



**City of Melbourne, Florida
City Council Agenda
Special Workshop Meeting**

City Hall Council Chamber
900 E. Strawbridge Avenue
Melbourne, FL 32901

May 4, 2021, 5:30 PM

1. Pledge of Allegiance
2. Roll Call
3. City Council Discussion
4. Public Comment
5. Adjournment

Mayor Paul Alfrey and Council Members Debbie Thomas and Vice Mayor Tim Thomas, as members of the Airport Authority Board, may discuss Airport Authority issues, which may subsequently be addressed by the Airport Authority.

Mayor Paul Alfrey and Council Members Yvonne Minus, Mimi Hanley, and Mark LaRusso (alternate), as members of the Space Coast Transportation Planning Organization (SCTPO), may discuss SCTPO issues, which may subsequently be addressed by the SCTPO.

Pursuant to 286.0105, Florida Statutes, the City hereby advises the public that if a person decides to appeal any decision made by the City Council with respect to any matter considered at its meeting or hearing, he will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for

the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office (321-608-7220) at least 48 hours prior to the meeting.

MEMORANDUM

To: Mayor and City Council Members
From: Shannon M. Lewis, City Manager
Date: April 27, 2021
Re: City Council Workshop on Homelessness and Panhandling

The City of Melbourne, like so many other cities throughout the state and country, has experienced an increase in the homeless population comprised of both the chronically homeless and those in a transitory state. Both groups have different needs and present different challenges for the local governments, social service agencies and the community. Over the past several years, the City has taken a stronger role in addressing the problem of homelessness within the community and has collaborated with multiple non-profit agencies to build capacity and make the best use of limited resources and funding.

Every year, the Department of Housing and Urban Development (HUD) provides a report on homelessness to Congress, the last of which was published in 2020. According to the report, for the fourth consecutive year, homelessness has increased nationwide. While the number of sheltered individuals remained largely the same, the number of unsheltered individuals increased by about 7%. The report indicated that more than half of the people experiencing homelessness in the country were located in four states: California, New York, Florida and Texas. These are also the country's four most populous states. Florida, which ranked third and is the third most populous state, was reported to have 27,487 homeless individuals (5% of the total). Overall, from 2019-2020, Florida saw a decrease of 3% in homelessness; a decrease of 10% in overall chronic homelessness; and an increase of 1.5% in unsheltered homeless.

During this same time period, the overall homeless population in Brevard County increased by 15% (815 to 940 individuals). Although the total sheltered homeless population decreased by about 12.5%, the unsheltered population increased by 45% (397 to 574 individuals), and the chronically homeless population increased by 19% (206 to 245 individuals). It is likely that some of this increase can be attributed to low counts in 2019 due to inclement weather and fewer volunteers. In 2020, four out of ten homeless families with children in Brevard County were staying in a designated homeless shelter leaving six out of ten unsheltered. Of the homeless population in Brevard County in 2020, nine out of ten were individual adults, and nine out of ten were unsheltered.

In Melbourne, a Street to Home partner-led homeless census count (a subset of the 2020 countywide count), revealed that there was a 13% increase in the unsheltered homeless population (234 to 264 individuals). The average age of a homeless individual in Melbourne is 50, 75% are male, and 55% are disabled. Of the total, approximately one-third were also counted as homeless the previous year.

Based upon these statistics, the increase in unsheltered homeless in Melbourne is greater than the increase statewide, but less than the overall increase in unsheltered homeless in Brevard County. Regardless, the homeless population has continued to rise despite the fact that the City, along with a multitude of community partners, has never put forth more effort and resources to help alleviate the problem. The number of citizen and business complaints regarding the homeless, homeless camps, and panhandling has increased over the past year, particularly after the COVID-19 pandemic began. Specific complaints include an increase in inappropriate verbal interactions; unsanitary conditions left by the homeless; drug paraphernalia left by the homeless; homeless camps; trespassing, panhandling, and increased crimes associated with homeless individuals and camps. City departments have also been greatly impacted by the homeless population. The Parks and Recreation Department has had to make structural changes to facilities to reduce the locations where individuals can hide at night. They have also had to increase cleaning efforts at the parks, park facilities and restrooms. The Police Department has had to take on additional responsibilities for organizing the City's efforts and outreach. Their calls for service have been greatly impacted by complaints due to negative interactions with the homeless, homeless camps, panhandling and more, which has limited their ability to address other quality of life issues in the city. The City Manager, City Attorney, Community Development and Code Compliance staff have also been highly involved with addressing questions and concerns, as there is not a current single point of contact for issues surrounding homelessness. We do have an opportunity to reclassify a vacant position in the City Manager's Office to a Community Outreach Liaison. This position would be responsible for coordinating efforts among city departments, non-profits, the business community and residents in an effort to reduce homelessness, as well as assist with other community and neighborhood issues.

In order to identify and address the root causes of homelessness and respond to citizen and business needs, the City has implemented a number of initiatives this past year, which will be further addressed in the attached documents and during the workshop presentation. To summarize, the City has continued its partnership with Steadytown by annually funding \$50,000 for case management services to help the chronically homeless in Melbourne move into permanent housing. The City has hosted homelessness stakeholder partnership meetings with Steadytown, Daily Bread, South Brevard Sharing Center, Volunteers of America, the Brevard Homeless Coalition, and many more in order to leverage resources and expertise. The Melbourne Police Department has created the B.E.T.T.E.R program, described later, to focus subcommittees on areas such as benevolence, education, housing, enforcement and technology. Additionally, the City has expanded its housing program, through the use of CARES

Act funding, to develop a bridge housing program to move homeless individuals into temporary housing as our partner agencies assist in securing permanent housing.

The agenda package includes information relating to affordable housing and housing assistance programs; an update on police activities and the B.E.T.T.E.R. program; legal considerations relating to homelessness and panhandling; and recent correspondence received by the City. In addition to a staff presentation to City Council, several of the City's community partners will also be present at the workshop to discuss their involvement and be available for questions. City Council Members will have an opportunity to express and discuss their ideas. City staff will document these suggestions and will add any other ideas from members of the public for analysis and implementation, as appropriate.

