occupying medians or unpaved areas behind curbs for extended periods of time.

68. The closest thing the City has to a justification for the Ordinance is its reliance on general street design guidance suggesting medians should be six-feet wide or greater if intended to be used as a pedestrian refuge. *See* Ex. A at 1. But the First Amendment requires more before a City may restrict speech in public forums, and generic guidance cannot justify a broad restriction on speech on medians and alongside roads across the City. This is particularly true when all of the evidence available to the City suggests the Ordinance would have no effect on public safety, while undermining the commitments made in the City's Vision Zero Action Plan.

C. The Ordinance Restricts Plaintiffs' Protected Speech in Crucial Public Forums

69. Plaintiffs are all individuals who use Dallas medians and areas adjacent to roadways to engage in protected First Amendment activities, which the Ordinance now criminalizes.

70. Plaintiff Alton Waggoner is a homeless veteran who solicits donations in public spaces in Dallas for his basic survival. Ex. F (Waggoner Decl.) at ¶¶ 2–3. Mr. Waggoner holds a sign to solicit donations that says, "Disabled Vet anything helps GOD Bless." If he were unable to solicit donations, Mr. Waggoner would have no way to afford the necessities of life including food, shelter, and water. *Id.* at ¶ 3.

71. He also understands far too well the harmful impact that § 28-61.1 will have on him and other poor people in Dallas. In March of 2020, Mr. Waggoner received a citation for $459.80 for "Solicitation of Occupants of Vehicles." *Id.* at ¶ 7. Because he was, and remains, too poor to

[54] *Id.* at 21–25.

afford the ticket, Mr. Waggoner had his driver's license suspended and currently lacks any form of government identification. *Id.* at ¶¶ 7, 10.

72. Mr. Waggoner cannot access a shelter because of his suspended license. *Id.* at ¶ 10. Unable to find anywhere else to go, Mr. Waggoner even attempted to turn himself into jail to pay off his fine and have a place to sleep. *Id.* at ¶ 7. He was told the jail was too crowded for him. *Id.*

73. He lives in fear that, because of this new ordinance, he will be further criminalized and targeted just for trying to survive. *Id.* at ¶ 9. The Ordinance punishes Mr. Waggoner for being in the only places where he can make money to survive. *Id.* Despite his attempts to find help with medical problems and addiction treatment, no person from the City has ever reached out to him to offer services. *Id.* at ¶ 11. Instead, several times a week, Mr. Waggoner encounters police officers telling him it is illegal to stand on medians. *Id.* at ¶ 8. When police officers make these statements, Mr. Waggoner complies, but that means he frequently struggles to afford the necessities of life. *Id.*

74. Plaintiff Lafayette "Teri" Heishman is a veteran with disabilities who can barely afford the basic necessities of life. Ms. Heishman has been in and out of homelessness for the last several years and relies on panhandling to survive. Ex. G (Decl. of Lafayette "Teri" Heishman) at ¶¶ 2–3. To solicit donations, Ms. Heishman holds a sign that says, "Disabled Combat Vet anything helps merry christmas!"

75. Ms. Heishman frequently uses medians to solicit donations from pedestrians and motorists. *Id.* at 5–6. Without the money gained from soliciting donations, she would not be able to afford food, water, and shelter. *Id.* at ¶ 8.

76. Dallas police officers have previously cited Ms. Heishman at least six times for behaviors associated with homelessness. *Id.* Ms. Heishman remains too poor to afford those tickets and instead is locked in a cycle of criminal debt and poverty. *Id.* at ¶¶ 9–10.

77. Ms. Heishman lives in constant fear that the Ordinance will further criminalize constitutionally protected activity she engages in for survival. *Id.* at ¶ 12. Ms. Heishman seeks to continue using areas affected by the Ordinance because when officers tell her it is illegal to be on medians and street corners, she struggles to afford basic life necessities. *Id.* at ¶¶ 13–14.

78. Similar to Mr. Waggoner, Teri has not been offered supportive services from anyone associated with the City of Dallas. *Id.* at ¶ 15. Instead, the main contact Teri has with the City is through Dallas Police Officers telling her to get off medians and street corners as she tries to survive. *Id.*

79. Dr. Hannah Lebovits is a Professor of Public Affairs at the University of Texas at Arlington who studies housing and homelessness through the lens of social equity and sustainability. Ex. H (Lebovits Decl.) at ¶ 2. Dr. Lebovits uses areas affected by the Ordinance both for her academic research and carrying out her personal commitments to helping people experiencing economic precarity. *Id.* at ¶ 3.

80. Medians and other areas affected by the Ordinance are critical to Dr. Lebovits's ability to communicate with and help poor people soliciting donations. These areas help her build trust and maintain the integrity of her research. *Id.* at ¶¶ 6–7, 8. Across the last several years, she has spoken to over 100 people in such areas. *Id.* at ¶ 7. Without access to such areas affected by the Ordinance, Dr. Lebovits will struggle in building long-term lasting relationships, which would undermine both her research and her ability to connect individuals with meaningful services. *Id.* at ¶ 13.

81. Since the Ordinance's passage, Dr. Lebovits must conduct her research and engagement with people on medians and streets corners under a perpetual threat of enforcement.

Id. at ¶¶ 16–18. A citation would harm her research and personal life and deter her from conducting outreach in the street in the future, even in areas unaffected by the ordinance. *Id.* at ¶ 18.

82. As the City enforces the Ordinance over time, more people who rely on panhandling to survive will leave public spaces for fear of enforcement, further pushing them to the margins. *Id.* at ¶¶ 19–20. This will sever Dr. Lebovits's ties to dozens of people who she has spent years getting to know and prevent future conversations with them. *Id.*

83. Beyond the Ordinance's effect on poor people who panhandle and those that try to support them, the Ordinance is so broad that it prohibits politically active citizens from speaking out on matters of public concern—speech at the very heart of the First Amendment's protection.

84. Plaintiff Kawana Scott is a community organizer and works with several advocacy groups across Dallas. Ex. I (Decl. of Kawana Scott) at ¶ 2. She is a dedicated advocate across a number of causes in Dallas, particularly racial and economic justice in Dallas's underserved communities. *Id.* at ¶ 3.

85. During her 10 years as a community organizer, she has frequently organized, attended, and participated in demonstrations on medians and unpaved areas along roadways. *Id.* at ¶ 4. For her, these public spaces provide her low-cost ways to reach a broad audience. *Id.* at ¶ 5.

86. As an organizer, Ms. Scott's use of medians is also informed by her understanding of the Civil Rights Movement, where rallies, protests, and demonstrations frequently utilized medians to push for greater civil liberties. *Id.* at ¶ 6. She continues that tradition today by ensuring that the public recognizes racial injustices that occur in our Dallas community. *Id.*

87. As an organizer of protests and demonstrations, Ms. Scott also recognizes the importance of balancing safety with effective messaging. Medians and areas near curbs give her and her allies a safer place in which to demonstrate because they are typically elevated above the

street and have enough distance from passing cars, while also being close enough to the street to reach a large audience. *Id.* at ¶¶ 7–8.

88. Across over 100 demonstrations and 10 years as an organizer, Ms. Scott has never seen a person injured while occupying a median. *Id.* at ¶ 11.

89. Ms. Scott intends to use medians to demonstrate in the future, but the Ordinance as written would prohibit much of Ms. Scott's community organizing and seriously infringes on her First Amendment rights. Because of its breadth, the vast majority of Ms. Scott's demonstrations near public roads are impossible without risking criminal sanctions. *Id.* at ¶ 12.

90. The diverse speech of Plaintiffs on areas affected by the Ordinance underscores that medians and areas adjacent to the street are critical forums for people to engage with their community and general public. For decades people across Dallas have used medians, sidewalks, and street corners to advocate for causes, preach their respective religions, solicit signatures for petitions, raise money for youth sports teams, and more. The Ordinance is unprecedented in Dallas and closes off critical forums in the marketplace of ideas.

V. CLAIMS FOR RELIEF

Count I: 42 U.S.C. § 1983

(Free Speech – Invalid Content-Based Restriction)

91. All prior paragraphs are reincorporated here by reference.

92. Section 1983 makes Defendants liable "in an action at law, suit in equity, or other proceeding for redress" when persons suffer a "deprivation of any rights, privileges, or immunities secured by the Constitution" due to the City's ordinance. 42 U.S.C. § 1983.

93. The First Amendment to the United States Constitution, as incorporated against the states through the Fourteenth Amendment, entitles all people to "the freedom of speech" and

prevents governments from abridging that freedom. The Ordinance is a sweeping restriction on expressive activities on medians and areas alongside roadways—places that have long been recognized as "quintessential public forums" where "the rights of the state to limit expressive activity are sharply circumscribed." *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45 (1983).

94. The City of Dallas has "no power to restrict expression because of its message, its ideas, its subject matter or its content." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (quotation omitted). Content-based laws, meaning those "target[ing] speech based on its communicative content," are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* A restriction on speech may be considered content-based either when its text singles out certain messages or when it is "adopted by the government 'because of disagreement with the message [the speech] conveys." *Id.* at 164 (quotation omitted).

