Illinois State University

From the SelectedWorks of Magali J Sanders

February 10, 2014

BEGGING TO BE CONSTITUTIONAL

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Available at: https://works.bepress.com/magali_sanders/1/
At the end of life we will not be judged by how many diplomas we have received, how much money we have made, how many great things we have done. We will be judged by ‘I was hungry, and you gave me something to eat, I was naked and you clothed me. I was homeless, and you took me in . . .’

I. Introduction

Residents of Miami know that traversing the public spaces of Downtown Miami leaves them susceptible to the indignities of everyday interaction. Walking on the streets next to the Miami-Dade County Courthouse, the Miamian is faced with beggars of all ages holding signs asking for money. A few blocks down, countless homeless persons gather next to the American Airlines Arena to panhandle. Whether dining in an outdoor table or walking to a Heat game, all too often these encounters not only annoy residents of Miami and tourists alike, but also turn them away. Consequently, public spaces have increasingly become less attractive due to street disorder, forcing cities to adopt new and innovative measures to maintain inviting public spaces.

These laws range from banning camping in parks to prohibitions on sleeping on streets and sidewalks. In addition, states and municipalities have attempted to address the ever increasing

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1 Juris Doctor Candidate, 2014 at St. Thomas University School of Law.
3 Fred Siegel, Reclaiming Our Public Spaces, CITY JOURNAL (Spring 1992), http://www.cityjournal.org/article01.php?aid=1545 (stating that New Yorkers are faced with the obstacles of everyday encounters).
5 Id. (“Miami is a third world city and the abomination known as parking around the Triple A continues to frighten even the most fearless person.”).
6 Id. (stating that visitors flee to the Arena to avoid vagrants); Siegel, supra note 3 (expressing people’s discomfort in encountering the homeless who panhandle aggressively in public forums).
7 See infra Part II.B.
8 See infra Part II.C.
homelessness issue by enacting ordinances prohibiting certain types of speech.9 Maintaining public order by enacting laws that regulate begging, street vendors, and land use to keep public spaces viable are traditional functions of government.10 Cities are motivated by a desire to protect their investment in a community that attracts residents and tourists alike.11 In an effort to preserve the economic vitality of the Downtown business district, the City of Miami enacted an ordinance (“Ordinance”) regulating soliciting, panhandling, and begging (“soliciting”) in certain areas specified in the Ordinance.12

This comment argues that the Ordinance passes constitutional muster because the law is aimed at combating the secondary effects of soliciting.13 The Ordinance is not intended to suppress speech.14 Section II of this comment discusses the history of the homeless, while section III addresses the implications of the First Amendment as well as restrictions on free speech in public forums.15 Rather than using the traditional tests of strict or intermediate scrutiny for speech restrictions, the various elements of the secondary effects test will be discussed in section IV.16 Moreover, subsections IV.A.3–4 illustrate that the prohibition on soliciting serves a legitimate government interest that is narrowly tailored to the City’s interest in that the City seeks to sustain the economic vitality of the Downtown business district.17 Finally, subsection IV.A.5 concentrates on the ample alternative channels of communication provided by the Ordinance.18

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9 See Tracy A. Bateman, Annotation, Laws Regulating Begging, Panhandling, or Similar Activity By Poor or Homeless Persons, 7 A.L.R. FED. 5th 455 (1992) (stating that states have reinstated and enacted laws to proscribe begging and panhandling).
10 See infra Part II.C.
11 See infra Part II.B.
12 See infra note 94 and accompanying text.
13 See infra Part IV.A.1–5.
14 See infra Part IV.A.1–5.
15 See infra Parts II, III–III.A.
16 See infra Part IV.A.2.
18 See infra Part IV.A.5.
II. History of the Homeless

During the 1980’s, homelessness\(^{19}\) became more prevalent in cities across the United States.\(^{20}\) Single males with alcohol or substance abuse problems are no longer the only people who are homeless.\(^{21}\) The recent trend indicates that families and the working poor have joined the homeless population.\(^{22}\) A 1984 study revealed that there were between 250,000 and 350,000 homeless persons in the U.S.\(^{23}\) In response, states and cities have opened emergency shelters.\(^{24}\) Public and private entities have also provided assistance for the homeless.\(^{25}\)

The rising number of homeless people has been attributed to several factors.\(^{26}\) During the 1950’s, the deinstitutionalization of patients from mental institutions along with changes in legal residences.\(^{21}\) Hannum, supra note 20, at 13–14 (finding that women and children were included in the new type of homelessness).

\(^{22}\) Hannum, supra note 20, at 478–79 (stating that there were between 250,000 and 350,000 homeless people in America in 1984).

\(^{23}\) See McKinney Homeless Assistance Act of 1987, 42 U.S.C. §§ 11301–11412 (1987), amended by Pub. L. No. 106-400 (renamed McKinney-Vento Homeless Assistance Act in 2000); Hannum, supra note 20, at 480–81 (discussing the McKinney Homeless Assistance Act of 1987, which provided emergency food and shelter for the homeless as well as housing and job training to transition individuals out of homelessness); Rossi, supra note 20, at 16; Knapp, supra note 24 (pointing out that the public response to homelessness was evidenced by states and cities opening shelters and governmental and private entities providing economic assistance). The Act provided $442 million in 1987 and $616 million in 1988 for the homeless. Rossi, supra note 20, at 16. In addition, the Act provided for a variety of programs such as subsidies for existing shelters, funds for rehabilitation programs, and housing assistance. Id.

\(^{24}\) See Hannum, supra note 20, at 479 (noting that homeless people where characterized primarily into three groups: substance abusers, mental illness, and veterans).

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20 Randall Hannum, Homelessness, in 2 THE EIGHTIES IN AMERICA 478, 478 (Milton Berman ed., 2008) (finding that the number of homeless persons began to increase during the decade); Peter Rossi, Without Shelter: Homelessness in the 1980s 13 (1989) (finding that entire families began to appear on the streets).

21 Hannum, supra note 20 (indicating that the characterization of the homeless as vagrants began to change); Rossi, supra note 20, at 14 (noting that homelessness was no longer characterized as a male problem).

22 Office of Cmty. Planning & Dev., U.S. Dep’t of Hous. & Urban Dev., The Annual Homeless Assessment Report to Congress 3 (Feb. 2007). Available at http://www.huduser.org/Publications/pdf/ahar.pdf (indicating that between 250,000 and 350,000 homeless people lived in the U.S. in 1984); Hannum, supra note 20, at 478–79 (stating that there were between 250,000 and 350,000 homeless people in America in 1984).

23 Id.

24 Rossi, supra note 20, at 14 (referring to a victory by public interest lawyers against New York City which doubled emergency municipal shelters by obligating the city to provide shelter for homeless men); Charles Feeney Knapp, Statutory Restriction of Panhandling in Light of Young v. New York City Transit: Are States Begging Out of First Amendment Proscriptions?, 76 Iowa L. Rev. 405, 405 (1991) (indicating that the public response to the increase in homelessness was considerable). Furthermore, new types of sheltering arrangements have been created such as the use of hotel and motel rooms as well as quasi-private quarters for families. Rossi, supra note 20, at 15.

25 See McKinney Homeless Assistance Act of 1987, 42 U.S.C. §§ 11301–11412 (1987), amended by Pub. L. No. 106-400 (renamed McKinney-Vento Homeless Assistance Act in 2000); Hannum, supra note 20, at 480–81 (discussing the McKinney Homeless Assistance Act of 1987, which provided emergency food and shelter for the homeless as well as housing and job training to transition individuals out of homelessness); Rossi, supra note 20, at 16; Knapp, supra note 24 (pointing out that the public response to homelessness was evidenced by states and cities opening shelters and governmental and private entities providing economic assistance). The Act provided $442 million in 1987 and $616 million in 1988 for the homeless. Rossi, supra note 20, at 16. In addition, the Act provided for a variety of programs such as subsidies for existing shelters, funds for rehabilitation programs, and housing assistance. Id.

26 See Hannum, supra note 20, at 479 (noting that homeless people where characterized primarily into three groups: substance abusers, mental illness, and veterans).
requirements to have someone institutionalized involuntarily were contributing factors.\textsuperscript{27} Another factor was the increase of crack cocaine use in the mid-1980’s.\textsuperscript{28} For example, out of the 65% of homeless individuals in New York that tested positive for substance abuse, 83% were cocaine users.\textsuperscript{29} Critics of the Reagan administration postulated that cuts in public housing and other programs designed to help the poor contributed to the increase in homelessness.\textsuperscript{30} A decrease in the availability of low level skill jobs attributed to the homelessness crisis.\textsuperscript{31}

The current economic recession has not alleviated the plight of the homeless.\textsuperscript{32} Over six million people were left without jobs, setting the unemployment rate to over 9% as of 2010.\textsuperscript{33}

\begin{itemize}
\item \textsuperscript{27} \textit{Id.} (arguing that the release of patients from mental institutions was a structural factor leading to homelessness); \textsc{John Scalon}, \textit{The Heritage Found., Backgrounder No. 729, Homelessness: Describing the Symptoms, Prescribing a Cure} \textsuperscript{5} (1989), \textit{available at} http://s3.amazonaws.com/thf_media/1989/pdf/bg729.pdf (noting that the main reason accounting for the large number of mentally ill homeless persons was the deinstitutionalization policies of the 1960’s). \textit{Contra} Robert E. Mensel, \textit{Right Feeling and Knowing Right: Insanity in Testators and Criminals in Nineteenth Century American Law}, \textsc{58} \textit{Okla. L. Rev.} \textsuperscript{397}, \textsuperscript{399} n.17 (2005); \textsc{Nat’l Coal. for the Homeless}, \textit{Why Are People Homeless} \textsc{1} (July 2009), \textit{available at} http://www.nationalhomeless.org/factsheets/Why.pdf. The author points out that President Kennedy passed two legislations in 1963 that furthered the process of deinstitutionalization: the Mental Retardation Facilities and Community Mental Health Centers Construction Act, and the Maternal and Child Health and Mental Retardation Planning Amendments. \textsc{Scalon, supra} at 5–6. The former provided funding for community facilities that served people with mental illnesses, while the latter increased funding for research on the prevention of retardation. \textit{Id.} However, the centers that were designed to care for mental patients did not do so. \textit{Id.} at 5. Instead, the centers became counseling and psychotherapy facilities. \textit{Id.} In contrast, the deinstitutionalization of mental patients did not contribute to the increase since most patients were released between the 1950’s and 1960’s. \textsc{Nat’l Coal. for the Homeless, supra}. Instead, governments use the term “mentally ill” as a pretext to control their behavior. Mensel, \textit{supra} (discussing the radical views of Thomas Szasz and Michael Foucault, critics of the concept of mental illness in the twentieth century).
\item \textsuperscript{28} \textit{See} Hannum, \textit{supra} note 20, at 480 (arguing that the usage of crack cocaine was seen as another possible cause attributed to the increase in homelessness).
\item \textsuperscript{29} \textit{Id.} (citing a study conducted by the Cuomo Commission in New York).
\item \textsuperscript{30} \textit{See id.} (statement of President Reagan in a Good Morning America interview) (“[H]omeless, you might say, by choice.”).
\item \textsuperscript{31} \textit{See id.} (explaining that a decrease in causal jobs was the result of structural changes in the economy); \textsc{Rossi, supra} note 20, at 35 (indicating that the continued lack of demand for unskilled labor contributes to homelessness even today).
\item \textsuperscript{32} \textit{See Nat’l Coal. for the Homeless, supra} note 27 (stating that the economic recession has increased the number of foreclosures and job loss); \textsc{Peter Witte, Nat’l Alliance to End Homelessness, The State of Homelessness in America} \textsc{2012}, at \textsuperscript{27} (2012), \textit{available at} http://b.3cdn.net/naehb/9829745b6de8a5e159_q2m6yc53b.pdf (noting that homelessness is a lagging indicator from the economic recession that can lead to future increases).
\item \textsuperscript{33} \textsc{Nat’l Coal. for the Homeless, supra} note 27 (stating that six million jobs have been lost since the start of the recession); \textsc{Witte, supra} note 32, at \textsuperscript{25} (“Data from the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) show that the annual rate of unemployment in 2010 was 9.6 percent, the highest annual rate since 1983.”); \textsc{Lisa M. Kline, Criminals By Necessity: The American Homeless in the Twenty-First Century}, \textsc{5 Liberty U. L. Rev.} \textsuperscript{275}, \textsuperscript{275} (2011) (stating that over six million jobs have been lost since the economic downturn).
\end{itemize}
Between April 2008 and April 2009, the U.S. experienced a 32% increase in the number of home foreclosures. As a consequence, 40% of families faced eviction and seven million households were at risk of foreclosure.