General goals for City Council consideration include:

1. Prevent, reduce, and mitigate the negative impacts of homelessness on citizens, businesses and city operations.
2. Support and build capacity within the city and community to address homelessness.
3. Support regulations that increase the safety of roadways and medians for pedestrians and motorists.
4. Encourage collaboration among city departments, non-profits, businesses and residents to address homelessness.
5. Retain and increase affordable housing supply.

At the conclusion of the workshop, we expect to achieve consensus on overall goals relating to homelessness and panhandling as well as specific strategies to meet those goals; however, solving homelessness will not occur after one meeting. We will need to have continuing conversations regarding the sustainability, cost, and effectiveness of our actions and be willing to try multiple approaches to determine the right combination for our community.

Memorandum

To: Shannon Lewis, City Manager
From: Cindy Dittmer, Community Development Director
Re: **Homeless Efforts and Affordable Housing**
Date: April 27, 2021

The City has been addressing homeless issues for several years, beginning with the grant and contract with Steadytown/Street to Home in 2016. The City has funded \$50,000 annually since that time for a case manager that performs street outreach efforts within the city limits. This has resulted in approximately 452 persons being housed during this time period (this number includes those individuals housed through the Bridge Housing Program). These efforts have made a positive impact in the number of homeless in the area.

With the COVID funding that was received, the City utilized the existing relationship with Street to Home and other community partners to develop a new Bridge Housing Program. The program started in September of 2020 and ran through December of 2020 utilizing Coronavirus Relief Funding (CRF) provided through Florida Housing. During this time period, 51 households were housed in temporary housing and 20 of these households transitioned to permanent housing. Approximately \$180,000 in CRF funding was utilized and staff is looking at ways to continue the program in mid-year using Community Development Block Grant (CDBG) CV3 funding. This effort greatly strengthened the partnership with Street to Home and Daily Bread. The program has continued unofficially during the first quarter of 2021 and another 31 people were housed in permanent housing.

One of the biggest obstacles for permanently housing more homeless people is the lack of available, affordable housing units. Very little affordable housing has been built within the City of the Melbourne over the past decade. Several projects are in various stages of development and will provide more affordable housing units once constructed.

- Heritage Park – 80 affordable units targeted toward supportive housing needs for the homeless that will include case management.
- Melbourne Housing Authority - Palms at University – 30 affordable units targeted toward elderly/non-disabled residents.
- St. Stephens Way – 40 affordable units targeted toward homeless families.

The City has undertaken efforts to provide incentives for the development of affordable housing and most recently in 2019, the Deferral of Impact Fees allowance was approved by City Council. It provides for the deferral of all impact fees for a development project and lasts for a determined affordability period. This is roughly \$7,587 for a single family home and \$5,671 for a typical two bedroom multi-family unit.

In addition to this allowance, a number of reduced development standards for single family and multi-family units were initiated approximately ten years ago. These standards relate to required building setbacks, lot size and parking. In addition, all affordable housing projects are provided expedited review through all levels of the development review process.

City staff has recently been discussing additional ways to incentivize the development of affordable housing and will be working with the Affordable Housing Committee on changes that can be made to City Code and the Comprehensive Plan.

Other efforts to assist households with the affordability of their housing units occurred during 2020 and continues into 2021 through the city's Rental, Mortgage & Utilities Assistance Program. From September of 2020 through December of 2020, 95 households were provided assistance with rent, mortgage and utility payments through the use of CRF funds. This effort has continued into 2021 utilizing CDBG-CV1 funds, with a total of 28 households being assisted through April 15th. With our current FY19-20 CDBG funding, the City has also recently funded renovations of two transitional housing units for the South Brevard Women's Center for women facing domestic violence and homelessness.



MELBOURNE POLICE DEPARTMENT

David Gillespie, Chief of Police

OFFICE OF THE CHIEF OF POLICE

To: Shannon M. Lewis
City Manager

From: David Gillespie
Chief of Police

Date: April 28, 2021

Subject: B.E.T.T.E.R. Initiative

I have attached several documents that I will utilize as reference material in the upcoming presentation for the Special Council meeting on Homeless. The one letter explains the B.E.T.T.E.R. initiative and the others are source material that identify the top 10 locations and calls for service at those locations. I am available should you have any questions.

DG:cw

B.E.T.T.E.R. WAY

Create (6) sub committees with specific goals to assist the City of Melbourne with the growing transient/ homeless issue. Each sub-committee will have a leader that will direct their respective team towards problem-solving methods and report back progress at each meeting. The team should be comprised of members within the coalition. Members of each problem-solving committee should strive to have a member representative from each agency.

BENEVOLENCE: Goal is to combine and channel resources. This group will be comprised of existing non-profits and city resources, as well as any donated funds through the community and faith based organizations. Examples of benevolence can be shelter, food, donated services and citizen contributions.

EDUCATE: Goal is to educate public and institutions on plan for dealing with transient/homeless issues, through media and pamphlets, website, etc. An example would be “hand up- not out” program. Educating public on responsible giving through city instead of panhandlers, also educating transients on benevolence and city restrictions.

TECHNOLOGY: Goal is to create a data-base of identification and aid in use of technology to assist the program. Examples would be offer and monitor privilege cards, identify conditions of those in program, I.E. sex offenders, criminal backgrounds and track residence locations. “Text a donation program”

TRANSIENT: Goal is to provide feedback on current transient trends, needs, issues. Examples would be transient interviews as well as a liaison member that is either an active or previous homeless individual. Critique of program impact.

ENFORCEMENT: Goal is to respond to criminal transients while maintaining a respect for constitutional rights balanced with empathy. An example would be zero tolerance response if violations of criminal law, coupled with administrative sanctions of privileges if non-criminal.

RESIDENCE: Goal is permanent residency for those in need as well as temporary shelter. Examples may be identifying a parcel of land for camping outside of downtown or other appropriate temporary locations. Streets to homes etc.