95. The City of Dallas conducted a multi-year campaign to target and criminally punish panhandling. City Council expressed contempt for people who panhandle, and § 28-61.1 is a manifestation of their disagreement with the expressive activity of panhandling. Even councilmembers who supported the ordinance recognized that it began as an anti-panhandling measure designed to be enforced against panhandlers. Such content-based restrictions on speech are subject to strict scrutiny, which the Ordinance fails.

96. The City passed the Ordinance for an illegitimate purpose. It has no evidence the Ordinance will keep people safe—let alone that it can survive the "most exacting scrutiny" applied to content-based limitations on speech. *United States v. Alvarez*, 567 U.S. 709, 724 (2012).

97. Even assuming the post hoc traffic safety justification is legitimate, which Plaintiffs do not concede, the Ordinance still fails strict scrutiny. None of the meager evidence presented to the City Council suggests people sitting or standing on medians pose a safety concern. The generic street design guidance, at most, "lend[s] minimal support to the notion that the Ordinance . . . alleviates non-speculative harms in a direct and material way." *Brewer v. City of Albuquerque*, 18 F. 4th 1205, 1229 (10th Cir. 2021).

98. Furthermore, the Ordinance is sweeping, applying to the majority of medians across the city and other vaguely defined areas near roadways. Even if the street design guidance supported some restriction on speech, the evidence is insufficient to justify such a broad prohibition on the exercise of First Amendment rights.

99. The Ordinance therefore violates the First Amendment facially and as applied to Plaintiffs' speech. Because the City has acted and threatened to act under the color of state law to deprive Plaintiffs of rights secured by the First Amendment, Plaintiffs may sue to seek relief under § 1983.

Count II: 42 U.S.C. § 1983

(Free Speech – Invalid Time, Place, and Manner Regulation)

100. All prior paragraphs are reincorporated here by reference.

101. If the Ordinance is not a content-based limitation on speech, Defendants must still justify it as a content-neutral time, place, and manner restriction under intermediate scrutiny, which the Ordinance fails. Content-neutral regulations must be narrowly tailored to serve a significant government interest and leave open ample alternative avenues for speech. *McCraw*, 973 F.3d at 1071 (quoting *McCullen v. Coakley*, 573 U.S. 464, 486 (2014)). This standard requires Defendants to demonstrate a "close fit between ends and means" to prevent "sacrific[ing] speech for

efficiency." *McCullen*, 573 U.S. at 468 (alteration in original) (quotation omitted). The Ordinance fails to meet that standard in all respects.

102. The Ordinance materially limits Plaintiffs' ability to demonstrate, advocate, solicit, and otherwise express themselves in these areas. Plaintiffs need not wait until they have "experienced an actual arrest, prosecution, or other enforcement action[.]" *Barilla v. City of Houston, Texas*, 13 F.4th 427, 432 (5th Cir. 2021) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). The City's express intention to enforce the Ordinance through DPD and the Marshal's Office creates a credible threat in the face of their continued First Amendment activity.

103. The Ordinance fails intermediate scrutiny because it does not address public safety concerns and burdens substantially more speech than necessary. The Ordinance bears at most a minimal relationship to the purported interest in protecting the safety of pedestrians and drivers. It leaves untouched the very conduct that the evidence suggests poses the greatest safety risk—pedestrians crossing streets illegally and cars failing to yield to crossing pedestrians.

104. Moreover, medians and roadsides are a unique, inexpensive place for Plaintiffs to advocate for causes of public concern. No other area in the public square provides as effective and safe a place to reach a broad swath of the public.

105. The Ordinance represents a broad restriction on a wide variety of First Amendment speech untethered to any actual public safety interest. It therefore fails intermediate scrutiny and violates the First Amendment facially and as applied to Plaintiffs.

106. Because the City has acted and threatened to act under the color of state law to deprive Plaintiffs of rights secured by the First Amendment, Plaintiffs may sue for relief under § 1983.

Count III: 28 U.S.C. § 2201

(Declaratory Judgment)

107. All prior paragraphs are reincorporated here by reference.

108. Section 2201(a) provides: "In a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration[.]"

109. This case presents an actual controversy between the Plaintiffs and the City of Dallas as to whether Plaintiffs have a First Amendment right to engage in expressive activity on public medians within the City's jurisdiction. As alleged, Plaintiffs claim the Ordinance violates their First Amendment rights.

110. Plaintiffs seek a declaration that § 28-61.1 violates the Constitution on its face and as applied to Plaintiffs.

VI. REQUESTS FOR RELIEF

Plaintiffs respectfully request the following relief:

a) A judgment declaring the challenged Ordinance violates the United States Constitution under the First Amendment, as incorporated against the states through the Fourteenth Amendment.

b) A permanent injunction prohibiting the City of Dallas, its police department, and City Marshal from enforcing the challenged Ordinance.

c) An award to Plaintiffs of costs and attorney's fees; and

d) Any other and further relief this Court deems just and proper.

Respectfully submitted,

/s/*Travis Fife*
Travis Fife
Texas Bar No. 24126956
travis@texascivilrightsproject.org
Attorney-in-Charge
Dustin Rynders
Texas State Bar No. 24048005
dustin@texascivilrightsproject.org
Molly Petchenik (*Pro Hac Vice*)
Illinois Bar No. 6339511
molly@texascivilrightsproject.org
Texas Civil Rights Project
1405 Montopolis
Austin, Texas 78741
Telephone: 512-474-5073

/s/*Caitlyn Silhan*
Caitlyn Silhan
Texas State Bar No. 24072879
csilhan@waterskraus.com
Waters Kraus Paul
3141 Hood Street, Suite 200
Dallas, Texas 75219
Telephone: 214-357-6244
Facsimile: 214-357-7252

Peter B. Steffensen
Texas State Bar No. 24106464
psteffensen@smu.edu
SMU Dedman School of Law
First Amendment Clinic
P.O. Box 750116
Dallas, TX 75275
Telephone: 214-768-4077
Facsimile: 214- 768-1611

ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Alton Waggoner et al.

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Travis Fife, Texas Civil Rights Project (see attachment)
1405 Montopolis, Austin Texas 78741, 512-474-5073

DEFENDANTS

The City of Dallas et al.

County of Residence of First Listed Defendant Dallas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. § 2201; 42 U.S.C. § 1983

Brief description of cause:
First Amendment lawsuit challenging an ordinance recently enacted by the City of Dallas

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ Permanent Injunction

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
Dec 14, 2022

SIGNATURE OF ATTORNEY OF RECORD
Travis Fife

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

Alton Waggoner Lafayette "Teri" Heishman Hannah Lebovits Kawana Scott, Plaintiffs, v. The City of Dallas, Texas Edgardo Garcia, in his official capacity David Pughes, in his official capacity, Defendants.	)	Case No. _____

CIVIL COVER SHEET ATTACHMENT

Please take notice of all Plaintiffs' attorneys of records:

Travis Fife (*attorney -in-charge*)
Dustin Rynders (*attorney*)
Molly Petchenik (*pro hac vice forthcoming*)
Texas Civil Rights Project
1405 Montopolis
Austin, Texas 78741
Ph: 512-474-5073

Peter Steffensen (*attorney*)
SMU Dedman School of Law
3315 Daniel Ave.
Dallas, Texas 75205
Ph: 214-768-2000

Caitlyn Silhan (*attorney*)
Waters Kraus Paul
3141 Hood Street, Ste. 200
Dallas, Texas 75219
Ph. 214-357-6244

EXHIBIT A

6-17-22

ORDINANCE NO. _____

An ordinance amending Chapter 28, "Motor Vehicles and Traffic," of the Dallas City Code by adding Section 28-61.1; prohibiting standing and walking on medians measuring six feet or less in width, where no medians exist, or in an area designated as a clear zone; providing a penalty not to exceed $500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, a study of pedestrian fatalities in the City of Dallas found that the vast majority of pedestrian fatalities occur when the pedestrian enters the roadway at a point that is not designated for crossing or standing;

WHEREAS, traffic studies have found that medians under six feet in width, areas with no medians, or areas designated as clear zones are not safe pedestrian refuges;

WHEREAS, the U.S. Department of Transportation, American Association of State Highway Transportation Officials, National Association of City Transportation Officials, and Section 4.3.5 of the City of Dallas 2019 Street Design Manual recommends a minimum median width of six feet for a median to be used as a pedestrian refuge;

WHEREAS, Chapter 2 of the Texas Department of Transportation 2020 Roadway Design Manual recommends an area of four feet from the face of the curb for curbed roadways, or 10 feet from the edge of a travel lane for non-curbed roadways, to be free from obstructions to provide a way for recovery of errant vehicles;

WHEREAS, Section 4.3.5 of the City of Dallas 2019 Street Design Manual recommends the provision of at least three feet of clearance from the outermost edge of structure to back of curb;

WHEREAS, prohibiting pedestrians from standing in a roadway median, on a divided roadway where no median exists, or in a clear zone will protect the health and safety of both pedestrians and motorists; and

WHEREAS, the city council finds that it in the best interest of the public health and safety to prohibit pedestrians from standing in a roadway median, where no median exists, or in a clear zone, subject to certain exceptions; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Article VIII, "Pedestrians' Rights and Duties," of Chapter 28, "Motor Vehicles and Traffic," of the Dallas City Code is amended by adding a new Section 28.61.1, "Standing and Walking on Medians Prohibited," to read as follows:

"**SEC. 28-61.1. STANDING AND WALKING IN CERTAIN AREAS PROHIBITED.**

(a) A person commits an offense if the person stands or walks on a median that measures six feet or less, in areas where no median exists for roadways designated as divided roadways, or in an area designated as a clear zone.