The increase in poor people unable to pay their monthly bill exacerbated the situation. With poverty rates at over 12% of the U.S. population, poverty inescapably led also to homelessness. For the poor, a missed paycheck or a medical emergency may be enough to send them to the streets.

In addition, the decrease in the availability of affordable housing has contributed to the rise in homelessness. A recent study revealed that more than minimum wage is necessary to live in affordable housing across the U.S. Approximately twelve million people allocate more than half of their salaries towards renting or housing expenses. Low earnings have severely hindered

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34 NAT’L COAL. FOR THE HOMELESS, supra note 27 (reporting that the number of foreclosures increased by 32% between April 2008 and April 2009).
35 Id. (“The National Low Income Housing Coalition estimates that 40 percent of families facing eviction due to foreclosure are renters and 7 million households living on very low incomes . . . are at risk of foreclosure.”).
36 See id. (stating that poor people are frequently unable to pay for basic necessities); Witte, supra note 32, at 24 (“[T]he root cause of homelessness can largely be explained by economics: people who become homeless have insufficient financial resources to obtain or maintain housing.”).
37 NAT’L COAL. FOR THE HOMELESS, supra note 27 (“In 2007, 12.5% of the U.S. population, or 37,300,00 [sic] million people, lived in poverty.”); Kline, supra note 33, at 276. Notably, children overrepresented the poverty rates in 2007 since children made up over 35% of poverty while only being approximately 24% of the total population. NAT’L COAL. FOR THE HOMELESS, supra note 27.
38 See NAT’L COAL. FOR THE HOMELESS, supra note 27 (“If you are poor, you are essentially an illness, an accident, or a paycheck away from living on the streets.”); Kline, supra note 33, at 276 (noting that an accident, job loss, or health issue could put any person experiencing poverty in the streets within a matter of days).
39 See NAT’L COAL. FOR THE HOMELESS, supra note 27, at 2 (stating that the federal definition of affordable housing is a one or two bedroom apartment at 30% of a person’s income); Affordable Housing, U.S. DEP’T OF HOUS. AND URBAN DEV., http://www.hud.gov/offices/cpd/affordablehousing/ (last updated May 15, 2012) (defining affordable housing as a one or two bedroom apartment at 30% of an individual’s income).
40 See NAT’L COAL. FOR THE HOMELESS, supra note 27, at 3 (stating that the limited availability of housing assistance programs and a lack in affordable housing has led to the housing crisis and homelessness); Rossi, supra note 20, at 31 (finding that homelessness is largely contributed to an outcome of the shortage of inexpensive housing for the poor, which began in the 1970’s and increased throughout the 1980’s).
41 See NAT’L COAL. FOR THE HOMELESS, supra note 27, at 2 (indicating that more than minimum wage is necessary to obtain affordable housing in every state).
42 Id. (“Unfortunately, for 12 million Americans, more than 50% of their salaries go towards renting or housing costs, resulting in sacrifices in other essential areas like health care and savings.”); Witte, supra note 32, at 24 (stating that nearly ten million Americans who rent are severely cost burdened since they spend half or more of their monthly income for housing).
the availability of affordable housing. Individuals employed at least twenty-seven weeks out of the year earn only approximately $9,400 annually. An individual in the latter situation would need to find affordable housing that is less than $235 monthly, which is nonexistent in the U.S. Over 17% of homeless adults in families and 13% of homeless single adults or unaccompanied youth were employed. Thus, poverty and homelessness are inextricably linked.

Despite the falling economy, homelessness decreased by 1% during 2009 and 2011. This decrease was attributed to a significant investment in federal resources, which not only sought to prevent homelessness, but also to find a solution to the crisis. A $1.5 billion federal funding effort through the Homelessness Prevention and Rapid Re-Housing Program (“HPRP”) sought to thwart an increase in homelessness fueled by the recession. As a result, approximately 700,000

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43 See Nat’l Coal. for the Homeless, supra note 27, at 2 (stating that declining wages have put housing out of reach for many workers); Rossi, supra note 20, at 33 (discussing the decline in affordable housing); Witte, supra note 32, at 25 (finding that low earnings among the working class affect the ability to afford housing). The direct effect of housing is described as follows: “[I]f one’s income is only three or four dollars a day and the cheapest possible place to live costs seven or eight dollars a day, then even the cheapest possible accommodations are out of the question.” Rossi, supra note 20, at 33.

44 Witte, supra note 32, at 25–26 (stating that poor workers earn 20% of the national average for all workers if they work at least twenty-seven weeks out of the year).

45 Id. (noting that a household supported by a single worker earning the average poor worker income, $9,413 annually, would need to find housing that is considered affordable at less than $235 monthly). The author points out that fair market rents for a one bedroom apartment exceed the latter number in every state in the U.S. Id. at 26. “Fair Market Rent (FMR) is defined as the 40th percentile of gross rents for typical, non-substandard rental unites occupied by recent movers in a local housing market.” Id. at 26 n.4.


47 See Nat’l Coal. for the Homeless, supra note 27 (finding that poor people are often unable to pay for housing); U.S. Conference of Mayors, supra note 46, at 11 (finding that thirteen cities cited poverty as one of the three main causes of homelessness).

48 U.S. Conference of Mayors, supra note 46, at 3 (explaining that a decrease of 1% in the homeless population constitutes approximately 7,000 people); Witte, supra note 32, at 2 (showing that regardless of the economic recession, homelessness decreased by 1% during 2009 and 2011). The most notable decrease was among homeless veterans. U.S. Conference of Mayors, supra note 46, at 3. Nonetheless, the homeless population increased in twenty-four states and the District of Columbia. Id. at 4.

49 See Witte, supra note 32, at 2 (finding that the decrease in homelessness was attributed to an investment of federal resources).

50 Witte, supra note 32, at 2 (“The Homeless Prevention and Rapid Re-Housing Program (HPRP, funded through the American Recovery and Reinvestment Act of 2009) was a $1.5 billion federal effort to prevent a recession-related increase in homelessness.”); Homelessness Prevention and Rapid Re-Housing Program, Homelessness Resource
at-risk and homeless people were aided. Unfortunately, the funding provided by HPRP has come to an end in many cities, which will inevitably lead to a rise in the number of homeless people in the years to come, unless federal assistance is provided again.

A. The Extent of the Problem

Entering public spaces has made passersby susceptible to an array of unwelcomed activities such as encountering someone begging for money, selling pirated copies of movies, or seeing a homeless person sleeping on the streets, benches, or sidewalks. As one journalist has written, “The streets of America’s cities have become desperate crossroads. To walk any distance at all is to run a gauntlet of beggars of every imaginable description with every conceivable need.”

Peddler

While some panhandlers request assistance passively by holding up a sign or cup, others aggressively intimidate pedestrians by following them to ATM machines. Other panhandlers,

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51 Witte, supra note 32, at 2 (finding that the HPRP assisted approximately 700,000 at-risk and homeless people).
52 See id. (noting that the funds provided by HPRP have not only run out in many cities, but also will end completely by the fall of 2012); Homelessness Prevention, supra note 50 (stating that funding for the HPRP will end nationwide on September 30, 2012).
53 See Siegel, supra note 3 (stating that New Yorkers are encountered with beggars in every corner).
54 Nancy R. Gibbs, Begging: To Give or Not to Give, TIME (June 24, 2001), http://www.time.com/time/magazine/article/0,9171,150018,00.html; see also Robert Teir, Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging, 54 LA. L. REV. 285, 288 (1993) (noting that Americans are confronted by beggars everyday). “A walk down a major urban street will usually mean being asked for money numerous times. Sitting on a park bench or at an outdoor restaurant can mean holding court to a steady stream of people hustling change.” Teir, supra.
56 See Teir, supra note 54 (finding that some panhandlers make repeated requests that are loud at times); Gibbs, supra note 54 (stating that panhandlers usually wait outside automated-teller machines, where wallets are full).
peddlers, and paupers will touch, shove, or curse if one declines assistance. The latter has caused a loss of empathy for the homeless. As a result, some Americans have changed their route to work to avoid beggars, while others no longer use the subway system.

B. Preserving Our Streets

Public streets are undoubtedly among a community’s greatest assets. Public streets not only provide the community’s users with transportation, but also provide the community’s users with a place to interact. As a result, streets prove to be essential to the vitality and success of the city and to businesses in the community. Public areas, such as sidewalks and city parks, historically served the purpose of the integration and congregation of a diverse culture of people to counterbalance the fragmentation of society.