All sub-committees would support each other in unison, working together to minimize panhandling, downtown and city park transient activity between 10 PM and 10 AM. This is an effort to not necessarily create a Mecca but manage and combine resources to combat crime, yet support the needy.

B.E.T.T.E.R. Sub-committee on Enforcement Situational Update

03/17/2021

The transient/homeless population has resulted in an increase in calls for service regarding “quality of life” issues in most parks and surrounding areas. Currently, **16%-20%** of total daily call volume, reflect these calls for service and have generated numerous citizen complaints involving trespassing of vagrants on both private and public properties. **This is down from 30%-20% average since the enforcement effort started, as well as a reduction in park complaints.** The Homeless Coalition has developed the B.E.T.T.E.R. initiative, which includes an Enforcement sub-committee, tasked with taking some proactive measures in intelligence- led, and selective enforcement to aid in this problem-solving initiative.

01/20/2021

The Sub-committee met consisting of Commander Carafano, Lt. Grinwis, Sgt. Rau. Sgt. Desomier, Sgt. Hession, Ofc. Miller. A second proactive patrol was discussed and hours of operation to best deal with current issues. The second detail in conjunction with maintaining the first would be a check of North and South homeless camps. (2) Patrol officers and (2) CSD officers would team up and make camp checks from 0600-0800 hours Mondays, and Fridays **based on availability.**

11/14/2020

To reduce calls for service, ensuring proactive patrol by focusing resources in selective target areas of enforcement, coupled with educating violators on available services. In partnership with the B.E.T.T.E.R. initiative, employ community policing efforts, as well as provide an opportunity to share intelligence information and promote a cooperation in reducing /preventing crime. As operational plan was created:

- The effort will be staffed by (2) evening Melbourne Police Officers, acting as an X-ray unit.
 - This will be a daily detail from 0300-0600 hours.
 - Officers will complete a DSR/ Checklist specific to the detail as well as make **detailed SharePoint entries.**
 - Detail officers will review Operational Plan, as well as DGO 424 Homeless Persons
 - Detail will be responsible for enforcement of State, City laws to include arrests for infractions.
 - If no arrest or TAW is appropriate, officer will supply a resource card
 - Detail will transport arrestees to station, complete 923, complete a hand receipt for” Safe-keeping” property and other appropriate paperwork, Evidence procedure.
 - On-coming shift will handle prisoner transport.
- Support personnel: CSO/Light-Duty Officer will handle File-On-Q evidence entry.

- Camp Detail: (2) Patrol officers and (2) CSD officers would team up (a North and a South Team) and make camp checks from 0600-0800 hours Mondays, and Fridays **based on availability.**
- **Officers are expected to operate within their department policies, procedures and general orders.**
- The detail started on **11/14/2020** accounting for the following accumulated results as of **03/17/2021: As of 2/24/ 2021 no additional suspects located @ location checks.**

(481) staffing hours
 (1,578) location checks
 (42) Trespass After Warning
 (9) Field Interviews
 (7) Arrests

- Calls for Service on Quality of life issues ranged between 16%-25% for the month of February thus far.

CAMP DETAIL:

02/17, 2/23, 2/26

(24) Staffing hours
 (15) Location checks
 (11) Trespass After Warning

HOMELESS OUTREACH WORKSHEET

Location	TAW	FI	Arrest	Other
DATE				
11/27/2019				
His Place Ministries	X3			
City Parking Garage	X1			
Henigar Center		X2		
11/29/2019				
1100 E. Strawbridge	X3			
300 E. New Haven	X2			
1/13/2020				
No Activity				
4/15/2020				
His Place Ministries	X3			
City Parking Garage	X1			
Crane Creek Bridge	X2			
Crane Creek Promenade	X2			
Henigar Center	X3			
05/01/202				
No Activity				
7/23/2020				
Wells Park	X1			
Florida Business Center	X1			Marchman
Melbourne Civic Auditorium	X1			
2/5/2021				
4601 W. Eau Gallie Blvd	X10			
4651 W. Eau Gallie Blvd	X1			
2/9/2021				
No Activity				
2/19/2021				
His Place Ministries	X1			
2/23/2021				
2001 W. Nasa Blvd	X1			
2/26/2021				
1350 E. New Haven	X1			
Front Street Park		X1		
Riverview Park		X1		
3/5/2021				
City Parking Garage	X2			
3/12/2021				
Crane Creen Promenade	X1			
Sharing Center	X1			
1800 S. Harbor City				X1 13P
3/31/2021				
No Activity				
4/8/2021				
Fee Park	X1		X1 42	X1 13P
Wells park				X1 13P
805 Palmetto				X2 13P
Geiger Point				X1 13P
Totals:	42	4	1	7

	2020	2021	Change
GRAFFITI	2	5	3
LEWD LASCIVIOUS	25	25	0
MARCHMEND	22	37	15
Mentally Ill	219	329	110
Narcotics	210	93	-117
obstruction	202	179	-23
Ordinance	128	171	43
Panhandling	185	82	-103
Shoplifting	181	77	-104
Subject Stop	43	17	-26
Suspicious Person	1728	1544	-184
Trespass	199	91	-98
Total	3144	2650	-494

Intersections with Panhandling Issues from 03/25/2018 to 03/25/2021

1. W Eau Gallie Bl and John Rhodes Bl- 100 calls
2. Aurora Rd and Wickham Rd- 11 calls
3. E Eau Gallie Bl and N Harbor City Bl- 206 calls
4. W Eau Gallie Bl and N Wickham Rd- 29 calls
5. Post Rd and N Wickham Rd- 27 calls
6. Strawbridge Av and N Harbor City Bl - 111 calls
7. Evans Rd and W New Haven Av- 43 calls
8. E New Haven and S Harbor City Bl- 27 calls
9. Eber Bl and Babcock St- 8 calls
10. Dr Martin Luther King Bl and Hibiscus Bl- 1 call
11. Mosswood Dr and W Eau Gallie Bl- 1 call
12. Sarno Rd and N Harbor City Bl- 1 call
13. E Florida Av and S Babcock St- 20 calls
14. Pineapple Av and E Eau Gallie Bl- 4 call
15. W Eau Gallie Bl and Apollo Bl(Commodore Bl)- 16 calls
16. Diary Rd and W New Haven Av-5 calls
17. E Hibiscus Av and Babcock- 8 calls
18. Sarno Rd and N Wickham Rd- 10 calls
19. Eau Gallie Bl and A1A- 36 calls
20. Riverside Dr and E Eau Gallie Bl- 13 calls
21. N Babcock St/ N Harbor City Bl- 50 calls
22. Sarno Rd and Eau Gallie Bl- 4 calls

Total 385 at these intersections for a three year period and a total of 1701 calls reference panhandling total in the city (businesses and intersections) in a three year period.