(b) For purposes of this section,

(1) CLEAR ZONE means the unobstructed, traversable area provided beyond the edge of the through travelled way for the recovery of errant vehicles. On a curbed street, the clear zone is the area four feet from the face of the curb. On an uncurbed street, the clear zone is 10 feet from the edge of the travel lane. A clear zone includes shoulders, bicycle lanes, and auxiliary lanes, except auxiliary lanes that function like through lanes. However, a clear zone does not include areas adjacent to the back of the curb where a paved sidewalk exists.

(2) MEDIAN means the intervening space, physical barrier, or clearly indicated dividing section between the two roadways of opposing traffic on a public divided roadway.

(3) RAISED SPLITTER ISLAND (also known as separator islands) means a median that slows, directs, and separates conflicting traffic and may provide refuge for pedestrians who are crossing a road.

(4) ROADWAY means streets classified in the city's thoroughfare plan as major/principal or minor arterials, frontage roads or parkways along controlled access freeways and tollways, non-controlled access state roadway facilities and associated intersections with city's major or minor arterials.

(c) This section does not apply if the person:

(1) is crossing a divided roadway in the most direct route possible inclusive of roadways that have provisions for dedicated bicycle lane facilities or curb bump outs;

(2) is the victim of or rendering aid in an emergency situation or in compliance with the directions of a peace officer;

(3) is performing work in the right-of-way in accordance with a permit issued under Chapter 43 of this code;

(4) is erecting or dismantling a barricade in the right-of-way in accordance with a permit issued under Chapter 52 of this code;

(5) has prior authorization from the city or is otherwise in compliance with applicable laws and regulations;

(6) is standing in a raised splitter island that is not less than four feet in width while attempting to cross a divided roadway in the most direct route possible; or

(7) is walking or standing on a paved sidewalk if the sidewalk is adjacent to the back of the curb on a curbed roadway which is within a clear zone area.

SECTION 2. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed $500.

SECTION 3. That Chapter 28 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part

thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 5. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, City Attorney

By_____
Assistant City Attorney

Passed_____

EXHIBIT B

3-31-22

ORDINANCE NO. _____

An ordinance amending Chapter 13, "Courts, Fines and Imprisonments," of the Dallas City Code, by amending Section 13-10; authorizing the city marshal and his or her deputies to enforce the city's provisions regarding standing or walking on medians contained in Section 28-61.1 of the Dallas City Code and the city's solicitation provisions contained in Section 28-63.3 of the Dallas City Code; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 13-10, "Duties of the City Marshal," of Article II, "Municipal Court of Record," of Chapter 13, "Courts, Fines and Imprisonment," of the Dallas City Code, is amended to read as follows:

"**SEC. 13-10. DUTIES OF THE CITY MARSHAL.**

The city marshal and his or her deputies, acting under the direction of the municipal clerk, shall perform the following duties:

(1) execute warrants of arrest, subpoenas, and other legal process issuing out of the municipal court of record; [~~and~~]

(2) execute other warrants of arrest, subpoenas, and legal process as determined by the municipal clerk; and

(3) enforce Sections 28-61.1 and 28-63.3 of the Dallas City Code."

SECTION 2. That Chapter 13 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3 That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, City Attorney

By_____
Assistant City Attorney

Passed_____

EXHIBIT C

City of Dallas

Overview of Panhandling, Solicitation, and Available Strategies

City Council Briefing
February 3, 2021

Christopher J. Caso,
City Attorney

Jill Haning, Chief of
Community Prosecution

Overview

- Background
- Constitutional Issues
- Available Tools
- Next Steps

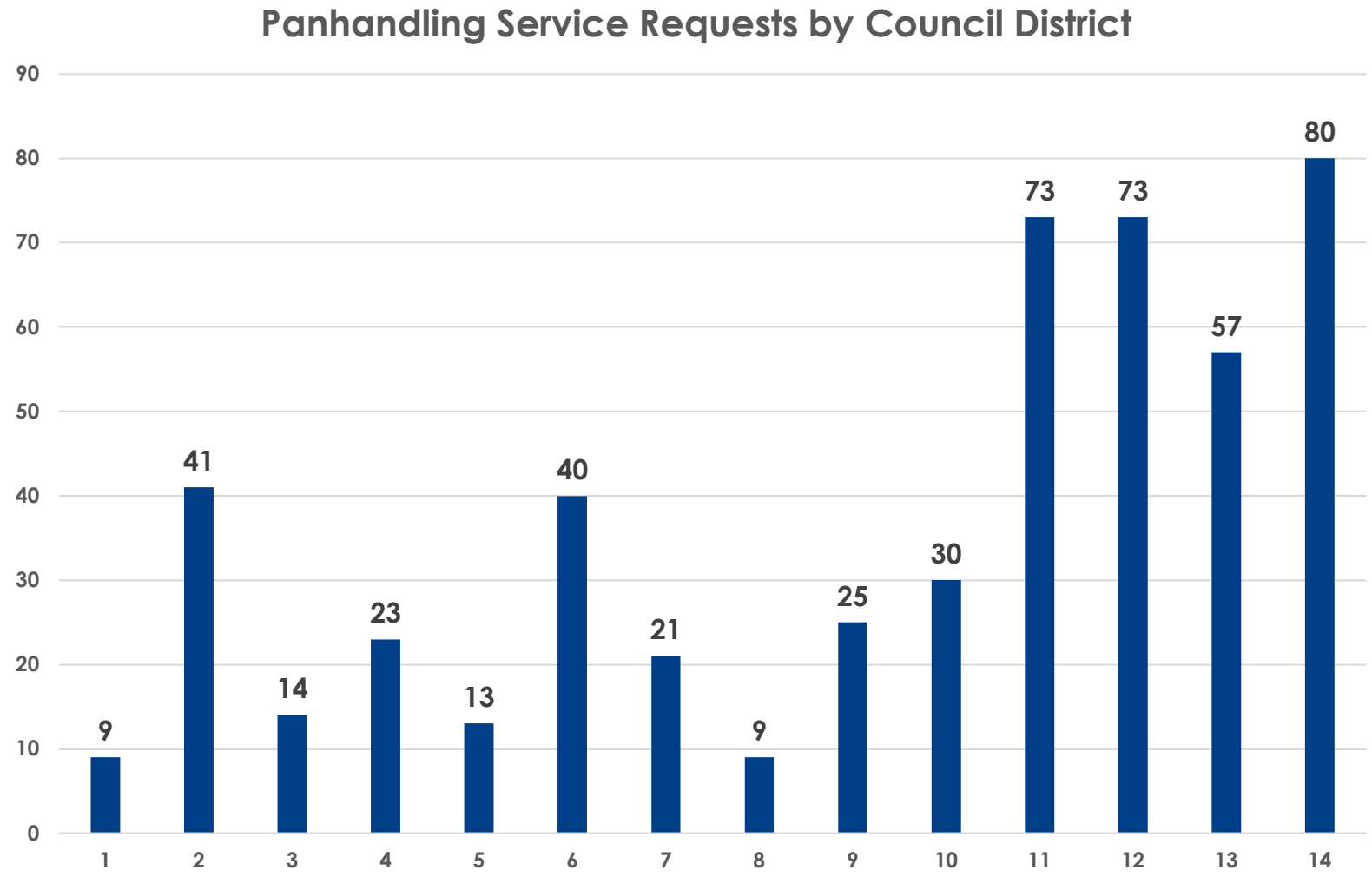
Background – Departmental Input & Collaboration

- **This is a multifaceted issue. Effectively addressing it requires a multifaceted approach – across many City departments.**
  - City Attorney's Office
  - Office of Homeless Solutions
  - Dallas Police Department
  - Office of Integrated Public Safety Solutions
  - Dallas City Marshal's Office
  - Court & Detention Services
  - Dallas Fire Rescue
  - Office of Community Police Oversight
  - Public Works Department

Background – City Initiatives

- **Dallas Police Department** – DPD enforces laws to address issues related to panhandling through citation and/or arrest. In 2015, DPD recommended placing "Keep the Change" signs in high traffic areas.
- **Community Court** – Community Courts assist individuals issued quality of life citations associated with panhandling. Along with addressing their criminal offenses, the courts help individuals with mental health, housing, job placement, substance abuse, and other supportive services.
- **Dallas City Marshal's Office** – A program is being developed at the City's Detention Center to refer individuals to community-based support providers to provide them assistance when they are facing quality of life challenges such as homelessness, unemployment, substance abuse, or mental health issues.
- **Office of Community Care** – In 2018, the End Panhandling Now initiative used data to respond to panhandling with social services and referrals delivered by street outreach workers coupled with a social media and outreach campaign designed to educate the community about panhandling and discourage giving directly to panhandlers.
- **Office of Homeless Solutions ("OHS")** – Panhandling outreach has transitioned to OHS as the research showed a high percentage of individuals that panhandle were individuals experiencing homelessness and/or on the continuum (e.g. living day-to-day in motels).