59 See Teir, supra note 54 (“Others will touch, shove, or respond with hostility or bigotry if one declines to give money.”); Gibbs, supra note 54 (explaining that a man was beaten to death after refusing to give aid to a panhandler).
60 See Harry Simon, Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities, 66 TUL. L. REV. 631, 647 (Mar. 1992) (noting that attitudes towards the homeless have become increasingly hostile); Teir, supra note 54 (“One of the consequences of aggressive begging is a loss of empathy for the homeless, or, perhaps, for poor people in general.”).
61 See Gibbs, supra note 54 (finding that people organize their days to minimize unpleasant encounters); George L. Kelling, Measuring What Matters: A New Way of Thinking About Crime and Public Order, CITY JOURNAL (Spring 1992), http://www.city-journal.org/article01.php?aid=1544 (noting that people stayed off the streets to avoid disturbances).
62 See Teir, supra note 54 (“Public streets are among a cities’ greatest assets.”); Siegel, supra note 3 (finding that New York residents hold their public spaces, especially their sidewalks, as one of their most important assets).
63 See CITIZENS CRIME COMM’N OF N.Y.C. & REG’L PLAN ASS’N, U.S. DEP’T. OF JUSTICE, DOWNTOWN SAFETY, SEC. AND ECON. DEV. 8 (July 1985) [hereinafter CITIZENS CRIME], available at https://www.ncjrs.gov/pdfpages/1/Digitization/103411NCJRS.pdf (finding that an important characteristic of a successful downtown is a business community that maintains itself where people can engage in face-to-face communication); Teir, supra note 54 (noting that streets provide cities with transportation, vitality, attraction, and interaction).
64 See CITIZENS CRIME, supra note 63, at 7 (finding that a high flow of pedestrian traffic is not only vital for restaurants, theaters, and merchants to thrive, but also to discourage crime and increase a safe feeling among pedestrians); Teir, supra note 54 (noting that a city’s streets serve functions essential to the vitality of the city).
65 See United States v. Grace, 461 U.S. 171, 177 (1983) (stating that public places such as streets and sidewalks were historically built for the free exercise of expressive activities); Teir, supra note 54 (stating that these venues were built as community meeting places).
However, if public spaces are not regulated and maintained they become unattractive and undesirable. When people encounter intimidating situations on a sidewalk, in a park, or on the street, people will no longer use these venues. For example, residents who used to enjoy their lunch on a park bench will move to more peaceful communities, which will lead ultimately to the demise of the community.

C. Criminalizing the Homeless

Begging has been prohibited since the earliest of civilizations. In feudal England, the Statute of Laborers was enacted requiring every person to work for wages in an effort to turn every working class person into a serf. The goal behind this law was to punish vagrants who refused an offer to work or provide for beggars who refused to work. During the Sixteenth century, England sought to penalize the lazy because they were seen as a threat to the health of society.

66 See Teir, supra note 54, at 289 (stating that a desirable and attractive public area maintains the integration, assimilation, and mixture of social classes); Kelling, supra note 61 (noting that some of the physical manifestations of panhandling lead to graffiti, broken windows, and abandoned cars and buildings).

67 See Loper v. N.Y.C. Police Dep’t, 802 F. Supp. 1029, 1031 (S.D.N.Y. 1992), aff’d, 999 F.2d 699 (2d Cir. 1993) (stating that the effects of begging range from being annoyed to actual fear); Teir, supra note 54, at 289 (stating that people avoid parks or sidewalks when they encounter repeated acts of intimidation); Kelling, supra note 61 (stating that crime is closely associated with disorder, which includes panhandling).

68 See Teir, supra note 54, at 289 (“People come to think twice about eating their lunch at the local park or square, or taking a walk to the zoo, the library, or the corner store.”); Kelling, supra note 61 (stating that fear causes people to stay off the streets and avoid public transportation and shopping in areas where loitering is prevalent).

69 See Kline, supra note 33, at 278 (stating that vagrancy laws date back to feudal England); Simon, supra note 60, at 635 (noting that laws punishing the poor have been in place for a long time).


71 See Kline, supra note 33, at 278 (noting that every “able-bodied” person was required to work for wages fixed at a certain level); Simon, supra note 60, at 635 (stating that the Statute of Laborers required the “labouring population” to work at specified rates of wages).

72 See Kline, supra note 33, at 278 (stating that the Statue made it a crime to refuse to work or to give money to beggars who refused to work); Simon, supra note 60, at 635 (noting that wandering or vagrancy became a crime).

73 See Teir, supra note 54, at 292 (explaining that old anti-begging laws were enacted to prevent a threat to the health of society by any unproductive member of the community).
The laws of early England influenced laws against the homeless in the U.S. Paupers and vagabonds were explicitly excluded from the privileges and immunities clause of the Articles of Confederation. The U.S. Supreme Court later held provisions restricting the right to travel unconstitutional because one of the fundamental rights of every American is the right to freely move.

Significant changes in the law did not occur until post World War II, when the Supreme Court struck down vagrancy laws as unconstitutionally vague. Other courts overturned vagrancy and loitering laws on the grounds that they punished status or condition, which violated due process rights. Cities and states began to look for innovative ways to maintain the public streets and sidewalks. In 2009, a study surveying 235 cities Nationwide revealed that 33% of them prohibit

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74 See Papachristou v. City of Jacksonville, 405 U.S. 156, 161 (1972) (finding the Jacksonville ordinance and Florida’s statute to have derived from early English law); Kline, supra note 33, at 279 (explaining that England’s policies and prejudices became the foundation for American laws regarding the homeless).
76 ARTICLES OF CONFEDERATION of 1781, art. IV, para. 1. “[T]he free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state . . . .” Id. (emphasis added).
77 See, e.g., Shapiro v. Thompson, 394 U.S. 618, 634 (1969) (striking down a state statute requiring the receipt of welfare benefits on the satisfaction of durational residence requirements because appellees were exercising a constitutional right when they decided to move into the jurisdiction); People v. Berck, 347 N.Y.S.2d 33, 40 (1973) (holding that the loitering statute violated the Privileges and Immunities Clause by restricting free movement of citizens through state); City of Portland v. James, 444 P.2d 554, 557 (Or. 1968) (en banc) (stating that an ordinance prohibiting nighttime wandering was too vague to provide protection for constitutional right to freedom of movement on public streets); see Kline, supra note 33, at 279 (noting that the Supreme Court has recognized the right to travel as fundamental).
78 See, e.g., Papachristou, 405 U.S. at 162 (holding that the ordinance was void for vagueness because it failed to give proper notice of prohibited conduct and its indefiniteness encouraged arbitrary arrests); see Kline, supra note 33, at 279 (“[N]o real changes appeared until after World War II, when federal and state courts across the nation began to strike down vagrancy laws as void for vagueness.”).
79 See Simon, supra note 60, at 642. Chief Justice Thompson stated, “[i]t simply is not a crime to be unemployed, without funds, and in a public place. To punish the unfortunate for this circumstance debases society.” Id. (citing Parker v. Mun. Judge, 427 P.2d 642, 644 (Nev. 1967)).
80 See Kline, supra note 33, at 279 (stating that cities responded to the decisions of the courts by enacting more specific ordinances); Simon, supra note 60, at 645 (finding that local officials perceived the invalidation of the vagrancy and loitering laws as a dangerous assault on their authority to enforce social order).
camping in certain public areas, 30% ban sleeping or lying in public places, 47% prohibit loitering in public places, and 47% restrict begging in certain public areas.\textsuperscript{81}

Although the traditional anti-begging statutes excluded the homeless from the public eye by punishing the lazy, modern laws seek to prohibit specific actions by beggars that hinder use of public areas.\textsuperscript{82} Contemporary laws are based upon the government’s regulatory interest and do not provide police with an unregulated discretion to make arbitrary arrests.\textsuperscript{83} Until the late 1990s, anti-begging laws were not questioned by legislators, civil rights organizations, or the homeless.\textsuperscript{84} Politicians, community groups, and individuals are slowly realizing that safeguarding public spaces “lies at the heart of the tension between individual freedom and communal security.”\textsuperscript{85} Thus, a debate has ignited the nation to force the judiciary into action as laws continue to criminalize homeless activities because civil rights organizations seek to preserve free speech and governments seek to maintain safety and civility in public spaces.\textsuperscript{86}

III. Presumption of Constitutionality

The First Amendment provides “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

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\begin{enumerate}
\item Kline, \textit{supra} note 33, at 276; see also Simon, \textit{supra} note 60 (stating that governments have adopted two methods to get rid of the homeless: performing homeless arrest sweeps and property sweeps).
\item See Chad \textit{v.} City of Fort Lauderdale, 861 F. Supp. 1057, 1059 (S.D. Fla. 1994) (providing examples of modern laws restricting actions by beggars to include banning sleeping or reclining in city parks, forbidding the storing of personal property in city parks, disallowing the removal of trash and debris from waste receptacles, and banning soliciting, begging, and panhandling); Teir, \textit{supra} note 54, at 292 (“While older laws were aimed at punishing the laggard and the lazy, the current measures are aimed at enabling the community to enjoy unimpeded passage through safe public spaces.”).
\item See State \textit{v.} Ecker, 311 So. 2d 104, 109 (Fla. 1975) (holding that a police officer must be able to point to specific facts that “reasonably warrant” an arrest for breach of the peace); Teir, \textit{supra} note 54, at 294 (stating that one of the main ways that modern anti-begging laws differ from the old statutes is that modern ordinances do not provide “unfettered discretion” to authorities to select who to arrest).
\item See Teir, \textit{supra} note 54, at 305 (finding that a reason for a lack of jurisprudence on the constitutionality of laws against begging is that the laws have not been questioned by legislators, civil libertarians, or beggars, until recently).
\item See \textit{id.}, at 287 (“Slowly, individuals, community groups, law enforcement officers, and politicians are coming to see that maintenance of order in public spaces ‘lies at the heart of the tension between individual freedom and communal security.’”).
\item See Kline, \textit{supra} note 33, at 276 (discussing the opposing views on how to handle the homelessness issue).
\end{enumerate}
\end{footnotesize}
press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."\(^{87}\) The First Amendment is applicable to the states via the Fourteenth Amendment Due Process and Equal Protection Clauses.\(^{88}\) Nevertheless, there is a general presumption of constitutionality when governments enact an ordinance or statute.\(^{89}\) However, the presumption is reversed in some cases dealing with the First Amendment right to free speech.\(^{90}\) The constitutionality of a governmental regulation that allegedly prohibits free speech depends upon whether the regulation is content-based or content-neutral and the nature of the forum involved.\(^{91}\) Regulations that restrict speech based on its content are presumptively invalid.\(^{92}\) As a result, the

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\(^{87}\) U.S. CONST. amend. I.
\(^{88}\) U.S. CONST. amend. XIV; Gitlow v. New York, 268 U.S. 652, 666 (1925) (holding that the Fourteenth Amendment required states to adhere to the First Amendment).
\(^{89}\) See Scullock v. State, 377 So. 2d 682, 683–84 (Fla. 1979) (holding that there is a presumption of constitutionality in every statutory analysis). But see United States v. Playboy Entm’t Grp., Inc., 529 U.S. 803, 817 (2000) (holding that the usual presumption of constitutionality afforded congressional enactments is reversed when the government restricts speech based on its content).
\(^{90}\) See Playboy, 529 U.S. at 816–17 (ruling that the usual presumption given to ordinances is reversed when the law is content-based). A content-based regulation will be upheld provided it survives strict scrutiny. Id. at 813.
\(^{91}\) See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 800 (1985) (upholding an executive order that excluded respondents from participation in a charity drive aimed at federal employees and military personnel since the order minimized disruption to the federal workplace, ensured the success of the fund raising effort, and avoided the appearance of political favoritism regardless of the viewpoint of excluded groups). The Campaign was held to be a nonpublic forum and thus, was subject to a reasonableness test. Id. at 797.
\(^{92}\) See Playboy, 529 U.S. at 817 (ruling that a law requiring cable operators either to scramble sexually explicit channels in full or limit programming on such channels to certain hours was a content-based restriction); R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) (finding that a city ordinance prohibiting bias-motivated disorderly conduct was content-based and presumptively invalid).
government bears the burden of proving the constitutionality of its laws. In this case, the usual presumptions of constitutionality are not reversed because the Ordinance is content-neutral.