MEMORANDUM

TO: Mayor and City Council

FROM: Alison Dawley, City Attorney

DATE: April 27, 2021

RE: Legal Parameters of Issues Related to Homelessness

The City increasingly receives complaints attributed to activities of homeless individuals. These complaints often lead to a discussion of what the City can do legally to regulate the activities. This memorandum attempts to provide a very general framework for understanding the legal limits of regulating such activities. It is not intended to address every situation. In fact, each particular set of circumstances must be analyzed in light of ever evolving case law. Instead, this memorandum is offered to allow for a practical and productive discussion of regulating activities often linked with homelessness.

Two points will assist in the discussion of such regulation. First, not all homeless individuals engage in the questioned activities. Second, the activities are not limited to the homeless; other individuals engage in the same activity. So an effective discussion of regulating activities needs to focus on just that....activities and not the status of the individual. What activities can the City regulate legally?

Can the City regulate panhandling throughout the City?

No. Soliciting “donations or payment” is a form of speech protected by the First Amendment.¹ A demand or request made in person and in public for an immediate donation of money or some other article of value from another person for use of one’s self or others is sometimes referred to as “panhandling”. Accordingly, the federal courts have protected panhandling activities as a First Amendment right of free speech. In a traditional public forum such as a public street, a public sidewalk or a public park, a regulation that impedes speech based on the content of the speech must satisfy strict scrutiny, which means that the regulation is constitutional only if the regulation employs the least restrictive means of advancing a compelling governmental interest.² Speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter and content-based regulation of speech is “presumptively unconstitutional.”³ Accordingly, if the City were to regulate against panhandling or solicitation, it is considered content-based regulation and the regulation must be the least restrictive means of advancing a compelling governmental interest, a particularly high standard. In

¹ See *Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980).

² *McCullen v. Coakley*, 573 U.S. 464, 478 (2014).

³ *Reed v. Town of Gilbert*, 576 U.S. 155, 162, 169 (2015).

contrast, a regulation imposing only a reasonable and content-neutral restriction on the time, place, and manner of speech must withstand only intermediate scrutiny, which permits a regulation both narrowly tailored to serve a significant governmental interest and “leav[ing] open ample alternative channels for communication of the information.” The regulation cannot “burden substantially more speech than is necessary to further the government’s legitimate interests.”⁴ A narrowly tailored statute “targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.”⁵ As a content-neutral regulation, focusing on the activity that creates the concern (distracting drivers) rather than the speech (begging) may allow the government to re-direct the activity to a more appropriate location. To that end, all similarly situated conduct would need to be subject to the prohibition as well and not only those begging.

Can the City prohibit panhandling in the right of way?

No, the City may not single out panhandling as prohibited in the right of way as such regulation is content-based and cannot satisfy strict scrutiny. However, the City may be able to restrict conduct that interferes with traffic as a content-neutral regulation, provided the regulation is narrowly tailored to target and eliminate more than the source of the ‘evil’ it seeks to remedy.⁶

Mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous and traffic control and safety are substantial governmental goals that serve legitimate interests for the exercise of police power. Yet the regulation must strike the careful balance between upholding First Amendment rights and ensuring traffic safety. The challenge, of course, lies in crafting that regulation.

Existing statutes that focus on traffic control and safety rather than the panhandling may be enforceable as content-neutral regulation. Drivers are subject to traffic regulations. For example, if a driver abruptly stops to hand money to a pedestrian in the median or on the sidewalk, arguably the driver could be cited for careless driving under the Florida Uniform Traffic Code. Also, pedestrians are subject to traffic regulations as set forth in §316.130, Fla. Stat. For example, §316.130(2) requires pedestrians to follow traffic control signals at intersections. Subsections (3) and (4) mandate where a pedestrian may walk: when there is a sidewalk, the statute prohibits pedestrians from walking along and upon the portion of a roadway paved for vehicular traffic and where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the shoulder on the left side of the roadway,

⁴ *McCullen*, 573 U.S. at 478, 486.

⁵ *News and Sun-Sentinel Co. v. Cox*, 702 F. Supp. 891, 900 (S.D. Fla. 1988).

⁶ See *Vigue v. Shoar*, 2020 WL 6020484 (M.D. Fla. October 2020), *appeal pending* (holding §316.2045 unconstitutional as content-based speech that does not employ the least restrictive means of advancing a compelling governmental interest and holding §337.406 unconstitutional as content-neutral speech that was not narrowly tailored).

facing traffic which may approach from the opposite direction. As provided in §316.130(5), no person shall stand in the portion of a roadway paved for vehicular traffic for the purpose of soliciting a ride, employment or business from the occupant of any vehicle. As provided in §316.130(8), no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

Additionally, some local governments prohibit the exchange of any physical items between vehicle occupants and pedestrians. Such a prohibition holds mutually responsible both the giver and the acceptor of the item. Attached to this memorandum is a regulation prohibiting all such exchanges on a city-wide basis. It is loosely based on a Tallahassee ordinance adopted in 2018. If Council is interested in pursuing this prohibition as an ordinance violation, I recommend that City Council consider other factors: time of day (i.e. morning and evening rush hours when traffic tends to be heavier) or particular intersections (i.e. where speed limits exceed 35 mph or where traffic control devices are installed or in school zones).