Background – Panhandling Service Requests 2020



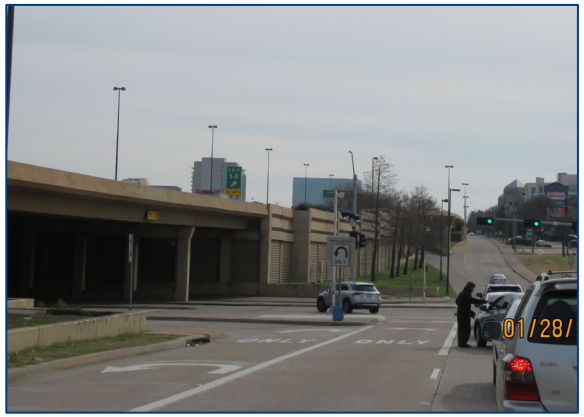
Background – Local Factors

- Individuals panhandle for a variety of reasons.
- According to the City's street outreach during the End Panhandling Now initiative:
  - *Most individuals are fulfilling basic needs, such as food or shelter.*
  - *Most individuals are considered homeless and/or on the continuum.*
  - *Mental health prevents many from getting and keeping traditional employment and from seeking social services, including shelters.*
  - *Individuals earn anywhere from $20-$300 daily.*
- These findings are consistent with other studies conducted across the country.

Background - Sites

Of the 508 service requests in 2020, 32 sites were more heavily trafficked (See Appendix 1) – with 6 of those being the most trafficked.

- Martin Luther King Jr. Blvd
- Samuell Blvd. & Jim Miller Road
- Galleria
- N. Central Expressway & Royal Lane
- 7950 Forest Lane
- Walnut Hill & N. Central Expressway SB



Constitutional Concerns

- The Supreme Court and lower courts have repeatedly found that asking for help is protected speech under the First Amendment.
- Courts regard the act of asking for money as protected speech and generally prevent cities from criminalizing panhandling or soliciting for money.
- Enforcement which specifically targets panhandling likely violates the First Amendment.
  - *Banning "aggressive panhandling"*
  - *Prohibiting panhandling in specified areas or at specific times*
  - *Requiring panhandlers to obtain solicitation permits*

Available Tools

Addressing the issues associated with panhandling will require a combination of:

- **Implementing supportive solutions**
- **Modifying existing ordinances and adopting new ordinances**
- **Enforcing existing ordinances and state law**

Criminal Offenses

- Cities may regulate illegal conduct associated with panhandling.
  - *Littering*
  - *Pedestrian in the Roadway*
  - *Obstructing Highway or Other Passageway*
  - *Impeding Traffic*
  - *Urinating or Defecating in Public*
  - *Criminal Mischief*
  - *Reckless Damage*
  - *Disorderly Conduct*
  - *Assault*
  - *Robbery*

Municipal Ordinances

- **Broad solicitation ordinances that are content-neutral might survive a constitutional challenge, so long as there is a compelling governmental interest, and they are narrowly tailored.**
  - *Banning all forms of solicitation*
  - *Prohibiting giving to any solicitors*
  - *Requiring all solicitors to obtain solicitation permits*
  - *Prohibiting solicitation at certain times*

Municipal Ordinances

- **Ordinances that indirectly address panhandling might survive a constitutional challenge.**
  - *Restricting sitting or standing on a sidewalk less than 36 inches*
  - *Require specific land uses that serve individuals who panhandle to develop a "Code of Conduct" that prohibits panhandling by clients; and a plan to manage panhandling in a specified area around the approved land use*

- However, based on the specific language of the ordinance or the specific application of the ordinance, they may face constitutional challenges.

Supportive Strategies

- **Strategies that address what is believed to be the reason why individuals panhandle are being implemented across the country.**

- Criminalization of panhandling often results in unpaid citations and outstanding warrants - limiting an individual's ability to obtain a driver's license, housing, or employment, and indirectly increasing or impacting homelessness.

Modifying the Environment

- The physical environment can be modified to discourage panhandling:
  - *Removing benches; unused pay phones; and/or newspaper boxes*
  - *Adding signage re applicable laws and alternative giving options*
  - *Redesigning appropriate landscaping and lighting*
  - *Activating the space to promote activity – mural art, street musicians, businesses, etc.*

Same-Day Pay Program

The program offers individuals who panhandle an opportunity to earn a daily wage – and create substantive steps towards finding a job, reconnecting with loved ones, or obtaining steady shelter.

City	Program	Funding	Details
Albuquerque, NM	***There's A Better Way Initiative***	City of Albuquerque and Various non-profits	The program pays participants a day's wage to beautify the community during each service day while connecting them with social services.
Philadelphia, PA	**Color Me Back: A Same Day Work and Pay Program**	City of Philadelphia, Scattergood Foundation, SEPTA, Sheller Family Foundation, and Mental Health Partnerships	The program offers individuals looking for work to assist with mural painting through a lottery program. They work for half the day and receive a paycheck. Participants can also be connected to city services, such as signing up for a city identification card and connecting to housing and mentorship.

Syracuse, NY; Tulsa, OK; Denver, CO; Boston, MA; San Diego, CA; Fort Worth, TX; San Jose, CA; Portland, ME; San Antonio, TX; Atlanta, GA; Memphis, TN

Encouraging Alternatives to Giving Curbside

- ***Giving to Non-Profits Serving Individuals Who Panhandlers***
  - This program provides a meaningful way for individuals to give to organizations who serve individuals who panhandle, including text message or websites.
  - OHS is working with San Antonio to develop a program in Dallas.
  - *Philadelphia, PA; Atlanta, GA; Baltimore, MD; Denver, CO; San Antonio, Tx*
- ***Using Technology to Give Directly to Individuals Who Panhandle - Samaritan App***
  https://www.youtube.com/watch?v=YZSgQLdGmkg
  - The program provides qualifying individuals with a small "beacon" (a key fob that functions as a smart wallet) which they can obtain through local non-profits.
  - People who download the app get notifications when they cross paths with a qualifying individual and are invited to read their stories and donate money through the app.
  - The "beacon holders" can then use their funds at local partner businesses or ask their counselors to apply the funds to their rent or a different purchase.
  - *Jacksonville, FL; Atlanta, GA; Seattle, WA; Chicago, IL; Oklahoma City, OK; Orange County, CA*

Voucher Payments

The program allows people to buy vouchers to give to individuals panhandling which are redeemable for food, shelter, transportation, or other necessities.

- a private, nonprofit organization prints and sells the vouchers and serves as the broker between buyers and merchants.
- vouchers are often accompanied with printed information about where they can be redeemed and what social services are available to the needy.

Los Angeles, CA; Berkeley, CA; Santa Cruz, CA; San Francisco, CA; Nashville, TN; Memphis, TN; New Haven, CT; Portland, OR; Chicago, IL; Seattle, WA; Boulder, CO; and New York, NY.

Providing Social Services

- This may include:
  - assistance finding housing that is more affordable;
  - locating community food programs;
  - locating childcare programs;
  - connecting to other activities that decrease social isolation or reconnect with employment, training, education or needed health services; or
  - help navigating available social assistance benefits.

Proposed Solutions

This multifaceted problem requires a commitment of resources to implement a solution that is a combination of:

- **Implementation of Supportive Solutions**
- **Considering City Code Amendments**
  1) prohibit all forms of solicitation;
  2) prohibit any giving to solicitors; and/or
  3) prohibit sitting or standing on a sidewalk/median less than 36 inches.
- **Enforcement**

Next Steps

- Consider feedback and direction from City Council.
- Further develop options in coordination with appropriate departments.
- Provide follow up briefings to City Council.
- Draft appropriate ordinances.
- Implement enforcement and supportive strategies.

QUESTIONS

City of Dallas

Overview of Panhandling, Solicitation, and Available Strategies

City Council Briefing
February 3, 2021

Christopher J. Caso,
City Attorney

Jill Haning, Chief of
Community Prosecution

EXHIBIT D

City of Dallas

Panhandling Deflection Program

Government Performance and Financial Management
October 25, 2021

OHS, CAO, OIPSS, Marshal's Office

Project Overview

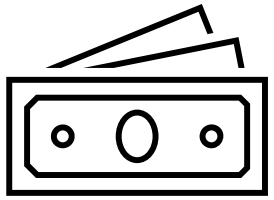
- Recap of Work Done
- Consequences of Panhandling
- Holistic Approach
- Database
- Pathways to Enforcement
  - OHS Street Outreach
  - City Marshal
  - Mobile Crisis Intervention
  - Community Courts
- Panhandling Deflection Program Flowchart
- Public Education Campaign
- 311 Data Map
- Deterrents
- Pilot Targets
- Next Steps