A. Restriction of Protected Speech in a Public Forum

A traditional public forum is defined as property, a principle purpose of which is the free exchange of ideas. Streets, sidewalks, and parks are considered public forums since they have been used historically for the free exercise of expressive activities. In these public fora, the rights of municipalities and states are severely limited because they have “immemorially been held in trust for the use of the public . . . for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”

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93 See Playboy, 529 U.S. at 816–17 (finding that the government has the burden of proving the constitutionality of its actions when it restricts speech).

a) Purpose. The purpose of this section is to regulate and punish acts of panhandling or solicitation that occur at locations specified herein. The purpose of this section is not to punish the status or condition of any person. Regulation is required because panhandling in certain areas threatens the economic vitality of those areas, impairing the city’s long term goals of attracting citizens, businesses and tourist to these certain areas and, consequently, the city overall. The city has substantial interests in protecting the city’s investment in certain areas, protecting tourism, encouraging expansion of the city’s economic base, and protecting the city’s economy. The regulations in this section further these substantial interests: this section is not intended to proscribe any demand for payment for services rendered or goods delivered. Nor is this section intended to prohibit acts authorized as an exercise of a person’s constitutional right to legally picket, protest or speak. . . . c) Prohibitions. Soliciting, begging or panhandling is prohibited within the downtown business district . . . .

95 See, e.g., Playboy, 529 U.S. at 817 (inferring that the usual presumption of constitutionality is not reversed because the presumption is only reversed when a speech restriction content-based).
96 See Int’l Soc’y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 679 (1992) (holding that a regulation prohibiting solicitation in the interior of an airport terminal did not violate the First Amendment since the terminal was categorized as a nonpublic forum and passed the reasonableness test).
97 See United States v. Grace, 461 U.S. 171, 177 (1983) (ruling unconstitutional a statute prohibiting the display of any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement in the U.S. Supreme Court building and on its ground); Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45 (1983) (stating that governments may not ban all communicative activity in these quintessential public forums). The Government did not provide sufficient justification for the restriction on signs, and the building’s perimeter sidewalks were indistinguishable from other public sidewalks in the city that are normally open to the conduct that the statute forbids. Grace, 461 U.S. at 182–83.
98 Perry Educ. Ass’n, 460 U.S. at 45.
Nevertheless, the First Amendment does not guarantee the right to communicate a person’s views at all times and places or in any manner that may be desired.\(^9\) As Anatole France said, “La majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain.”\(^{100}\) As a result, governments may impose reasonable time, place, or manner restrictions on protected speech even in a public forum.\(^{101}\) Time, place, or manner restrictions may not be content-based.\(^{102}\) Content-neutral speech restrictions are subject to intermediate scrutiny.\(^{103}\) Solicitation\(^{104}\) is a form of speech that is subject to protection by the

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\(^9\) See Heffron v. Int’l Soc’y for Krishna Consciousness, Inc., 452 U.S. 640, 647 (1981) (holding that the First Amendment does not guarantee the right to communicate views whenever and however a person may want to express himself or herself); Adderley v. State, 385 U.S. 39, 47–48 (1966) (rejecting petitioner’s argument that was premised on the assumption that people have a constitutional right to propagandize their views at any time and in any manner they please).


\(^{101}\) See Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989); Clark v. Cnty. for Creative Non-Violence, 468 U.S. 288, 293 (1984) (holding that activities protected by the First Amendment are subject to reasonable time, place, or manner restrictions). The city’s regulation required bandshell performers to use sound amplification equipment and a sound technician provided by the city. Ward, 491 U.S. at 784. The ordinance was found to be content-neutral since the city’s justification of controlling noise levels at bandshell events, to retain the character of a certain area, had nothing to do with the content. Id. at 792. The ordinance was narrowly tailored to the government’s substantial interest in protecting its citizens from unwanted noise. Id. at 802.

\(^{102}\) See Heffron, 452 U.S. at 648 (“A major criterion for a valid time, place and manner restriction is that the restriction ‘may not be based upon either the content or subject matter of speech.’”); Burk v. Augusta-Richmond Cnty., 365 F.3d 1247, 1251 (11th Cir. 2004) (“[A] prior restraint may be approved if it qualifies as a regulation of the time, place, and manner of expression rather than a regulation of content.”).

\(^{103}\) See Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1258 (11th Cir. 2005) (holding that content-neutral regulations are subject to intermediate scrutiny while content-based regulations must face strict scrutiny).

\(^{104}\) Soliciting Definition. MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/soliciting (last visited Feb. 9, 2014) (defining soliciting as to make petition or approach with a request or plea for something, such as money).
First Amendment. “Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.”

Here, the Ordinance restricts soliciting in streets and sidewalks that are part of the Miami Downtown business district. Consequently, the Ordinance prohibits soliciting in a public forum. The Ordinance prohibits soliciting, begging, and panhandling, which are types of expression that are subject to these restrictions. Therefore, the activities prohibited by the Ordinance fall within speech protected by the First Amendment.

IV. Solution

A. Secondary Effects of Soliciting

Traditionally, courts have analyzed content-based and content-neutral speech restrictions according to strict or intermediate scrutiny tests, respectively. However, courts should not

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105 See Grace, 461 U.S. at 176 (holding that picketing and leafleting are expressive activities that involve speech protected by the First Amendment); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999) (stating that begging is a type of speech protected by the First Amendment); Loper v. N.Y.C. Police Dep’t, 999 F.2d 699, 703 (2d Cir. 1993) (finding that the solicitation the ordinance sought to restrict was entitled to receive First Amendment protection). But see Young v. N.Y.C. Transit Auth., 903 F.2d 146, 154 (2d Cir. 1990) (holding that begging fell outside the scope of speech protected by the First Amendment). This Comment will assume arguendo that the type of speech the Ordinance restricts is protected by the First Amendment.

106 Clark, 468 U.S. at 293 (holding that a regulation prohibiting camping and sleeping on certain parks was valid as content-neutral because it applied regardless of the message presented); accord Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 795 (1984); Grace, 461 U.S. at 177; Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45–46 (1983); Heffron, 452 U.S. at 647. The demonstration was primarily left intact, with its signs, and the presence of those who were willing to alternate turns in a vigil. Clark, 468 U.S. at 296.

107 See ORDINANCES § 37-8 (listing the areas where the restriction is imposed).

108 See, e.g., Grace, 461 U.S. at 177; Carey v. Brown, 447 U.S. 455, 460 (1980) (citing Hague v. Comm. for Indus. Org., 307 U.S. 496, 515 (1939)) (“Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”).

109 E.g., Krishna, 505 U.S. at 677 (finding that an ordinance restricting solicitation within airport terminals was the quintessential type of speech protected by the First Amendment); United States v. Kokinda, 497 U.S. 720, 725 (1990) (“Solicitation is a recognized form of speech protected by the First Amendment.”).

110 See Int’l Soc’y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 677 (1992) (upholding a regulation prohibiting solicitation in the interior of an airport terminal because the law did not violate the First Amendment since the terminal was categorized as a nonpublic forum and passed the reasonableness test); Heffron, 452 U.S. at 647 (holding that First Amendment protection is not lost simply because contribution or gifts are solicited).

111 See Foti v. Menlo Park, 146 F.3d 629, 635 (9th Cir. 1998).

For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The State may also enforce regulations of time, place, and manner of expression which are content-neutral, are
scrutinize this Ordinance according to these traditional tests. Instead, courts should analyze the Ordinance using the secondary effects test applied in Renton v. Playtime Theatres, Inc.

In Playtime Theatres, Inc., the municipality enacted a zoning ordinance restricting the location of adult movie theatres from locating from within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park, or school. The purpose of the ordinance was the prevention of crime, maintenance of property values, and protection of residential neighborhoods. The ordinance was not aimed at the content of the films shown, but rather at the secondary effects of adult theaters. The U.S. Supreme Court upheld the zoning ordinance under a hybrid test because it combated the negative secondary effects of adult theaters rather than the suppression of speech.

The U.S. Supreme Court initially developed the time, place, or manner test to review restrictions on expression taking place in public forums. However, the Court has also used this test to evaluate the validity of zoning regulations on private property. The secondary effects analysis applied in Playtime Theatres, Inc., has been interpreted to apply to cases outside of the narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

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113 Id. at 48.
114 Id. at 47.
115 See Playtime Theatres, Inc., 475 U.S. at 48 (recognizing that the city had a high and substantial interest in preserving the quality of urban life); Young v. Am. Mini Theatres, Inc., 427 U.S. 50, 72 (1976) (finding that a city’s interest in the present and future character of its neighborhoods was a constitutional restriction on free speech); R.V.S., LLC v. City of Rockford, 361 F.3d 402, 407 (7th Cir. 2004) (finding that the ordinance in Playtime Theatres, Inc. was an exception to the content-based rule since the ordinance was designed to decrease the secondary effects rather than speech). Regardless of the label, the correct inquiry was the purpose behind the ordinance instead of determining whether a restriction is content-based or content-neutral. R.V.S., 361 F.3d at 407. As a result, the ordinance should be subject to intermediate rather than strict scrutiny. Id.
116 See, e.g., Barnes v. Glen Theatre, Inc., 501 U.S. 560, 566 (1991) (plurality opinion) (noting that the time, place, or manner test was developed for evaluating restrictions taking place in areas known as public forums); Ward, 491 U.S. at 791 (“Our cases make clear, however, that even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech . . . .”); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1364 (11th Cir. 1999).
117 Barnes, 501 U.S. at 566 (plurality opinion) (referring to Playtime Theatres, Inc.); see Playtime Theatres, Inc., 475 U.S. at 47.
adult entertainment business context, even though the test has not been utilized in free speech cases before.\textsuperscript{118}

A three-prong test is utilized to determine if an ordinance violates the First Amendment: 1) whether the ordinance constitutes an invalid complete ban or merely a time, place, or manner regulation; 2) if the ordinance is determined to be a time, place, or manner regulation, whether the ordinance should be subjected to strict or intermediate scrutiny; and 3) if the ordinance is determined to be subject to intermediate scrutiny, whether the ordinance is narrowly tailored to serve a substantial government interest and allows for reasonable alternative channels of communication.\textsuperscript{119}

1. The Ordinance is Not a Total Ban on Protected Speech

The Ordinance only restricts soliciting in a single area within the entire City, namely the Downtown business district, and does not ban the substantive content of any particular message.\textsuperscript{120} Rather than acting as an outright prohibition on soliciting throughout the entire City, the Ordinance merely regulates the locations where the activity may occur.\textsuperscript{121} In addition, the Ordinance does

\textsuperscript{118} See, e.g., Barnes, 501 U.S. at 583–84 (Souter, J., concurring) (relying on the evidentiary standard described in \textit{Playtime Theatres, Inc.} to clarify the evidentiary showing necessary to uphold a public indecency ordinance); Johnson v. City of Pleasanton, 982 F.2d 350, 353 (9th Cir. 1992) (applying the time, place, or manner test to an ordinance regulating satellite signal reception and costs on satellite antenna users); see also San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024, 1033 n.5 (9th Cir. 2004) (noting that the framework in \textit{Playtime Theatres, Inc.} has been used to apply to cases outside of the “adult business” context).