Can the City prohibit aggressive panhandling city-wide?

In 2014, the City adopted Ordinance 2014-40 and 2014-41 prohibiting aggressive panhandling citywide, codified in Sec 46-52 of City Code. Under *Reed*, this ordinance would be considered content-based regulation subject to strict scrutiny. In adoption of the ordinance, the record does not identify a compelling governmental interest. Further a city-wide blanket prohibition is unlikely to be the least restrictive means of protecting that interest even if it were established.

Although panhandlers cannot be targeted, generally aggressive behavior remains illegal and enforceable under the Florida criminal code. For example, breach of the peace and disorderly conduct are punishable as a misdemeanor pursuant to §877.03, Fla. Stat. As defined in §784.011, Fla. Stat., the offense of “assault” is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. As defined in §784.03, Fla. Stat., the offense of battery occurs when a person actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person. Witnesses of such aggressive conduct should contact the police department and be willing to file a complaint and testify in the criminal case.

Can the City prohibit panhandling in the downtown area in the interest of protecting from blight within the CRA?

In 2014, the City adopted Ordinance 2014-40 and 2014-41 prohibiting panhandling within a defined area of downtown, codified in Sec. 46-53 of City Code. As explained, the City may not single out panhandling as prohibited in

the downtown area as such regulation is content-based and cannot satisfy strict scrutiny. Sec. 46-53 of City Code prohibiting panhandling in the downtown exclusion area is no longer enforceable and should be repealed. The Melbourne Police Department has been advised that the First Amendment prohibits enforcement of this ordinance.

The 2014 ordinances also prohibit panhandling at certain “sensitive” locations (i.e. near ATMs) codified in Sec. 46-54 of city Code. This is section too is no longer enforceable as it is a content-based regulation that cannot satisfy strict scrutiny. Section 46-55 should be repealed. The Melbourne Police Department has been advised that the First Amendment prohibits enforcement of this ordinance.

Can the Melbourne Police Department arrest unauthorized people for camping on privately owned vacant land?

Yes. A homeless person does not have the right to use private property. Chapter 810 of Florida Statutes prohibits trespass. A person commits the offense of trespass on property other than a structure or conveyance when that person, without being authorized, licensed, or invited, willfully enters upon or remains on any property other than a structure or conveyance as to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing or cultivation. A violation is a misdemeanor. If the property owner intends to rely on signage, fencing or cultivation, then the owner should review Chapter 810 very carefully as the law has very specific requirements as to the size and wording and form of signage/fencing/cultivation. Alternatively, the owner of the property can contact the Melbourne Police Department to provide a standing letter authorizing trespass against people found on the property.

Can the City prohibit people from camping on public sidewalks?

No, unless the individual has an alternative location available to sleep. Federal courts have routinely held that it is a violation of the Eighth Amendment (which prohibits cruel and unusual punishment) to impose criminal penalties for engaging in conduct such as sitting, lying, or sleeping in an area open to the public.⁷ Courts consider sitting, lying or sleeping in public to be an unavoidable consequence of being human and homeless without a shelter.

Public sidewalks are recognized as a traditional public forum and people have the right to be on public sidewalks at any time of the day or night so long as they are not blocking pedestrian access or engaging in criminal conduct. If

⁷ See *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992), *Jones v. City of Los Angeles*, 444 F. 3d 1118 (9th Cir. 2006); *Martin v. City of Boise*, 902 F. 3d 1031 (9th Cir. 2018), *amended and superseded on denial of rehearing*, 920 F. 3d 584 (9th Cir. 2019).

alternative shelter or place to go is not available to a homeless individual, case law restricts the City's ability from prohibiting the homeless individual from sleeping, sitting and living on public sidewalks. The City can, however, temporarily close the subject sidewalk for a few hours simply for the purpose of cleaning the area.

Can the City prohibit people from sleeping in their parked cars on the public streets?

No, unless the individual has an alternative location available to sleep. Also, currently, the City does not prohibit overnight parking on its public streets and could not target the homeless in prohibiting the same.

Can the City prohibit people from living in City parks?

Yes. After hours, individuals remaining in the closed park can be trespassed. When the park is open to the public, the City cannot trespass the homeless from the park simply because the individual is sleeping. The City can trespass an individual from the park for violating park rules unrelated to homelessness.

Can the City prohibit people from camping on City-owned property that is not generally open to the public?

Yes. Trespass can be enforced on City-owned property. The City can prohibit people from camping on City-owned property that is not generally open to the public, although it must follow particular procedures to remove people from the encampments.

The removal of these trespassers from the City-owned property will require the individuals to relocate to another area with their belongings. If the individual is unable to find shelter, they will most likely relocate on public property elsewhere in the City, including the possibility of streets and sidewalks (see above).

Are there rules about disposing of a homeless person's personal belongings?

Yes. The personal belongings of people living on the streets or in encampments are often dirty and may appear as trash to other people. Yet advocates of the homeless explain that the personal belongings of the homeless person likely include their only forms of identification, their only medications, their only clothing, items needed for daily survival and their only photographs of family and other keepsakes. "For many of us, the loss of our personal effects may pose a minor inconvenience. However, ... the loss can be devastating for the homeless."⁸ Federal courts have condemned the practice of summarily seizing and destroying homeless persons' unattended personal belongings and have

⁸ *Pottinger*, 810 F. Supp. at 1559.

found that the homeless persons retain a constitutionally protected property right to their possessions when the unattended property is on government property. The Ninth Circuit Court of Appeals wrote that a city could no more seize and destroy unattended personal property left on sidewalks by homeless persons in violation of a city ordinance than it could "seize and destroy cars parked in no-parking zones left momentarily unattended."⁹

Nevertheless, courts do recognize the interests of local government in the health, safety and welfare of the public balanced against the critical needs of the homeless for the items and allow the local government to enforce "cleaning and clearing" ordinances and policies. So long as the City has provided the homeless individual with adequate notice and an opportunity to remove his personal belongs from public property, the City can remove the unattended belongings. Obstructions, hazards and threats to public safety may warrant a timely post-deprivation notice (rather than a pre-deprivation notice) but that determination is highly fact-specific. For the most part, the unattended belongings must be bagged and tagged and held by the City at an identified location for retrieval by the rightful owner.