Recap of Work Done In The Past 90 Days

2/2021 CAO Presentation to City Council

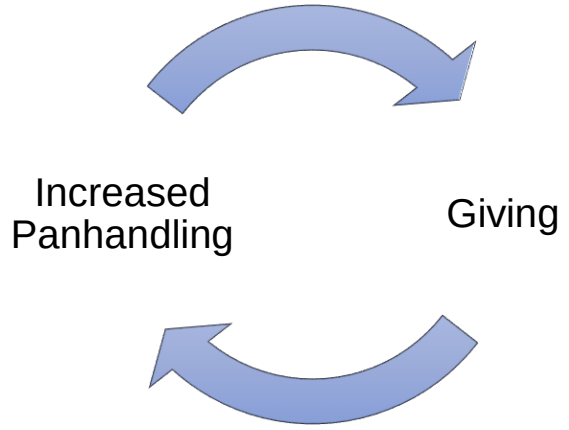
Mobile Crisis Intervention	• Manager, Supervisors and Caseworkers hired in September and October • Briefed CHC on September 9, 2021 on Mobile Crisis Intervention and RIGHT Care
City Marshal's Office	• Location of panhandling calls; 911/311 calls by time of day and day of the week compiled • Complaint calls mapped and high complaint locations identified
City Attorney's Office	• To provide additional enforcement options, CAO has drafted proposed ordinances: • Create offense for standing in a median • Expand enforcement authority to allow city marshals to enforce the above prohibition and solicitation of occupants in vehicles
Office of Homeless Services	• 05/13/2021: Briefed the Citizen Homelessness Commission on draft Public Education Campaign Outreach plan • 08/2021: Public listening sessions by District

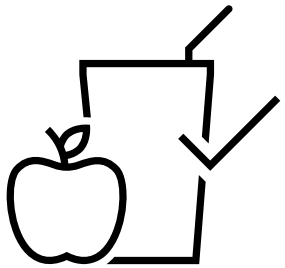
Consequences of Panhandling



- Encourages individuals to remain on the street
- Further discourages service-resistant recipients
- Creates a potentially dangerous situation for the donor and recipient of funds

☆Panhandling ≠ Homelessness





- Hepatitis A
- No guarantee of safe food preparation and handling practices
- Discarded food attracts rodents and stray animals
- Litter is a burden to area property owners and sanitation staff
- Creation of an unsustainable relationship

Holistic Approach

- This panhandling diversion project is holistic and attempts to address through an integrated, data-driven approach
- In conjunction with the education and awareness campaign, multiple departments will work together to deter panhandling
  - Environmental deterrents
  - Outreach and services
  - Community courts
- Traditional law enforcement as a last resort

Database

Proposed Data Collection and Integration Workflow

1. OHS, OIPSS and Marshal's Office will be able to enter data.

OHS

OIPSS

Marshal

Data stored securely in the ArcGIS Cloud

3. Data can then be displayed via customized internal operational dashboards and compiled into reports.

2. Data can be accessed and entered via a smart application on a phone or tablet, or on a computer.

Picture source: ESRI

Office of Homeless Solutions

- 311-based Street Outreach Team engagement
- Service-resistant panhandlers captured in new database

- Engage the faith community, homeless services providers, and street charity event organizers
- Educate the public of the unintended consequences of street charity
- Identify donor and volunteer opportunities
- Match and connect street charity organizers with homeless services providers

City Marshal

- Partnered with a Crisis Intervention Caseworker
- Identify individuals illegally soliciting
- Conduct initial investigation and check the individual
  - Mental and physical status
  - Warrants
  - Resistant to services

If the individual is cooperative and in need of services, crisis intervention will take over and assess needs

If the individual is uncooperative and resistant to services, a V-citation will be issued

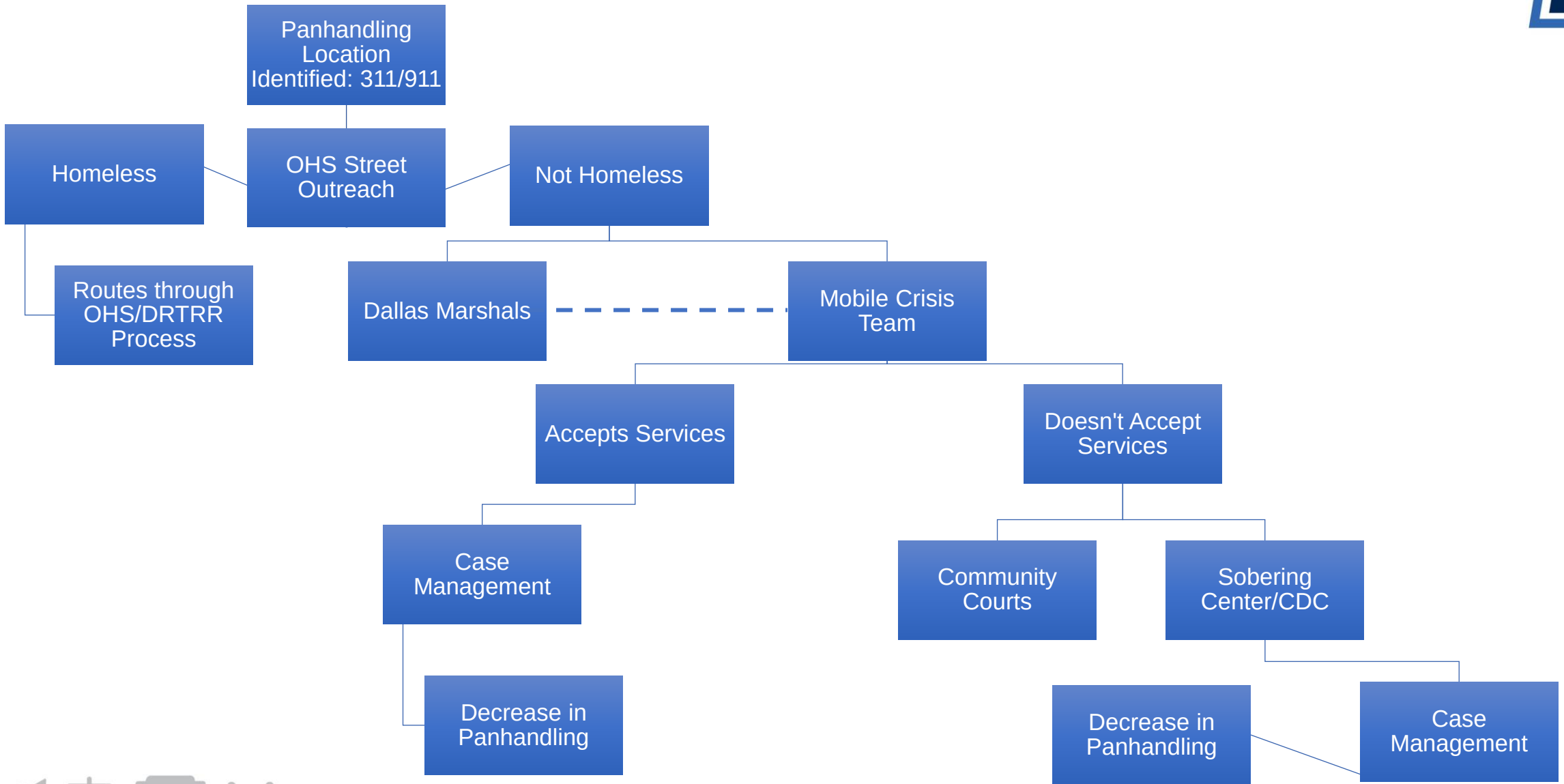
Mobile Crisis Intervention

- Crisis Intervention caseworkers will ride with a city marshal and conduct an initial assessment on individuals illegally soliciting
- Attempt to deflect the individual away from soliciting and the criminal justice system
- Determine root cause for individual panhandling
- Crisis Intervention caseworkers will be able to refer individuals in need of services
  - **Behavioral Health –** Includes mental health and substance
  - **Physical Health** - Includes primary healthcare services and individuals with disabilities
  - **Social Drivers of Health –** Includes assistance to address factors such as:
    - Access to food security
    - Access to shelter/housing
    - Employment assistance
    - Family reunification

Community Courts

- The Community Courts will assist individuals cited for violation of Dallas City Code
- Community Courts provide defendants with the opportunity to address the V-citation and connect them to valuable resources that can include:
  - Mental health care
  - Substance abuse care
  - Housing, employment, and transportation needs
  - Basic life skills and financial literacy referrals
- A goal of Community Courts is to eliminate financial hardships:
  - In lieu of court costs, defendants perform supervised community service.
- Pilot Community Courts Street Knowledge Initiative
- Defendants who plead not guilty are referred to Municipal Court