\textsuperscript{119} See, e.g., \textit{Playtime Theatres, Inc.}, 475 U.S. at 46–54 (discussing the secondary effects analysis); see also Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860, 870 (11th Cir. 2007) (summarizing the framework in \textit{Playtime Theatres, Inc.}); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee Cnty., 337 F.3d 1251, 1264, 1266 (11th Cir. 2003) (interpreting the third step of the framework in \textit{Playtime Theatres, Inc.} to require narrow tailoring); Int’l Eateries of Am., Inc. v. Broward Cnty., 941 F.2d 1157, 1161–62 (11th Cir. 1991).

\textsuperscript{120} ORDINANCES § 37-8 (clarifying that the Ordinance is not meant to prohibit constitutional rights as well as delineating the limited areas the restriction applies to). Although the Ordinance does not define “soliciting,” the term appears to include requests for money, help, etc. \textit{Id.}

\textsuperscript{121} See ORDINANCES § 37-8 (defining the area where the restrictions are applicable); Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 116 (1991) (striking down a statute that required an accused or convicted criminal’s income from works describing his crime to be deposited in an escrow account). The statute was found to be content-based because it singled out speech even though the regulation was properly aimed at governmental concerns. \textit{Simon & Schuster}, 502 U.S. at 116, 118–19.
not effectively drive out certain ideas or viewpoints from the marketplace since the Ordinance prohibits soliciting only in certain areas of the Downtown business district. Persons are free to solicit anywhere outside the area outlined by the Ordinance, and as a result, the Ordinance is not a total ban on protected speech.

2. Intermediate Scrutiny

Restrictions on speech protected by the First Amendment have been upheld provided that the restriction is justified without reference to the content of the regulated speech. On one hand, a “government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” The fundamental principle regarding content-based regulations is not allowing the government to select the speech it prefers. Content-based regulations are subject to the strictest scrutiny, must serve a compelling state interest, and be narrowly tailored to achieve that interest.

The restriction imposed by the Ordinance does not reference the content of the regulated speech. Instead, the Ordinance applies equally to all solicitors, beggars, and panhandlers.

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122 See Simon & Schuster, 502 U.S. at 116 (finding that content-based regulations on speech effectively and unconstitutionally drive out certain ideas or viewpoints from the marketplace).
123 See Ordinances § 37-8 (listing the only areas within the Downtown business district that prohibit soliciting).
124 See Heffron, 452 U.S. at 648 (stating that the Court has approved restrictions of the same kind if they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that they leave open ample alternative channels for communication); Consolidated Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y., 447 U.S. 530, 535 (1980) (holding unconstitutional a regulation prohibiting public utility companies from inserting controversial issues of public policy in monthly bills since the law was content-based).
125 Playtime Theatres, Inc., 475 U.S. at 48-49 (quoting Police Dep’t of Chicago v. Mosley, 408 U.S. 92, 96 (1972); see also Solantic, 410 F.3d at 1259. As a general rule, laws that distinguish favored speech from disfavored speech based on the idea expressed are content-based while a content-neutral ordinance is one that makes no distinction on a particular idea. Solantic, 410 F.3d at 1259.
126 See Playtime Theatres, Inc., 475 U.S. at 48-49 (noting that the government may not use public forums only for views it does not object to); Mosley, 408 U.S. at 95 (“[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”).
127 See Simon & Schuster, 502 U.S. at 118 (stating that strict scrutiny requires the restriction to serve a substantial interest and is narrowly tailored to achieve the interest); Ark. Writers’ Project, Inc. v. Ragland, 481 U.S. 221, 231 (1987) (holding a statute that taxed general interest magazines, but exempted newspapers and religious, professional, trade, and sports journals to be content-based because in order to determine whether a magazine was subject to sales tax, enforcement officers had to examine the content of the message being conveyed).
128 Ordinances § 37-8.
regardless of the content of their speech.\textsuperscript{129} This equal restriction demonstrates that the City’s goal in enacting the Ordinance was not to select the speech it preferred.\textsuperscript{130} The purpose behind the Ordinance was to combat the secondary effects of soliciting such as increased criminal activity, and the negative impact on tourism and economic vitality.\textsuperscript{131}

Several cases regarding regulations that exempted certain categories of signs based on their content are distinguishable.\textsuperscript{132} For instance, regulations have been found to be content-based in cases in which some signs were extensively regulated while others were exempt from regulation.\textsuperscript{133} An ordinance is content-based when a police officer must read or listen to the expression to determine its legality.\textsuperscript{134} A police officer in these cases must necessarily read the signs to determine their legality because only certain types of signs are prohibited while others are not.\textsuperscript{135} Here, a police officer does not have to read or listen to the type of solicitation being expressed since all soliciting is banned.\textsuperscript{136} A prior restraint on speech may be constitutional if it survives intermediate scrutiny.\textsuperscript{137}

\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Id.; Playtime Theatres, Inc., 475 U.S. at 47.
\textsuperscript{132} See Solantic, 410 F.3d at 1252 (holding that the sign code violated the First Amendment).
\textsuperscript{133} See City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429 (1993) (holding the regulation to be content-neutral because of the city’s choice of a limited and selective prohibition on news racks); Foti v. Menlo Park, 146 F.3d 629, 636 (9th Cir. 1998). The ordinance banned the posting of signs on public property or the displaying of signs in the public right of way. Foti, 146 F.3d at 633–34. The law also contained several exemptions for temporary open house signs, signs placed by government entities, and public informational signs. Id. at 634.
\textsuperscript{134} See Writers’ Project, 481 U.S. at 230 (holding that official scrutiny of the content of publications is incompatible with the First Amendment); Foti, 146 F.3d at 636 (ruling that even though the ordinance banned all signs on all public property, the exemptions were content-based because a law enforcement officer must examine a sign’s message to determine if the sign was exempted from the ordinance).
\textsuperscript{135} See Writers’ Project, 481 U.S. at 230 (finding that since the articles dealt with a variety of subjects, enforcement authorities had to necessarily examine the content of message it conveyed); Foti, 146 F.3d at 636 (holding the regulation to be content-based because officers had to examine the content of signs to decide if the ordinance’s exception was applicable).
\textsuperscript{136} See ORDINANCES § 37-8 (banning only soliciting, panhandling, and begging); Foti, 146 F.3d at 636 (ruling that even though the ordinance banned all signs on all public property, the exemptions were content-based).
\textsuperscript{137} See Burk v. Augusta-Richmond Cnty., 365 F.3d 1247, 1251 (11th Cir. 2004) (ruling that a prior restraint may be approved if it qualifies as a time, place, or manner regulation instead of a ban on content).
On the other hand, to determine whether a regulation is content-neutral or content-based, courts must look to the purpose behind the regulation.\textsuperscript{138} Content-neutral regulations apply equally to all, rather than those with a specific message.\textsuperscript{139} Content-neutral speech restrictions are those that “are justified without reference to the content of the regulated speech.”\textsuperscript{140} As long as the justifications for regulation have nothing to do with the content the regulation is content-neutral.\textsuperscript{141}

A restriction intended to minimize secondary effects, rather than suppress speech, is subject to intermediate scrutiny.\textsuperscript{142} The latter is true even if the regulation is facially content-based.\textsuperscript{143} 

\textit{Boos v. Barry} illustrates the aforesaid by relying on \textit{Playtime Theatres, Inc.}, stating, “[s]o long as the justifications for regulation have nothing to do with content, \textit{i.e.}, the desire to suppress crime has nothing to do with the actual films being shown inside adult movie theaters, we concluded that the regulation was properly analyzed as content neutral.”\textsuperscript{144} The purpose of Miami’s Ordinance is

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\item[\textsuperscript{138}] See City of Los Angeles v. Alameda Books, 535 U.S. 425, 440–41 (2002) (plurality opinion) (holding that courts must verify if the “predominate concerns” motivating the ordinance are based on the secondary effects of speech); Bartnicki v. Vopper, 532 U.S. 514, 526 (2001) (stating that the purpose of the regulation is central to determining whether a law is content-based or content-neutral).
\item[\textsuperscript{139}] See Solantic, 410 F.3d at 1259 (finding that content-neutral ordinances apply equally to all); Burk, 365 F.3d at 1254 (noting that content-neutral regulations apply equally to all rather than those with a specific message or subject).
\item[\textsuperscript{140}] Boos v. Barry, 485 U.S. 312, 320 (1988) (quoting Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976)). Here, the statute prohibited persons from carrying signs critical of governments and prohibited congregation within a 500 foot zone surrounding embassies or consulates owned by foreign governments, but the statute also extended to other buildings if foreign officials were inside for an official purpose. \textit{Id.} at 316–17. The Supreme Court held the display clause to be content-based since it only prohibited one category of speech and was justified only by reference to the content of speech. \textit{Id.} at 319. However, the congregation clause was held to be valid because the clause was not overinclusive since it was site specific applying only within 500 feet of foreign embassies and not prohibiting peaceful congregations. \textit{Id.} at 331.
\item[\textsuperscript{141}] See \textit{id.} at 320 (stating that the regulation was properly analyzed as content-neutral if the reasons for the regulation had nothing to do with the content).
\item[\textsuperscript{142}] See Alameda Books, 535 U.S. at 448 (Scalia, J., concurring) (finding that an ordinance whose purpose was to prevent secondary effects rather than speech should be subject to intermediate scrutiny); \textit{Playtime Theatres, Inc.}, 475 U.S. at 48–49 (finding the ordinance to be subject to intermediate scrutiny); Solantic, 410 F.3d at 1258 (finding that a content-neutral regulation is subject to intermediate scrutiny); R.V.S., LLC v. City of Rockford, 361 F.3d 402, 407 (7th Cir. 2004) (holding that a law prohibiting speech based on its content was subject to intermediate scrutiny because the law was aimed at the secondary effects of the speech).
\item[\textsuperscript{143}] See Alameda Books, 535 U.S. at 448 (Scalia, J., concurring) (clarifying that the ordinance in \textit{Playtime Theatres, Inc.} was content-based since it described speech by its content). \textit{But see Playtime Theatres, Inc.}, 475 U.S. at 48 (holding the ordinance to be content-neutral).
\item[\textsuperscript{144}] Boos, 485 U.S. at 320 (agreeing with the framework in \textit{Playtime Theatres, Inc.} since the regulation applied to a specific type of speech and sought to prevent its secondary effects). In \textit{Boos}, a statute prohibited the display of any sign within 500 feet of a foreign embassy if that sign tended to bring public odium to that foreign government as well
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to preserve the economic vitality of the Downtown business district, and has nothing to do with the actual words that are spoken.\textsuperscript{145} This brings the Ordinance within the rule of \textit{Ward v. Rock Against Racism}, in which the court held that “[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.”\textsuperscript{146}