Is it illegal to camp on the causeways?

Yes. Section 337.406, Fla. Stat. prohibits camping on the causeways. So long as there are reasonable alternatives available for homeless individuals to sleep, whether that be indoor shelters or other public places, the enforcement of §337.406(4) as a prohibition on camping is unlikely to violate the Eighth Amendment to the U.S. Constitution. Notably, the local court has determined that proof of camping requires something more than simply sleeping in a vehicle and requires indicia of actually camping such as setting up a tent or a cooking area.

⁹ *Lavan v. City of Los Angeles*, 693 F. 3d 1022, 1032 (9th Cir. 2012).

SAFE USE OF ROADS AND MEDIANS

WHEREAS, the City of Melbourne has a significant government interest in the safety of pedestrians and individuals traveling in vehicles throughout the City; and

WHEREAS, interactions between pedestrians and vehicles pose a safety risk to drivers, pedestrians, and bystanders; and

WHEREAS, the presence of pedestrians in the right-of-way interferes with the safe movement of normal vehicular traffic; and

WHEREAS, it is dangerous for persons to stop or stand upon medians in roadways, except for limited purposes, such as a pedestrian crossing a street or a driver of a disabled vehicle; and

WHEREAS, signs being held by individuals standing in a median are dangerous for the individual and a distraction to passing motorists; and

WHEREAS, distracted driving is a public safety concern due to its effect on traffic patterns as well as its potential to cause traffic accidents; and

WHEREAS, Smart Growth of America is a not for profit organization that evaluates and ranks state and metropolitan areas around the country using a pedestrian danger index, which measures how deadly it is for people to walk based on the number of people struck and killed by drivers while walking, controlling for the number of people and the share of people who walk to work as a proxy for overall walking in an area;

WHEREAS, the 2021 Smart Growth of America Dangerous by Design Report identifies the State of Florida as the number 1 most dangerous state in the country for

pedestrians and the Palm Bay-Melbourne-Titusville Florida area as the fourth most dangerous metropolitan area in the country for walking;

WHEREAS, persons engaging in an exchange of objects with motorists on roadways can cause significant traffic and safety hazards in the City, including delaying traffic after traffic signals have changed, darting in and around the cars, impairing drivers' views of oncoming traffic and/or pedestrians crossing the road and remaining in the street after the traffic signal has turned green; and

WHEREAS, regulating the acts related to interactions between pedestrians and vehicles will benefit the health, safety, and welfare of the residents of the City by reducing traffic crashes involving both vehicles and pedestrians and reducing traffic fatalities; and

WHEREAS, it is the intention of the City to use the least restrictive means to advance the significant government interest of traffic safety; and

WHEREAS, the regulations set forth herein are content-neutral and narrowly tailored to the City's interest in protecting the safety of drivers, pedestrians, and bystanders and imposing the minimum restrictions that are necessary to serve the public safety and ensure orderly traffic flow; and

WHEREAS, the City has many other alternate channels of communication for persons who seek to exercise their First Amendment freedoms such as, but not limited to, distribution of literature or solicitations of funds through the mail, at alternate locations such as sidewalks or parks, and by allowing any such passing of information to all pedestrians.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF MELBOURNE,

FLORIDA, AS FOLLOWS:

Section 1. Section _____ of the Code of Ordinances is hereby amended and shall read as follows:

Sec. _____. - Safe Use of Public Roads and Medians

(a) It is the intent of this article to protect the health, safety, and general welfare of the citizens of the City of Melbourne; to assure the free, orderly, uninterrupted movement of vehicles on public roads within the City; and to provide for safety in the interest of pedestrians and occupants of vehicles located on public roads within the City. This section is intended to apply evenhandedly to all persons who engage in the activities proscribed herein, regardless of their message. This section is intended to be narrowly-tailored to serve the significant government interest of public safety, and to leave open ample alternative channels of displaying advertising, distributing goods and materials, and soliciting personal, business, and charitable donations.

(b) [During the restricted times,] it shall be unlawful for a person to occupy a sidewalk, public street, traffic median, crosswalk, bicycle lane, or entrance or exit ramp of interstate highways, and to make physical contact with, or exchange any physical item (including documents, money, pamphlets, etc.) with, that person and an operator or other occupant of any vehicle within any lane of traffic, stopped at a traffic control device, or at an intersection for any reason. This provision shall not apply to vehicles parked, pulled over, or otherwise removed from a travel lane of traffic.

(c) [During the restricted times,] it shall be unlawful to stand or remain on any median while holding or displaying any advertisement, sign, or other media that is for view by any operator or occupant of vehicles on the public street.

(d) [During the restricted times,] it shall be unlawful for any person operating or occupying a vehicle on a public street, bicycle path or lane, or entrance or exit ramp of interstate highways to make physical contact with, or exchange any physical item (including documents, money, pamphlets, etc.) with, any pedestrian.

(e) The language of subsections (b)-(d) above is intended to prohibit the activities described only when they are directed between pedestrians and those occupants of motor vehicles that are on the traveled portion of public roads that are open to traffic. The term "traveled portion" includes travel lanes, turn lanes, and other portions of the road that are generally used for motor vehicle travel. This section does not prohibit activities between pedestrians on sidewalks.

(f) Any person violating the provisions of this section shall be subject to the penalty provided by section 1-14.

(g) For the purposes of this section:

(1) *Public street* means all portions of any public roadway normally available for use by motor vehicles, including turn lanes, marked bicycle lanes, and emergency stopping lanes, as well as all crosswalks, medians or traffic islands within such roadways. Public street shall not include sidewalks or other areas adjacent to the roadway.