Panhandling Deflection Program Flowchart



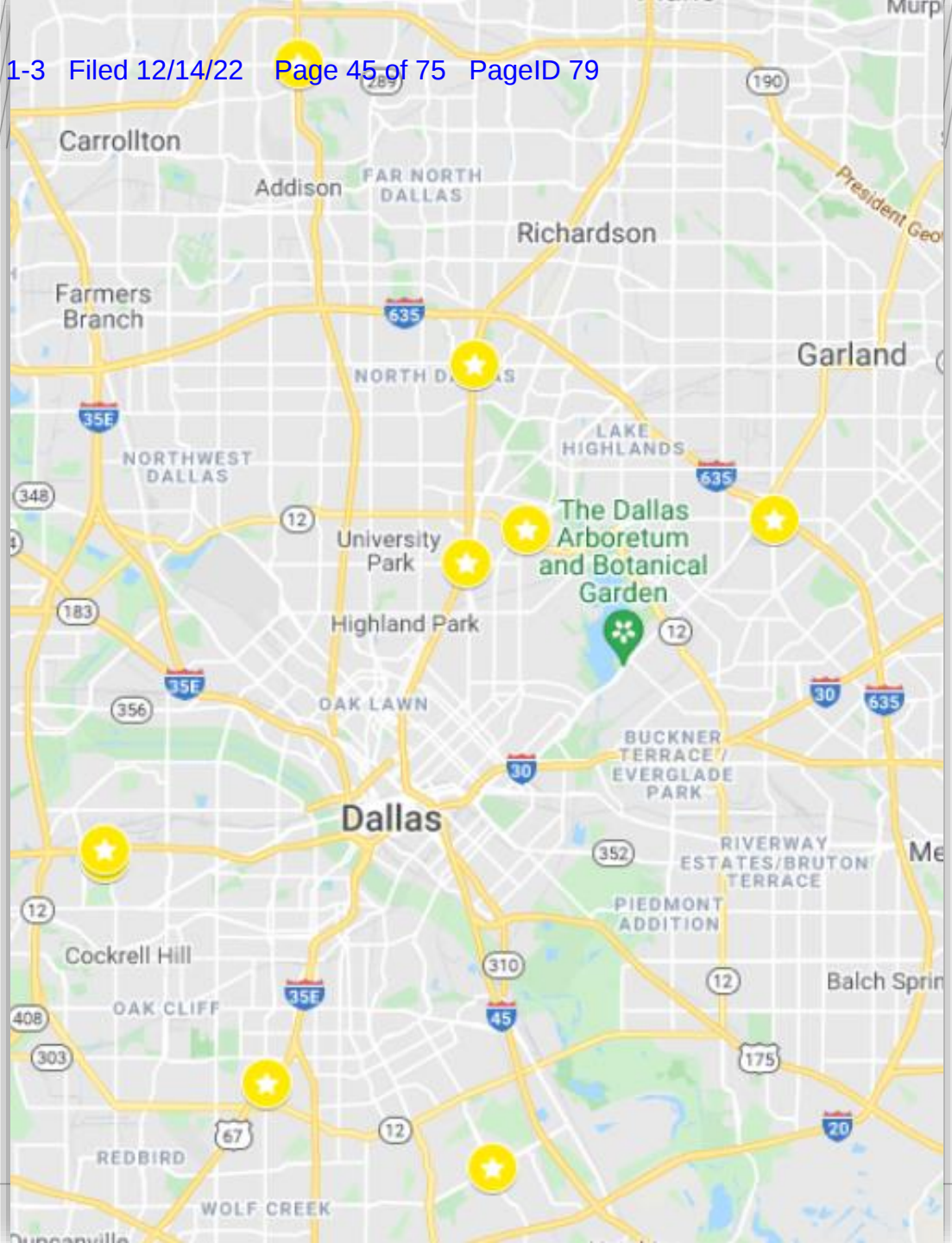
Public Education Campaign

- Direct residents to call 311 to report issues and ask for better ways to give sustainably
- Educate the public of the unintended consequences of street charity
- Engage the faith community, homeless services providers, and street charity event organizers
- Identify donor and volunteer opportunities
- Match and connect street charity organizers with homeless services providers
- Concepts of signs proposed for campaigns:

311 Data Map

Top 9 Locations

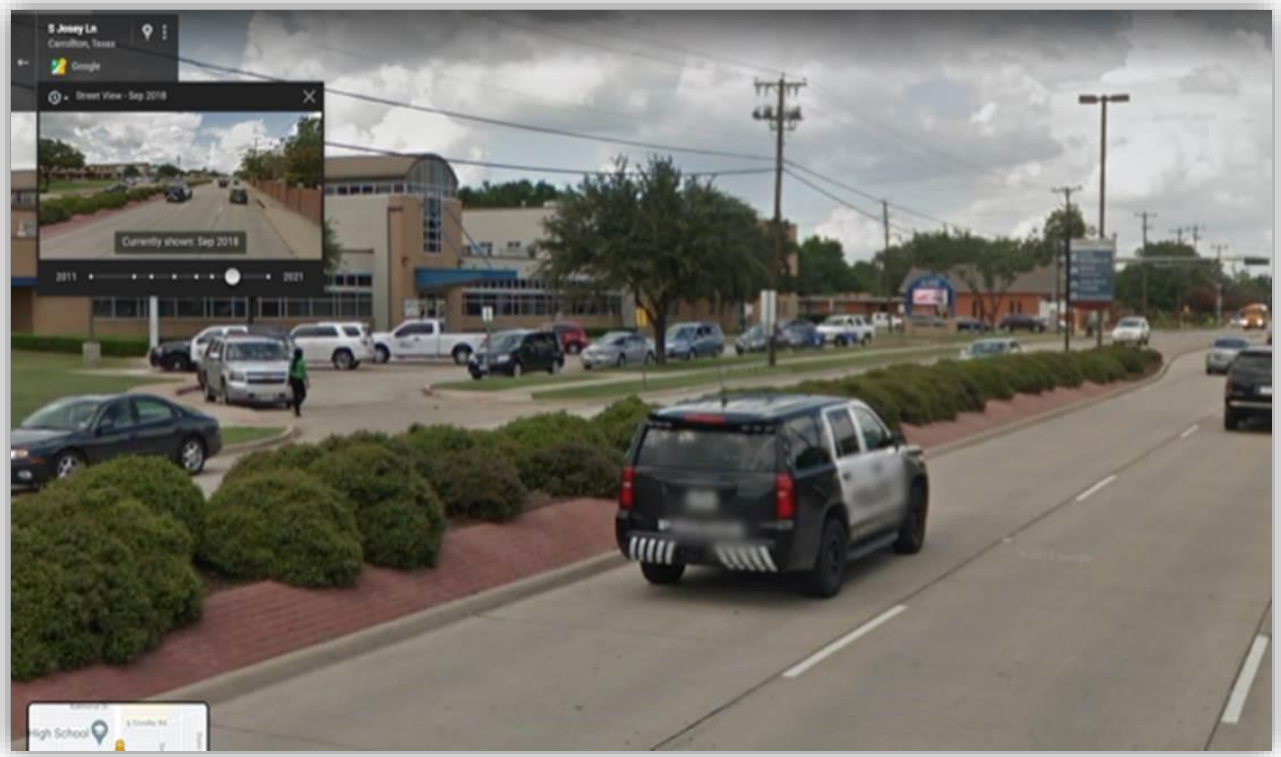
- Frankford Rd & Dallas North Tollway, D12
- Forest Ln & 75, D10 & D11
- W Northwest Hwy & Boedeker St, D13
- Shiloh Rd & E Northwest Hwy, D9
- Lovers Ln & 75, D14
- *Communications Dr & N Cockrell Hill Rd, D3 & D6
- *DFW Turnpike & N Cockrell Hill Rd, D3 & D6
- S Polk St & Hwy 67, D4
- Bonnie View Rd & Simpson Stuart Rd, D8



*2 signs only

Deterrents

- Public works is researching environmental changes to landscape



Deterrents Continued

- <u>Noise as a deterrent</u>
  - Use of music
  - Mosquito: Ultra-sonic anti-loitering device

Pilot Targets

- Goals:
  - Target and identify most active panhandlers and sites reporting panhandling at highest rates
  - Educate public on sustainable giving
  - Decrease giving to panhandlers
- Metrics over 6 months:
  - Reduce number of 911 calls for aggressive panhandling
  - Analyzation of 311 calls – frequency, location
  - Pilot Community Courts Street Knowledge Initiative and report back
  - Increased number of sites hardened
  - Number of V-citations
  - Number of people accessing Sobering Center/CDC
  - Number of people accessing Mobile Crisis services
  - Number of individuals accepting Community Courts services
    - Number of cases warranting adjudication

Next Steps

- Pilot
  - Beginning of November 2021:
    - Start public education outreach
    - Say No To Panhandling signage goes up
  - November 2021: Database soft-launch
  - End of November/Beginning of December 2021: 6-month pilot
    - Locations based on 311 and 911 data
    - Community Courts partnering with Marshal's Office
  - June 2022: Progress report to GPFM

City of Dallas

Panhandling Deflection Program

Government Performance and Financial Management
October 25, 2021

OHS, CAO, OIPSS, Marshal's Office

EXHIBIT E

Memorandum

CITY OF DALLAS

DATE October 7, 2022

TO Honorable Members of the Public Safety Committee
Adam McGough (Chair), Cara Mendelsohn (Vice Chair), Tennell Atkins, Jesse Moreno, Jaime Resendez, Casey Thomas, Gay Donnell Willis

SUBJECT **October 26, 2022, City Council Draft Agenda Item #L-1; 22-2385 Chapter 13 Code Amendment**

As part of the city's comprehensive strategic plan to address the needs of the unsheltered population and address illegal solicitation, the City Marshal's, Office of Homeless Solutions, Crisis Intervention and Community Courts have proposed an amendment to the Dallas City Code, Chapter 13. This amendment authorizes the City Marshal to enforce illegal solicitation in the roadway as part of this holistic strategy.

The following excerpt of the change is listed below:
An ordinance amending Chapter 13, "Courts, Fines and Imprisonments," of the Dallas City Code, by amending Section 13-10; authorizing the city marshal and his or her deputies to enforce the city's provisions regarding standing or walking on medians contained in Section 28-61.1 of the Dallas City Code.

The proposed ordinance amending chapter 13 has been briefed to GPFM on October 25, 2021, and to the Transportation and Infrastructure committee on August 15, 2022. It is scheduled for City Council consideration at the October 26, 2022, City Council meeting.

The full ordinance amendment is attached. Should you have any questions or concerns please contact me at (214) 670 5299.