However, the emotional impact of speech on its audience is not a secondary effect, and thus a regulation that regulates speech because of its potential emotional impact must be considered content-based.\textsuperscript{147} The Miami Ordinance is aimed at the secondary effects of soliciting rather than the effect of the message.\textsuperscript{148} The Ordinance is not directed to the listener’s emotional reactions to soliciting.\textsuperscript{149} The purpose of the Ordinance is to preserve the economic vitality of the Downtown business district by regulating the secondary effects of soliciting, which would hinder tourism and expansion of the City’s economic base, and threaten the City’s economy.\textsuperscript{150}

The key inquiry is whether the city has demonstrated that the purpose of the Ordinance is to combat the negative secondary effects of soliciting.\textsuperscript{151} The burden of proof is not high.\textsuperscript{152} In

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\item \textsuperscript{143} See ORDINANCES § 37-8 (stating that the there was not a ban on all types of speech).
\item \textsuperscript{144} See \textit{Ward}, 491 U.S. at 791 (ruling the regulation to be valid even if it had an incidental impact on some messages); \textit{see also Playtime Theatres, Inc.}, 475 U.S. at 48 (finding the ordinance to be completely consistent with regulations that are justified without reference to the content of speech).
\item \textsuperscript{145} See Boos, 485 U.S. at 321 (finding the respondents’ justification to protect the dignity of foreign diplomatic personnel to be the primary effect in regulating picket signs in front of embassies rather than a secondary effect such as protecting the security of embassies or congestion and interference with egress and ingress).
\item \textsuperscript{146} See ORDINANCES § 37-8 (stating the reasons the Ordinance is required to reduce the effects of soliciting).
\item \textsuperscript{147} See Boos, 485 U.S. at 321 (ruling that listeners’ reactions do not count for secondary effects analysis).
\item \textsuperscript{148} See ORDINANCES § 37-8 (indicating that the regulation is required because soliciting threatens the economic vitality of certain areas, as listed in the Ordinance).
\item \textsuperscript{149} See \textit{Zibltuda, LLC v. Gwinnett Cnty.}, 411 F.3d 1278, 1285 (11th Cir. 2005) (finding the licensing scheme was subject to intermediate scrutiny since it was adopted to combat effects of adult entertainment businesses).
\item \textsuperscript{150} See \textit{id.} at 1286 (noting that the evidentiary standard the county faced was not high).
\end{itemize}
Playtime Theatres, Inc., the Court looked no further than the ordinance itself, which recited as its purpose the protection and preservation of the quality of life in the city.153

There are numerous secondary effects of speech, but the most common are increased crime, decreased property values, and neighborhood blight.154 Here, the Ordinance states that the "[r]egulation is required because panhandling in certain areas threatens the economic vitality of those areas, impairing the city’s long term goals of attracting citizens, businesses and tourists to these certain areas and, consequently, the city overall."155 The secondary effects of begging are the negative impact on tourism, increased criminal activity, and economic vitality.156 Accordingly, the Ordinance is properly treated as content-neutral because the predominate concern of the City enacting the Ordinance was to combat the secondary effects of soliciting.157

The Ordinance does not suppress free speech because the Ordinance’s predominate concern is aimed at the negative secondary effects of soliciting.158 Similarly, in Smith v. City of Fort Lauderdale, an ordinance prohibited begging in a five-mile strip along the beach and two

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153 See Playtime Theatres, Inc., 475 U.S. at 48 (looking no further than the face of the ordinance itself); Ziblituda, 411 F.3d at 1286 (ruling that the ordinance’s purpose was evident on its face because it was concerned with the preservation and protection of quality life in the city).

154 David L. Hudson, Jr., The Secondary Effects Doctrine: “The Evisceration of First Amendment Freedoms”, 37 Washburn L.J. 55 (1997). Secondary effects include: increased criminal activity, prostitution, residential privacy, visual clutter, interference with ingress and egress, traffic congestion, noise, security problems, appearances of impropriety, employment discrimination, economic vitality in business districts, property values, preserving the educational appearance of a college dormitory, preventing blockbusting, loss of a profession's integrity, identifying unfit judges, maintaining public order, equal employment opportunities, street crime associated with panhandling, negative effects of gambling, competition in the video programming market, congestion at the polls and confusion for election officials tabulating votes, delay and interference with voters, sexual arousal of readers, signal bleed and harm to children.

Id.

155 ORDINANCES § 37-8 (detailing the secondary effects of soliciting).

156 Id.

157 See, e.g., Playtime Theatres, Inc., 475 U.S. at 48 (finding the ordinance was designed to prevent crime, protect the city’s retail trade, and maintain property values); Ziblituda, 411 F.3d at 1285 (deciding to treat the ordinance as content-neutral since it was based on preventing secondary effects).

158 See Ziblituda, 411 F.3d at 1285 (finding the ordinance to be aimed at the secondary effects of adult businesses such as crime prevention).
adjacent sidewalks. The ordinance’s purpose was to provide a safe, pleasant environment, and eliminate nuisance activity on the beach. The city had the discretion to determine that begging in this limited beach area adversely impacted tourism. The suppression on begging did not burden “substantially more speech than necessary to further the government’s legitimate interest” and was mitigated by permitting begging in other public forums throughout the city. The court held that the ordinance was constitutional as a content-neutral regulation. Therefore, the Ordinance is a content-neutral restriction on speech that is justified without reference to the content of any particular speech and is properly analyzed as a time, place, or manner regulation. It is subject to intermediate scrutiny.

3. Substantial Government Interest

The City has a substantial interest in passing the Ordinance to protect tourism, encourage expansion of the City’s economic base, and protect the City’s economy. The legislative history of the Ordinance supports the Ordinance’s stated purpose. The legislative history indicates that

159 Smith, 177 F.3d at 955.
160 Id. at 956 (finding the ordinance’s purpose to serve a significant government interest).
161 Id.
162 Id. at 956–57.
163 See id., at 956–57 (stating that the ordinance was content-neutral, left reasonable alternative channels of communication open, served a substantial interest, and was narrowly tailored to serve its interest).
164 See Alameda Books, 535 U.S. at 448 (Scalia, J., concurring); Boos, 485 U.S. at 320 (holding that content-neutral restrictions are valid as long as they are justified without reference to the content of speech); Playtime Theatres, Inc., 475 U.S. at 48–49 (finding the ordinance to be content-neutral).
165 See Alameda Books, 535 U.S. at 448 (Scalia, J., concurring); Boos, 485 U.S. at 320; Playtime Theatres, Inc., 475 U.S. at 48–49.
166 See ORDINANCES § 37-8; Playtime Theatres, Inc., 475 U.S. at 48 (finding the purpose of the ordinance to protect the City’s retail trade and preserve the quality of life).
167 See ORDINANCES § 37-8 (stating that the purpose of the ordinance is to protect the City’s economic vitality). Contra CITY OF MIAMI, LEGISLATION ORDINANCE 13232, at 1 (2010), LEGISLATIVE HISTORY OF ORDINANCE § 37-8 (2010), available at http://egov.ci.miami.fl.us/Legistarweb/Attachments/60810.pdf (noting that the purpose of the restriction was to protect citizens from the “fear, harassment, and intimidation” attributable to soliciting). However, the legislative history also points out that the economic vitality of the City is adversely affected by soliciting, and the City’s goal is to provide tourists and the general public with a safe environment. MIAMI LEGIS. 13232.
the City has a substantial interest in promoting a safe environment for tourists and the general public.\textsuperscript{168}

The Court “will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.”\textsuperscript{169} However, a secondary effects rationale can be refuted by demonstrating that the city’s evidence does not support its rationale or by producing evidence that disputes the city’s factual findings.\textsuperscript{170} An ordinance will be upheld as long as the city can show that it relied on evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial government interest.\textsuperscript{171} Although the city must rely on some pre-enactment evidence, such evidence may consist of the city’s own findings, the experience of other cities, studies done in other cities, case law reciting findings on the issue as well as the city council’s own wisdom and common sense.\textsuperscript{172}

\textsuperscript{168} \textit{MIAMI LEGIS}. 13232.
\textsuperscript{169} United States v. O’Brien, 391 U.S. 367, 383 (1968) (pointing out that judicial inquiries as to purposes or motives behind the enactment of laws was a “hazardous matter”); see also \textit{Playtime Theatres, Inc.}, 475 U.S. at 48 (rejecting the notion from the Court of Appeals that if a motivating factor in enacting the ordinance was to restrict free speech, then the ordinance would be unconstitutional irrespective of the weight the factor had on the Council’s decision); \textit{Zibtluda}, 411 F.3d at 1288 (rejecting Zibtluda’s contentions as circumstantial, inferential, and remote). The Court also noted that the motives of one legislator may not be the reason why the regulation was enacted. \textit{O’Brien}, 391 U.S. at 384. Furthermore, the Court ruled that a law that would otherwise be valid would not be struck down because of the unwise motives of one legislator. \textit{Id}.
\textsuperscript{170} \textit{See Zibtluda}, 411 F.3d at 1288 (deciding that Zibtluda had not established sufficient evidence to prove improper motive); \textit{Peek-A-Boo Lounge}, 337 F.3d at 1265.
\textsuperscript{171} \textit{See Zibtluda}, 411 F.3d at 1286 (stating that the government is only required to have a reasonable basis for believing that the ordinance will further a legitimate interest); \textit{Peek-A-Boo Lounge}, 337 F.3d at 1265 (finding that the county failed to provide any evidence before enacting the ordinance).
\textsuperscript{172} \textit{See Daytona Grand, Inc. v. City of Daytona Beach}, 490 F.3d 860, 875 (11th Cir. 2007) (holding that a city must rely on at least some pre-enactment evidence); \textit{Zibtluda}, 411 F.3d at 1286; \textit{Peek-A-Boo Lounge}, 337 F.3d at 1265 (finding that the city had to rely on evidence reflecting the negative secondary effects at the time of enactment).