(2) *Median* means a paved, planted, striped or unimproved area of land dividing lanes of a street.

(3) *Vehicle* means every device in, upon, or by which any person or property is, or may be, transported upon a public street, bicycle path or lane, or entrance or exit ramp of interstate highways, including, but not limited to, cars, trucks,

semi-trucks, vans, buses, motorcycles, mopeds, bicycles, and scooters.

(4) *Restricted times* means the time periods of _____(a.m. hours) and _____ (p.m. hours) on [weekdays/every day].

DRAFT



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Melbourne, FL 32935

Merritt Island Location
135 N Grove Street
Merritt Island, FL 32953

March 31, 2021

The Honorable Paul Alfrey
The Mayor of Melbourne
The City of Melbourne
900 E Strawbridge Avenue
Melbourne, FL 32901

RE: Traffic safety

Dear Mayor Alfrey,

This letter is to express my deep concern for the safety of the citizens of our city. Our business is located at the busy intersection of W. Eau Gallie Blvd and US-1 where the daily traffic count is 56,575.

It is with great concern that I contact you based upon the numerous incidents that I observe on a daily basis that endanger both motorists and pedestrians and lead to the accumulation of unsightly litter and trash at one of our county's busiest thoroughfares. These hazards could be so easily prevented or deterred for the safety of all.

Every day, from sunrise to sunset, I observe people stepping onto the busy Eau Gallie and US-1 roadways to solicit and accept objects and money from the windows of passing vehicles. At times, these vehicles are temporarily stopped at the traffic light, but often they are moving and then stop amid traffic, creating traffic jams and hazards. This activity places both the individuals going onto the roadway as well as the drivers in jeopardy of creating a motor vehicle accident or a pedestrian being struck by a moving vehicle.



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On a regular basis, I witness items being tossed out of car windows which then prompts individuals on the sidewalk to dart into ongoing roadway traffic to retrieve money and various objects, again creating an unsafe pedestrian and vehicular situation and leading to the endless accumulation of trash.

In addition, shopping carts are regularly left in intersections with the risk of rolling into oncoming traffic. Objects such as food and clothing that are being passed from car windows are being left on the sidewalk and gutter which then creates a roadway hazard. There is a woman on a nearly daily basis who goes into the street and runs in and out of traffic with her young child of no more than 6 years of age to approach vehicles. This is abhorrent and abusive.

Another trick that I often see is where individuals soliciting at the corner will regularly point to a car's tires as if something is wrong. The driver unwittingly opens her car window to see what's wrong and then that individual uses that opportunity to aggressively approach and accost the driver amidst traffic, diverting her attention from the roadway and traffic and causing an at-risk situation.

I am requesting help from you and the City of Melbourne to address this ongoing public safety and traffic concern.

Very truly yours,

Ross A. Clevens, M.D., F.A.C.S.

From: [Paul Alfrey](#)
To: [Alison Dawley](#)
Cc: [Shannon Lewis](#); [Kevin McKeown](#); [David Gillespie](#)
Subject: Fw: The pan handler in this picture can still be given a ticket yes?
Date: Monday, April 5, 2021 1:52:35 PM

Hello Alison,

Please add this picture / communication in the packet for the homeless / panhandling meeting.