Jon Fortune
Deputy City Manager

c: T.C. Broadnax, City Manager
Chris Caso, City Attorney
Mark Swann, City Auditor
Bilierae Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizor Tolbert, Deputy City Manager
Majed A. Al-Ghafry, Assistant City Manager
M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager
Dr. Robert Perez, Assistant City Manager
Carl Simpson, Assistant City Manager
Jack Ireland, Chief Financial Officer
Genesis D. Gavino, Chief of Staff to the City Manager
Directors and Assistant Directors

3-31-22

ORDINANCE NO. _____

An ordinance amending Chapter 13, "Courts, Fines and Imprisonments," of the Dallas City Code, by amending Section 13-10; authorizing the city marshal and his or her deputies to enforce the city's provisions regarding standing or walking on medians contained in Section 28-61.1 of the Dallas City Code and the city's solicitation provisions contained in Section 28-63.3 of the Dallas City Code; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 13-10, "Duties of the City Marshal," of Article II, "Municipal Court of Record," of Chapter 13, "Courts, Fines and Imprisonment," of the Dallas City Code, is amended to read as follows:

"**SEC. 13-10. DUTIES OF THE CITY MARSHAL.**

The city marshal and his or her deputies, acting under the direction of the municipal clerk, shall perform the following duties:

(1) execute warrants of arrest, subpoenas, and other legal process issuing out of the municipal court of record; [~~and~~]

(2) execute other warrants of arrest, subpoenas, and legal process as determined by the municipal clerk; and

(3) enforce Sections 28-61.1 and 28-63.3 of the Dallas City Code."

SECTION 2. That Chapter 13 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3 That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO, City Attorney

By_____
Assistant City Attorney

Passed_____

EXHIBIT F

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alton Waggoner et al.,	)	
Plaintiffs,	)	
	)	Case No. _____
v.	)	Jury Trial Demanded
The City of Dallas, Texas,	)	
Defendant.	)	

DECLARATION OF ALTON WAGGONER

I, ALTON WAGGONER, hereby declare and state:

1. I am over eighteen years of age and am of sound mind to make this declaration. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I reside in Dallas, Texas.

2. I am currently homeless and struggle to obtain the basic necessities of life. I am a veteran and have been homeless for approximately two years.

3. The only way I currently make money to purchase food, water, and personal hygiene products is by asking people for donations. I most frequently solicit donations from medians and street corners near traffic lights. These locations are the only ones in Dallas where I feel safe because the cars travel at lower speeds and come to a complete stop as they approach a red light. The stoplights allow me to ask for donations from drivers who are already stopped, as opposed to requesting donations from moving vehicles. It is also where pedestrians most frequently travel by foot. If I could not solicit at these locations, it would be almost impossible to solicit on public property.

4. I have read the ordinance the City of Dallas passed on October 26, 2022. As I understand it, the Ordinance prevents people from standing or sitting on medians of less than six feet and prohibits me from standing within four feet of the street.

5. To get the funds I need for my basic survival, I frequently stand within four feet of the street and use medians of less than six feet to panhandle. Without the ability to do so, it would be impossible to buy food, water, and other basic necessities.

6. I live in constant fear of police harassment and enforcement of the newly passed ordinance. I have faced enforcement by police of similar ordinances in the past based on the panhandling activity I must continue to do for survival.

7. For example, on March 8, 2020, I received a citation for "Solicitation of Occupants of Vehicles." The municipal court found that I owed $459.80. Because I could not afford to pay the fine, my license has been suspended and there is a warrant for my arrest. This outstanding warrant has kept me from obtaining the identification I would need for work. I even tried to go to jail to get time served instead of paying the fine I cannot afford, but I was told the jail was too crowded.

8. Beyond filing formal criminal charges, Dallas Police Department officers regularly tell me to move from the medians and street corners I find are safest and best allow me to ask for help I need to survive. Several times a week, officers will honk their horns and tell me I am not legally allowed to be on medians and street corners I use to panhandle. I typically move at their requests, but that means I go without food or other necessities until the police move on. I risk the consequences of returning to these locations because it is necessary for my survival.

9. I am worried this new Ordinance will give police an even greater ability to fine me and tell me to move. It makes it illegal for me to simply sit or stand in public places, but there

is nowhere else I can go to ask people for help where people frequently walk or drive by. I also understand the City passed this ordinance because officials were frustrated that they could not enforce the old ordinances as frequently as they wanted to and thought it might be unconstitutional.

10. Because my license is suspended based on a fine for soliciting donations, I cannot access a shelter. Shelters are also challenging for me because I am trying to manage my sobriety, and previous shelters have been triggering for my addiction.

11. I understand City officials have claimed to conduct outreach to panhandlers to ask if they need help accessing social services. Although I panhandle almost every day on Dallas streets, I have never been offered supportive housing, addiction services, or other help I need. I would accept those services if they were offered to me. Instead, the only people from the City I have spoken to while panhandling are police officers, who keep me from asking people for help and cite and harass me for trying to survive.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of November at Dallas, Texas.

Alton Waggoner

EXHIBIT G

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alton Waggoner et al.,	)	
Plaintiffs,	)	Case No. _____
v.	)	Jury Trial Demanded
The City of Dallas, Texas,	)	
Defendant.	)	

DECLARATION OF LAFAYETTE "TERI" HEISHMAN

I, LAFAYETTE "TERI" HEISHMAN, hereby declare and state:

1. I am over eighteen years of age and am of sound mind to make this declaration. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I reside in Dallas, Texas.

2. For many years, I have been in and out of homelessness. Currently, I live in Veterans Administration subsidized housing in Dallas. I only obtained this housing after having a heart attack in which I nearly died and woke up at a VA hospital. For several years before, I had been living in various encampments across Dallas.

3. I am 67 years old. I use a wheelchair to get around and have an ulcer in my leg that makes it difficult to walk. In addition, I have a criminal record that includes numerous incidents of being criminalized by the City of Dallas for being homeless. I do not have a phone or a Texas identification card. All of these circumstances have prevented me from finding work.

4. The only source of income I have is Social Security Income of $750 per month, almost all of which goes to my housing. However, this money does not cover life's necessities.

To buy sufficient food, water, medical supplies, and personal hygiene products, I solicit donations to supplement my social security benefit.

5. I most frequently solicit donations from medians and street corners near traffic lights. These locations are the only ones I know of in Dallas where I feel safe because the cars travel at lower speeds and come to a complete stop as they approach a red light. The stoplights allow me to ask for donations from drivers who are already stopped, as opposed to requesting donations from moving vehicles. Medians, sidewalks, and street corners also help me talk to pedestrians passing by and ask for donations.

6. If I could not solicit at these locations, it would be virtually impossible to solicit on public property because cars and pedestrians would have to stop at unsafe locations to give donations. Additionally, private businesses do not typically allow people like me to solicit aid on their property.

7. I have read the ordinance the City of Dallas passed on October 26, 2022. As I understand it, the ordinance prevents people from sitting on medians of less than six feet and prohibits me from being within four feet of the street.

8. As part of my basic survival, I often stand within four feet of the street and use medians of less than six feet to panhandle. If I could not do so, it would be impossible to buy food, water, and other basic necessities.

9. I live in constant fear of police harassment and enforcement of the newly passed ordinance. Police routinely limit my ability to ask people for help on corners or medians.

10. Even before this new ordinance, I was punished several times by police for being homeless. In 2015, Dallas police cited me for sleeping in public (citation # C21658242-01). Then in 2016, I was cited for soliciting donations from vehicles (citation # C21752973-01). At the

beginning of 2017, I was cited again for soliciting donations from vehicles (citation # C21663235-01). Because I was unable to pay the fines, I was put in jail, but released shortly after because the municipal jail could not meet my medical needs.

11. After being released from jail, I was still homeless and relied on panhandling for my survival. I was cited three times in a three-month period in 2017 (citation #'s: C21791042-01; C21765649-01; C21753070-01).

12. The new ordinance poses a serious barrier for my survival because it prevents me from even sitting on the sidewalk or street corner to ask pedestrians for help. This, along with my prior police experiences, make me worried each time I am panhandling that I will be cited again. I also understand that the new Ordinance was passed to give police an additional tool to cite people like me because the City Council found the old ordinances less effective and possibly unconstitutional.

13. I have no money to pay a citation, but panhandling is currently my only method of survival. I intend to continue panhandling because without it, I have no way of providing for myself.

14. Beyond formal criminal charges being filed, Dallas Police Department officers frequently tell me to move from the medians and street corners I find are most safe and enable me to obtain money I need to survive. Several times a week, officers will honk their horns and tell me I am not legally allowed to be on medians and street corners I use to panhandle.

15. I understand City officials have claimed to conduct outreach to panhandlers to ask if they need help accessing social services. Although I panhandle almost every day on Dallas streets, I have never been offered social services. If I had been, I would have considered

accepting it. Instead, the only people from the City I have spoken to while panhandling are police officers citing and harassing me for trying to survive.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of Nov. at Dallas, Texas.

Lafayette "Teri" Heishman

Lafayette "Teri" Heishman

EXHIBIT H

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alton Waggoner et al.,	)	
Plaintiffs,	)	
v.	)	Case No. _____ Jury Trial Demanded
The City of Dallas, Texas et al.,	)	
Defendants.	)	

DECLARATION OF DR. HANNAH LEBOVITS

I, HANNAH LEBOVITS, hereby declare and state:

1. I am over eighteen years of age and am of sound mind to make this declaration. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto.