The board of commissioners expressly found that . . . [certain behavior] “begs criminal behavior and tends to create undesirable community conditions”; . . . contributes to . . . “disorderly conduct, prostitution, public solicitation, public indecency, drug use and drug trafficking”; . . . “depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior hereinabove described.” Accordingly, the board of commissioners found that it was “in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses [and] neighborhoods . . . to prevent or reduce the adverse impacts of adult entertainment establishments,” through . . . regulation.
“The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem the city addresses.”173 This burden is not a rigorous one.174 Nevertheless, the city must cite to some meaningful indication in the language of the ordinance or in the record of legislative proceedings that the city’s purpose was to combat the secondary effects rather than suppress protected speech.175 In addition, a court should be careful not to substitute its own opinion for that of the city, and the city’s legislative judgment should be upheld if the city can show that its judgment is still supported by credible evidence.176

Here, the Ordinance on its face meets this burden.177 Section (a) entitled “Purpose” plainly states that “[t]he city has substantial interests in protecting the city’s investment in certain areas, protecting tourism, encouraging expansion of the city’s economic base, and protecting the city’s

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173 Playtime Theatres, Inc., 475 U.S. at 51–52 (finding that the city could rely on the experiences of Seattle even though the city did not implement the same method Seattle choose); accord Daytona Grand, 490 F.3d at 875 (finding that the city did not have to generate new studies independent of those already conducted by other cities to meet its initial burden); Zibtluda, 411 F.3d at 1286 (stating that new studies were not required).

174 See Zibtluda, 411 F.3d at 1286 (“We do not conceive this burden as a rigorous one”); Peek-A-Boo Lounge, 337 F.3d at 1266 (finding that the city had not satisfied the weak condition set forth in Playtime Theatres, Inc.).

175 See Zibtluda, 411 F.3d at 1286 (noting that the county must cite to meaningful language in the code itself or in the legislative history); Daytona Grand, 490 F.3d at 876 (finding that the ordinance itself stated the secondary negative effects endangering the health and welfare of its residents).

176 See Daytona Grand, 490 F.3d at 876 (finding that a city can establish its burden by citing to Supreme Court cases as well as relying on its own experiences); Peek-A-Boo Lounge, 337 F.3d at 1273 (finding that the county had not met their burden since the petitioner had produced sufficient evidence to cast doubt on the county’s outdated and foreign studies).

177 See ORDINANCES § 37-8; MIAMI LEGIS. 13232 (stating that the ordinance does not intend to discriminate on free speech).
Similarly, a Fort Lauderdale ordinance banning soliciting, begging, and panhandling along the city’s beach and adjacent sidewalk was held to be content-neutral because it applied evenly to all persons regardless of their agenda. The same Fort Lauderdale ordinance was upheld in another case because the city made the discretionary determination that begging in the beach area as defined by the ordinance adversely impacts tourism. Notably, the City found from its own experience that enforcement of the ordinance had been successful in the past. Therefore, the Ordinance serves a substantial interest in protecting the Downtown business district from the negative secondary effects of soliciting.

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178 ORDINANCES § 37-8 (stating that the City’s interest is in preserving the economic base); see also MIAMI LEGIS. 13232 (noting several reasons for imposing time, place, or manner restrictions in the Downtown business district). Among the various reasons the City sought to regulate soliciting were to “improve the quality of life, maintain and further expand the economic vitality of this area of the City, [and] protect the safety of the general public . . . .” MIAMI LEGIS. 13232. Furthermore, the history indicates that “the City has a responsibility to provide tourists and the general public with a safe, pleasant environment in which to enjoy the City’s assets, and the safety of the public is threatened by the presence of panhandlers . . . .” Id.

179 ORDINANCES § 37-8 (explaining that the City’s intention is not to suppress speech).

180 See Clark, 468 U.S. at 296 (finding the city had a substantial interest in maintaining the city’s parks); Chad v. City of Fort Lauderdale, 861 F. Supp. 1057, 1063 (S.D. Fla. 1994) (finding the ordinance’s aim to maintain safety on the beach and preserve the beach for recreational activity). Furthermore, the Court found that the city had a legitimate interest in removing a nuisance activity in the city’s famous beach as well as providing citizens and visitors with a safe, pleasant, and aesthetic environment. Chad, 861 F. Supp. at 1063.

181 See Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999) (stating that without second guessing the city’s judgment, the court could not conclude that banning begging in the beach area burdened more speech than necessary to further the city’s interest); One World One Family Now v. City of Miami Beach, 175 F.3d 1282, 1287 (11th Cir. 1999) (finding that the city was allowed to make a discretionary judgment that removing tables from the west side of Ocean Drive would serve the city’s interest in alleviating obstacles to pedestrian flow).

182 See MIAMI LEGIS. 13232 (“[T]he establishment of the no-panhandling zone has been successful in addressing the negative impacts of panhandling within the Downtown business district and contributing to the revitalization of Downtown . . . .”).

183 See generally Smith, 177 F.3d at 956 (holding that the city had a legitimate interest in preserving its beaches); Chad, 861 F. Supp. at 1063 (finding the city to have a substantial interest in protecting its beaches).
4. **Narrowly Tailored**

A law is narrowly tailored when it promotes a substantial government interest that would be achieved less effectively absent the regulation.\(^\text{184}\) However, the ordinance need not be the least restrictive means of serving the city’s interest to be narrowly tailored.\(^\text{185}\) Critics contend that the City’s interest might be served by prohibiting only aggressive soliciting.\(^\text{186}\)

Opponents of the Ordinance correctly point out that courts have agreed that prohibitions on soliciting are content-based.\(^\text{187}\) However, those cases are distinguishable because the ordinance in those cases prohibited soliciting in *all public places*.\(^\text{188}\) A statute that completely prohibits soliciting in all public places cannot be considered narrowly tailored because the statute does not leave open alternative means of communication and because it does not regulate the time, place, or manner of expression.\(^\text{189}\)

Conversely, in *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, the ordinance prohibited *all* persons or organizations, whether commercial or charitable, who wished to distribute materials during a state fair to do so from fixed locations.\(^\text{190}\) The ordinance in *Playtime*
Theatres, Inc., was constitutional because it did not ban adult theaters altogether, but rather prohibited such theaters in certain areas.\textsuperscript{191} The Miami Ordinance is within the City’s constitutional authority because it limits soliciting in the Downtown business district only.\textsuperscript{192} Every place is a free speech zone, except the Downtown business district.\textsuperscript{193}

Furthermore, critics contend that the Ordinance is not narrowly tailored to its stated goal of protecting the City’s economic vitality because the Ordinance is underinclusive in that it does not include political, religious, commercial, or other types of speech that could threaten economic vitality.\textsuperscript{194} Rather than imposing an underinclusiveness limitation, the First Amendment imposes a content discrimination limitation on a state’s prohibition of speech.\textsuperscript{195} A statute is underinclusive when the regulation does not provide a person of ordinary intelligence fair notice of the restriction, or the regulation authorizes or encourages discriminatory enforcement.\textsuperscript{196} Perfect clarity and precise guidance has never been required from legislation that restricts expressive activity.\textsuperscript{197} The Ordinance in dispute only prohibits certain types of speech, namely soliciting, begging, and

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\item \textsuperscript{191} See Playtime Theatres, Inc., 475 U.S. at 46 (finding that the ordinance was narrowly tailored to affect only the category of adult theaters shown to produce undesirable secondary effects).
\item \textsuperscript{192} See ORDINANCES § 37-8 (listing the areas the Ordinance applies to).
\item \textsuperscript{193} Id.
\item \textsuperscript{194} See Playtime Theatres, Inc., 475 U.S. at 52–53 (rejecting respondents’ contention that the ordinance was underinclusive because it failed to regulate other kinds of adult businesses that were also likely to produce negative secondary effects similar to those produced by adult theaters). The Court found that the city’s decision to address a single problem created by one particular kind of adult business was not synonymous with discriminating against adult theaters. Id. Furthermore, the city may in the future select to include other kinds of adult businesses that produce negative secondary effects. Id. at 53.
\item \textsuperscript{195} See R.A.V. v. City of St. Paul, 505 U.S. 377, 387 (1992) (stating that a state’s prohibition of obscenity only in certain media or markets did not discriminate on the basis of content).
\item \textsuperscript{196} See United States v. Williams, 553 U.S. 285, 304 (2008) (upholding the validity of a restriction on solicitation of child pornography).
\item \textsuperscript{197} See id. (holding that there was no indeterminacy since the statute required clear questions of fact rather than subjective notions); Ward, 491 U.S. at 794 (stating that the guideline was not susceptible to respondent’s facial challenge).
\end{itemize}
panhandling.\textsuperscript{198} The Ordinance is also easily understood by lay persons to mean no soliciting since the language of the Ordinance is plain and direct.\textsuperscript{199}

In addition, a government may not prohibit more speech than is necessary to further the government’s goal.\textsuperscript{200} For a law to be overbroad it must “be substantial, not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.”\textsuperscript{201} Even though a law is considered invalid when it is overinclusive, it is not a common judicial remedy.\textsuperscript{202} The overbreadth doctrine has been utilized by the Supreme Court sparingly and should only be used as a last resort because of the “wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment.”\textsuperscript{203} The City’s interest is not to reduce all types of speech, but to prevent the negative secondary effects associated with soliciting by reducing only soliciting in a certain area.\textsuperscript{204} As a result, the Ordinance is not underinclusive or overinclusive.\textsuperscript{205} In addition, local governments must be allowed a reasonable opportunity to experiment with solutions to the city’s serious problems.\textsuperscript{206} Therefore, the