Thanks,

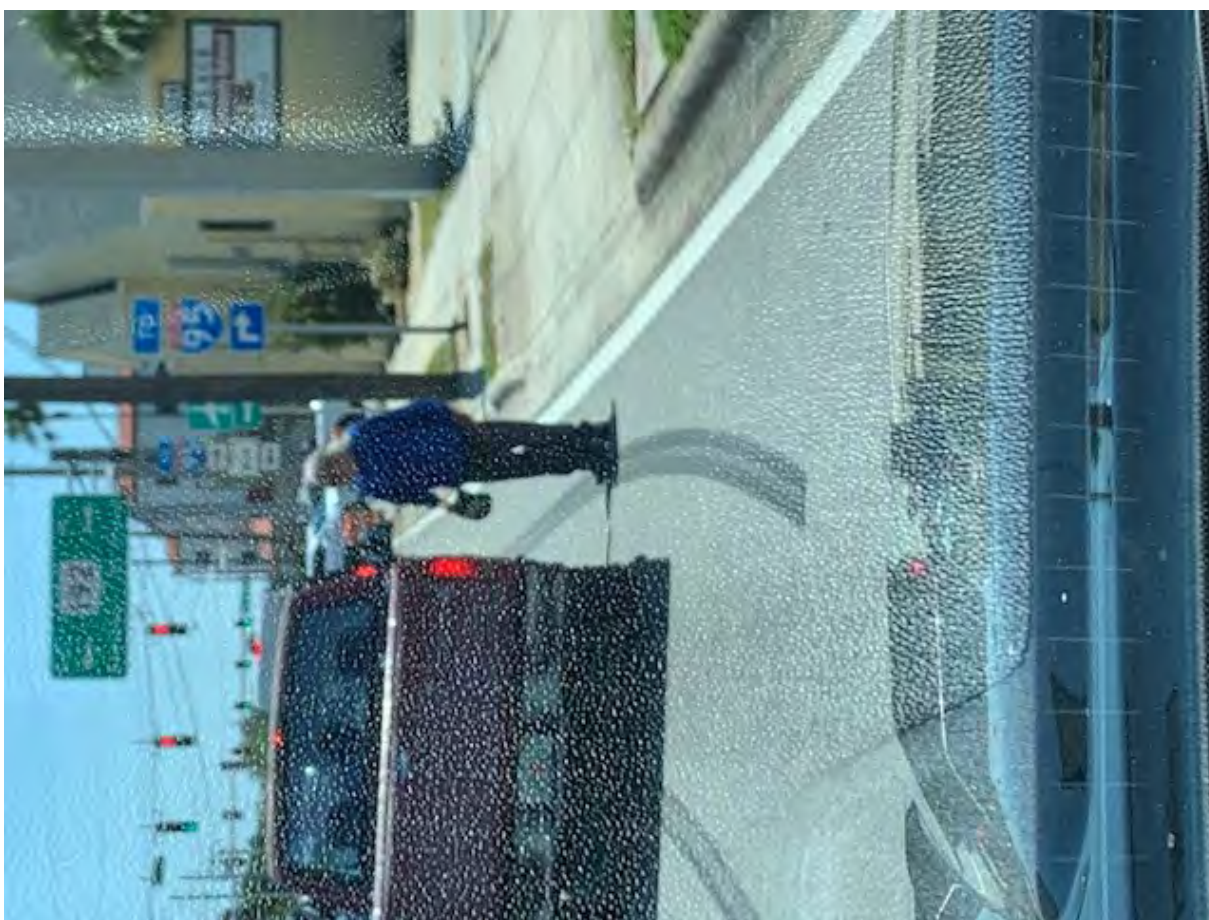
Paul Alfrey
Mayor

From: M Herendeen <mherendeen32@gmail.com>
Sent: Monday, April 5, 2021 12:59 PM
To: Paul Alfrey <Paul.Alfrey@mlbfl.org>
Subject: The pan handler in this picture can still be given a ticket yes?

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paul, My understanding even on the current ordinance and supported nationwide under caselaw, the man in this picture could still be ticketed for aggressive panhandling based on the material reason he is standing in the roadway.

Follow up question and comment... That if this logic follows, then the driver or whoever is giving him the dollar could also be given a ticket.?



Sent from my iPhone

TIM DERATANY & LIZ LAMB
11520 DRAGON POINT DRIVE, MERRITT ISLAND, FLORIDA 32952
321.501.1104 DERATANYCONSULTING@GMAIL.COM

April 27, 2021

The Honorable Paul Alfrey
The Mayor of the City of Melbourne
900 E. Strawbridge Avenue
Melbourne, Florida 32901

Dear Mayor Alfrey,

We are very concerned about the unsafe conditions in Melbourne due to the transient and homeless people who have taken over the sidewalks and medians, especially near Fee Avenue and South Harbor City Blvd.

We recently purchased a historic building located on South Harbor City Blvd. Prior to our purchase, we had heard the homeless people were creating challenges for property owners, especially near the Daily Bread on Fee Avenue. But, we were so excited about restoring the neglected brick building that we believed we could overcome the challenges. Since then, we have been in absolute shock over what we have experienced.

First, we now know that our downtown area is not safe.

Homeless people had taken over our property, including a very aggressive man. The man refused to leave the property when we began cleaning it up. After he was politely asked by the Police to move off of our property, he came back, threatened to hurt us and said he was going to break the windows of our property. This man has a record of at least 60 violations, including violence, rape charges, burglary and cocaine, and has been harassing people near Lincoln Avenue for approximately 10 years.

We are approached by transient or homeless people almost every time we step outside of our building. They try to start a conversation, and then scream profanities at us when we say "No" to whatever it is that they want. There is a non-stop parade of clearly intoxicated people cutting through our property from the Daily Bread to get to the Chevron Station, most of which are buying alcohol or looking for the neighborhood drug dealer.

We witness suspicious exchanges of money and packages on Lincoln Avenue next to the Chevron dumpster. One person in a van parked near our front door, tried to lure a woman out of our building by pretending he needed help. We see that van parked at Daily Bread every day and at nearby parks.

We are disappointed by the lack of presence by the Melbourne Police Department. We gave up on calling the Non-Emergency phone number, and so have many of our downtown neighbors. When we feel we are in danger, they tell us why they can't do much about it. Enforcing ordinances is apparently difficult for them.

Second, the streets and properties in our area are littered with trash and smell from urine from the transient people.

Our morning ritual is to clean up liquor bottles, beer cans, drug needles, cigarettes, broken glass and the styrofoam containers and plastic bags from the Daily Bread. Not only is this trash hazardous, but at the end of Fee Avenue there is a large drain where all of this trash flows directly into the Indian River Lagoon. It took us weeks to remove the overwhelming smell of urine from our property.

Our major concern is that the Daily Bread is also attracting alcoholics, drug addicts and mentally unstable people who are camping in the bushes, on sidewalks, and on doorsteps. We understand the primary mission of the Daily Bread is to feed the homeless people and we truly have compassion for those who need and deserve assistance. We don't want anyone to go hungry, but the gates to the Daily Bread property are closed more often than they are open. This creates problems for everyone.

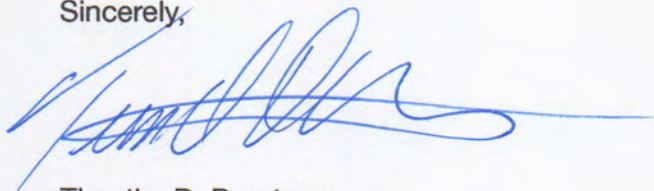
As long time residents of Brevard County, we would have never believed that Melbourne is so unsafe and tolerant of crime, until we purchased this property. We are disgusted with the tolerance of public intoxication, excessive littering, and public urination just to name a few.

The City of Melbourne needs real solutions for assisting the homeless. We have some suggestions:

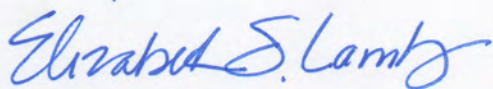
1. The Melbourne Police must be proactive rather than waiting for a complaint to initiate contact with transients and drifters for public intoxication, littering, sleeping on sidewalks, urinating in public, and other violations of our City Ordinances.
2. Daily Bread should discontinue the use of plastic bags and styrofoam, and they should require the homeless people to eat on their property behind their fenced area to reduce the litter problem.
3. Daily Bread should provide toilets, water and sleeping areas inside their gated property 24 hours a day for the homeless people.
4. Daily Bread should prioritize families in need.

We are requesting help from the City Of Melbourne to address our concerns.

Sincerely,



Timothy D. Deratany



Elizabeth S. Lamb