2. I reside in Dallas, Texas. I am an Assistant Professor of Public Affairs at the University of Texas at Arlington. My research focuses on housing and homelessness, within the context of social equity and sustainability. I have a Ph.D. in Urban Studies and Public Affairs from Cleveland State University, awarded in 2020. I have published several peer reviewed papers and book chapters on topics related to urban governance, urban inequality and justice, as well as democratic behavior and social capital formation.

3. Through both my research and my personal engagement with people who are experiencing visible social and economic hardships, I spend a significant amount of time standing on the medians of streets across Dallas as well as street corners. In my personal life, I use the medians to engage with homeless individuals and others in poverty who panhandle to

survive. I speak with people on medians and on street corners, provide food and water, and offer help connecting them with services in some cases.

4. In my research, I am interested in why people become homeless, why they remain homeless for extended periods of time, and the gaps in the existing social service safety nets. Part of my work includes embedding myself in the communities I study to understand people's experiences. Access to medians and street corners is fundamental to my research. It allows me to maintain relationships and build trust with people where they are at so that I can keep their stories and experiences at the center of my work.

5. It is important to me and to my work to meet people where they are and where they feel comfortable. I never want to inconvenience people because of my work or ask them to travel elsewhere and take time that they would otherwise use to earn money for basic needs by panhandling. Additionally, due to the sensitive nature of research with vulnerable participants, requiring them to leave the site of their economic activities in order to participate in my research effort would be unethical.

6. I am invested in building trust and lasting relationships with people who stand on medians and street corners, which takes time. Since June 2020, I have spent over 100 hours with people who stand on medians and street corners in Dallas, many of whom do so in order to express themselves and request assistance.

7. I have gotten to know over 100 people who stand on medians and street corners, many of whom are seeking services. My presence gives them the opportunity to express themselves, share information, and access resources.

8. It is crucial to be able to stand in medians and on street corners with the individuals who use them for their means of survival. I cannot do my work without access to

these spaces. I could not physically find the people I help and who fundamentally shape my research if medians were not available.

9. In my experience, medians are essential to housing insecure individuals' ability to communicate with people who provide assistance, whether they be existing members of their networks or people who engage in one-off interactions. Medians are a place where I can connect with these individuals and where they can connect with others. Pedestrians and drivers interact with panhandlers on medians as they rarely do in other contexts. Having frequently interacted with people on medians and street corners, it is clear that these interactions must happen in locations that housing insecure people feel comfortable and empowered.

10. When you communicate with people on a median, they are able to share their needs, ideas, and experiences. This is fundamental to their basic humanity and is an integral form of expression.

11. In the many hours I have spent interacting with people on the street, I have never seen the Office of Homeless Solutions ("OHS") out offering services to people.

12. I have heard there is an OHS team that goes out on the street, but I have never met them. I have seen officials from the City Code enforcement office and Parks and Recreation workers who clean public areas. I have never seen these city workers help people or engage in trust-building communication practices. I have observed police officers who just tell people to leave; and nonprofit representatives who offer food but none who assist these individuals in acquiring government-sponsored food assistance, healthcare, immediate housing, cash assistance, employment assistance, SSID/SSI, HIV/AIDS-specific resources, or educational services.

13. In my experience, people on the street are often resistant to speak with an individual who offers to help them, including myself, because they have no reason to trust these individuals and the personal risks are incredibly high. It can take months or years before people on the street even agree to have a conversation with me. Without putting in the effort to build this trust, it would be incredibly difficult for me to connect anyone with the services they need. You cannot build trust by shaming someone or taking away their rights. You need to meet people where they are and continue to show up. By forcing people off of medians and street corners, the City is exacerbating the existing lack of trust.

14. I have never seen anyone get injured by a car while panhandling or standing on a median or street corner, nor have I seen anyone injure someone else. People know how to keep themselves safe, and intuitively adopt practices to avoid dangerous situations. They will situate themselves in ways that make it unlikely they will be hurt, such as only walking along the median or the edge of the corner when the light is red and the cars around them are not driving by.

15. I have seen the police create more traffic and potentially unsafe situations when they park in the street and exit their vehicles to speak to people standing on medians and street corners. Drivers slow down to look at police, which can create difficult traffic situations.

16. I am personally worried about the police enforcing the Ordinance not only because it is possible that I will be fined but because it is likely that if this ordinance is enforced it will cause people to become less accessible to those who seek to assist them. This work is critical to who I am and what I stand for. If people disappear from public spaces out of fear of enforcement or because of the harm of the tickets/fines, it would negatively impact my job, my career, and my sense of self.

17. After the Ordinance's passage, I now feel I am opening myself up to police aggression by interacting with people on the street. I never know if someone will call the police on me for speaking with housing insecure people on medians or if the person I'm speaking to will be punished. If I were to be fined or otherwise face criminalization for doing this work, it would have a devastating effect on my life. If my license were suspended, I would be unable to work. The power of the police to exert their authority over me leaves me in constant fear and likely dissuades others from offering help as I do.

18. My fear of enforcement has increased markedly since the new ordinance was passed. The Ordinance is based on where you stand, so just by standing on a median or a street corner, I could be ticketed.

19. I have heard from people who have experienced aggressive treatment, harassment, and taunting by police. At other times, police drive through a place over and over again to make their presence known. But I have also heard that police sometimes ignore people when they need help.

20. When we force people off of medians and street corners, they go to even more unsafe places, with less access to food and other basic needs, and less access to lifesaving services. Medians and street corners are irreplaceable in terms of their role in building trust and a strong social network which enable people to continue to survive. If my fear of police intervention increases, then I will avoid these spaces, and the trust I have built will be diminished. Many of these individuals do not have access to other forms of communication, as their phones can get lost or stolen. Their visibility in the medians and on the corners is essential to building trust, maintaining dignity, providing assistance, and empowering them to live as full United States citizens.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8 day of December at Dallas, Texas.

DocuSigned by:
Hannah Lebovits
E1C96344F0204C7...

Hannah Lebovits

EXHIBIT I

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alton Waggoner et al.,	)	
Plaintiffs,	)	
v.	)	Case No. _____ Jury Trial Demanded
The City of Dallas, Texas,	)	
Defendant.	)	

DECLARATION OF KAWANA SCOTT

I, KAWANA SCOTT,[1] hereby declare and state:

1. I am over eighteen years of age and am of sound mind to make this declaration. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I reside in the Dallas Fort Worth metropolitan area.

2. I am currently a local community organizer and the Chair of the Dallas Alliance Against Racist & Political Repression (DAARPR), a local chapter of the National Alliance Against Racist & Political Repression (NAARPR).

3. I have been organizing and leading political actions such as protests and demonstrations for 10 years. I have participated in and organized over 100 actions within the City of Dallas. These demonstrations include protests, community education, and holding spaces for community members to come together in the public square.

[1] Ms. Scott recently married and is in the process of changing her name to Kawana Menchaca.

4. At these events and demonstrations, we frequently stand on medians less than six feet and within clear zones. We use these areas because they are the most effective at displaying our message and they keep our fellow demonstrators safe.

5. Medians give demonstrators unique access to the public. The streets and intersections with the most travel, and therefore the best access to our audience, are medians less than six feet in width, street corners, and sidewalks. A vast majority of our demonstrations occur in these locations.

6. My use of medians for First Amendment activities are informed by the history of the Civil Rights Movement where rallies and protests frequently occurred on medians and areas adjacent to the streets and were critical to achieving civil liberties victories. We continue that tradition today by using medians to reach the greatest number of people in areas where people will see our message. Even at our largest events, demonstration leaders will use the median to direct participants safely.

7. These public spaces are also cost effective. Many other areas in Dallas, for example the streets themselves, require paying for a permit, which community-based organizations largely composed of volunteers cannot typically afford.

8. Even public property we can use for free, such as parks, are less effective for generating community awareness of our causes because those areas are further removed from passing members of the public.

9. Medians and areas adjacent to the street also feel safer to me than alternatives. We use these areas because they are raised from the street and allow our members and allies a place to stand, while also communicating our message to passing cars.

10. As organizers, we have a social responsibility to keep attendees safe at our events. I frequently assign leaders within the event to look after attendees to ensure people stay safe and, especially in the summer months, I bring food and water and first aid kits to help keep people at events safe.

11. Because of these precautions and our use of raised medians, in my 10 years of organizing and over 100 demonstrations attended, I have never seen someone injured from using the median or areas adjacent to the street.

12. I have read the Ordinance passed by the Dallas City Council on October 26, 2022. I understand it to prohibit anyone from standing or walking on medians less than six feet wide and standing within four feet. This would prohibit a significant amount of our protests and demonstrations, activities which we plan to do in the future.

13. I am worried that this Ordinance will be used to punish and criminalize protestors with which Dallas city officials disagree. In the past, we have faced police harassment and even had some of DAARPR's members harmed by the police during peaceful protests.

14. As a protest and demonstration organizer, safety is a serious concern, but this Ordinance will not keep myself or our membership safe. Instead, it will only suppress our ability to advocate on messages critical to our mission.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of December at Dallas, Texas.

DocuSigned by:

0300CE21719E44A...

Kawana Scott