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\item \textsuperscript{198}See ORDINANCES § 37-8 (listing only soliciting, panhandling, and begging as the types of speech the prohibition applies to).
\item \textsuperscript{199}See id. (identifying only three types of speech).
\item \textsuperscript{200}See Ward, 491 U.S. at 798 (finding that the statute was not overly broad); Smith v. City of Fort Lauderdale, 177 F.3d 954, 957 (11th Cir. 1999) (ruling that the ordinance was not overinclusive since begging was only banned in the beach area).
\item \textsuperscript{201}Williams, 553 U.S. at 292 (holding the statute not to be overbroad); see also Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973) (finding the regulation not to be substantially overbroad).
\item \textsuperscript{202}See Williams, 553 U.S. at 293 (finding that invalidating a statute for overbreadth should only be used sparingly); R.A.V. v. City of St. Paul, 505 U.S. 377, 413 (1992) (finding the ordinance to be facially overbroad).
\item \textsuperscript{203}See Williams, 553 U.S. at 293 (stating that invalidation for over inclusiveness is strong medicine that is not to casually employed); L.A. Police Dept. v. United Reporting Publ’g Corp., 528 U.S. 32, 39 (1999); Horton v. City of St. Augustine, 272 F.3d 1318, 1332 (11th Cir. 2001) (holding an ordinance not overinclusive since the law specified a limited area in which distinct types of expression were prohibited).
\item \textsuperscript{204}See ORDINANCES § 37-8 (outlining the City’s interest in protecting the Downtown business district).
\item \textsuperscript{205}See generally Horton, 272 F.3d at 1331–32 (finding the ordinance not to be underinclusive or overinclusive); Smith, 177 F.3d at 957 (finding the ordinance not to be overinclusive).
\item \textsuperscript{206}See Playtime Theatres, Inc., 475 U.S. at 52 (finding no defect in the city’s method of regulation to further its substantial interests); Peek-A-Boo Lounge, 337 F.3d at 1274 (finding the ordinance to be overinclusive).
\end{itemize}
Ordinance is narrowly tailored since the Ordinance limits soliciting only in the Downtown business district as defined in the Ordinance.\textsuperscript{207}

5. Reasonable Alternative Channels of Communication

A prohibition on speech may be mitigated by alternative channels of communication.\textsuperscript{208} In \textit{Playtime Theatres, Inc.}, the ordinance left approximately 520 acres or more than 5\% of the land area of the city open to use as adult theater sites.\textsuperscript{209} Here, the Ordinance comprises only a certain portion of the Downtown area and 6\% of the entire City.\textsuperscript{210} However, an alternative method of communication may be constitutionally insufficient if the speaker’s ability to communicate successfully is hindered.\textsuperscript{211}

Nevertheless, restrictions have been upheld when the legislation in question has not been shown to deny access within the public forum in question.\textsuperscript{212} In \textit{Heffron}, the Supreme Court upheld a rule that required “all persons, groups or firms which desire to sell, exhibit or distribute materials during the annual State Fair . . . [to] do so only from fixed locations on the fairgrounds.”\textsuperscript{213}

\textsuperscript{207} See generally \textit{Playtime Theatres, Inc.}, 475 U.S. at 52 (finding the city’s decision of concentrating adult theaters to a designated area instead of them dispersing them to be up to the city’s discretion); \textit{Young v. Am. Mini Theatres, Inc.}, 427 U.S. 50, 71 (1976) (holding that the Court’s job is not to appraise the wisdom of the city in selecting a method to regulate).

\textsuperscript{208} See \textit{Smith}, 177 F.3d at 957 (stating that the ban on begging in the beach was mitigated by permitting begging in other public forums throughout the city).

\textsuperscript{209} See \textit{Playtime Theatres, Inc.}, 475 U.S. at 53 (finding that 520 acres consisted of ample and accessible real estate). Furthermore, the Court rejected the Court of Appeals, which found that many sites were not truly available since the sites were occupied by other existing businesses. \textit{Id.} 53–54. The Court held that the First Amendment did not guarantee businesses to obtain sites at bargain prices. \textit{Id.} at 54.

\textsuperscript{210} See \textit{Downtown Neighborhood, City-Data.com}, \url{http://www.city-data.com/neighborhood/Downtown-Miami-FL.html} (last visited Sept. 28, 2012) (indicating the Downtown area is comprised of 2.117 square miles); \textit{Miami Neighborhood, City-Data.com}, \url{http://www.city-data.com/city/Miami-Florida.html} (last visited Sept. 28, 2012) (showing Miami land area to be 35.7 square miles).

\textsuperscript{211} See \textit{Heffron}, 452 U.S. at 655 (finding that the rule did not prohibit access within the public forum); \textit{Bay Area Peace Navy v. United States}, 914 F.2d 1224, 1229 (9th Cir. 1990) (finding unconstitutional a restriction around the pier prohibiting civilian boats from entering the day of the Navy parade because respondents could not convey their peaceful anti-war messages to their intended audience).

\textsuperscript{212} See \textit{Heffron}, 452 U.S. at 655 (finding the rule to provide ample alternative means to solicit and sell on the fairgrounds); \textit{Bay Area}, 914 F.2d at 1229 (finding that the seventy-five foot water zone rendered the Navy’s demonstration completely ineffective).

\textsuperscript{213} \textit{Heffron}, 452 U.S. at 643 (finding that the organization may distribute, sell, and solicit on the fairgrounds by arranging for a booth).
rule did not prevent practicing Sankirtan\textsuperscript{214} anywhere outside the fairgrounds.\textsuperscript{215} In addition, the rule did not exclude respondents from the fairgrounds.\textsuperscript{216}

Similarly, the Ordinance limits the ban to a limited area in the City.\textsuperscript{217} The Ordinance does not prevent begging anywhere outside this limited Downtown area.\textsuperscript{218} The Ordinance does not exclude beggars from the Downtown business district.\textsuperscript{219} Solicitors, beggars, and panhandlers enjoy expressive communication anywhere outside of the Downtown business district as well as the inside the Downtown area.\textsuperscript{220}

Even though the Downtown business district may be a busy city center encompassing the best resources for destitute persons, legislation is not invalid because the government’s interest could have been served by a less restrictive speech alternative.\textsuperscript{221} \textit{Schneider v. New Jersey}, is distinguishable because the regulation was struck down due to the ordinance prohibiting the distribution of printed material in all streets and alleys of the entire city, while leaving persons free to distribute materials in other public places such as parks.\textsuperscript{222} Here, the Ordinance does not prohibit soliciting in all streets, sidewalks, and other public forums in the entire City nor does the Ordinance limit begging in the entire Downtown area; the Ordinance only prohibits soliciting in the Downtown business district.\textsuperscript{223}

\textsuperscript{215} See Heffron, 452 U.S. at 655 (holding that the rule did not prevent the organization from practicing their religion inside or outside of the fairgrounds).
\textsuperscript{216} See id. (finding that members may mingle among the crowd).
\textsuperscript{217} ORDINANCES § 37-8 (specifying the areas where soliciting is restricted).
\textsuperscript{218} Id.
\textsuperscript{219} Id.
\textsuperscript{220} Id.
\textsuperscript{221} See Ward, 491 U.S. at 800 (upholding the city’s determination that its interest in controlling volume would be better served by requiring bandshell performers to use the city’s sound technician despite alternative regulatory methods in limiting sound volume); Clark, 468 U.S. at 299 (stating that the judiciary’s role is not to judge the amount of protection required for parks or the method of doing so).
\textsuperscript{222} See Schneider v. New Jersey, 308 U.S. 147, 151 (1939) (holding that public places such as streets are natural places for the dissemination of ideas).
\textsuperscript{223} See ORDINANCES § 37-8.
In addition, the expense and convenience of the alternative must be considered in determining whether ample alternative modes of communication exist as well as whether the alternative is a practical substitute.\textsuperscript{224} In \textit{City of Ladue v. Gilleo}, the Court determined that the added costs of taking out a newspaper advertisement and being unable to reach the speaker’s intended audience where not practical alternative channels of communication, and thus, the law was struck down.\textsuperscript{225}

However, in \textit{Horton v. City of St. Augustine}, the ordinance prohibiting street performers from performing in a four block area was found to provide ample alternative means.\textsuperscript{226} The Ordinance in this case leaves ample open space outside the Ordinance’s restricted area including areas within the Downtown area.\textsuperscript{227} Critics point out that it is not practical for destitute persons to travel outside of the Downtown business district in the morning and return in time to secure a place in the shelter-bed line.\textsuperscript{228} However, this reasoning overlooks the fact that shelter homes exist outside of the Downtown business district such as Camillus House.\textsuperscript{229} Furthermore, the Ordinance does not prohibit soliciting in the entire Downtown area, and the Downtown business district

\textsuperscript{224} See \textit{City of Ladue v. Gilleo}, 512 U.S. 43, 57 (1994) (finding that yard or window signs may have no practical substitute for persons of modest means or of limited mobility); State v. O’Daniels, 911 So. 2d 247, 253 (Fla. Dist. Ct. App. 2005) (striking down an ordinance that sought to restrict street performers from taking up a fixed position in the entire municipality since performing on the move was not a practical substitute).

\textsuperscript{225} See \textit{Gilleo}, 512 U.S. at 57 (noting that residential signs were a convenient and cheap way to communicate); \textit{Members of City Council v. Taxpayers for Vincent}, 466 U.S. 789, 812 (1984) (stating that there were ample alternative modes of communication).

\textsuperscript{226} See \textit{Horton}, 272 F.3d at 1334 (ruling that the ordinance left a wide open space outside the ordinance’s restricted area); ISKCON, Miami, Inc. v. Metro. Dade Cnty., 147 F.3d 1282, 1290 (11th Cir. 1998) (finding that the zones the Director of MIA set were adequate despite ISKCON’s expert testimony that the current zones were not the best zones for the promotion of expressive ideas).

\textsuperscript{227} See ORDINANCES § 37-8.


cannot be said to be the only place where people walk, eat, and shop.\textsuperscript{230} Therefore, the Ordinance does provide ample alternative means of communication.\textsuperscript{231}

V. Conclusion

The Ordinance should pass constitutional muster under the secondary effects analysis because the Ordinance seeks to protect the City’s economic vitality and tourism base rather than suppressing free speech.\textsuperscript{232} The Ordinance serves a substantial government interest that is narrowly tailored to achieve its interest to protect the economic vitality of the Downtown business district by limiting the prohibition on speech to the areas listed in the Ordinance.\textsuperscript{233} Furthermore, the Ordinance leaves ample open alternative channels for communication because it does not proscribe solicitors, beggars, and panhandlers from the entire City nor does the Ordinance exclude beggars from the entire Downtown area.\textsuperscript{234} In conclusion, the Ordinance does not violate the First Amendment.\textsuperscript{235}

\textsuperscript{230} See ORDINANCES § 37-8.
\textsuperscript{231} See generally Horton, 272 F.3d at 1334 (holding that the regulation did provide for ample alternatives); ISKCON, 147 F.3d at 1290 (ruling that the law had ample alternative means of communication).
\textsuperscript{232} See supra Part IV.A.3; supra text accompanying note 94.
\textsuperscript{233} See supra Part IV.A.3–4.
\textsuperscript{234} See supra Part IV.A.5.
\textsuperscript{235} See supra Part IV.