

PRESENTED AT

26th Annual Land Use Conference

April 21-22, 2022

Austin, TX

Regulating the Homeless
A Dispassionate, Apolitical Examination
of Panhandling and Anti-Camping Ordinances

Thomas A. Gwosdz

Regulating the Homeless.
*A Dispassionate, Apolitical Examination
of Panhandling and Anti-Camping Ordinances*

Thomas A. Gwosdz
City Attorney
Victoria, Texas
(361) 485-3520
TGwosdz@VictoriaTx.org

Four of Thomas's five children are teenagers this year, including a 19 year old daughter, a twin sixteen-year-old sons, and a thirteen year old son.

Thomas has therefore adopted an official department policy requiring "warm, clean and [most of all] calm" client service. Thomas has represented the City in numerous real estate transactions (including the purchase of property for a proposed wastewater treatment plant), a few successful economic development projects (including the final assembly plant for large yellow-and-black hydraulic excavators), and exactly zero criminal indictments (zero and counting).

Thomas was staff attorney at the Texas Association of School Boards, where he enjoyed both travelling the state teaching school board members why they couldn't fire the football coach, and coming home to a small house in the Texas hill country filled to the brim with five wonderful children and a strong Texas woman.

Thomas has also represented large corporate clients in transactions involving too many zeroes between the dollar-sign and the decimal.

Due to the eight years he spent teaching high school English to reluctant teenagers, Thomas eschews obfuscation whenever possible, and delights in reducing complex, convoluted Texas law to practical paradigms.

Outside of the office, Thomas maintains his sanity by riding a bicycle as fast as possible. Thomas has been signing his email messages with his initials since before Al Gore invented the internet, and he contains his mild exasperation that no one has yet started calling him Tag.

Regulating the Homeless.

A Dispassionate, Apolitical Examination of Panhandling and Anti-Camping Ordinances

Thomas A. Gwosdz
City Attorney
Victoria, Texas
(361) 485-3520
TGwosdz@VictoriaTx.org

Regulating the Homeless: This will be a dispassionate review of the legal limitations on ordinances designed to control or eliminate panhandling and camping. We'll breeze through the first, fifth, eighth, and fourteenth amendments, the equal protection clause, and the due process clause, in a session designed to give city attorneys the tools needed to either draft an ordinance tailored to their city, or to tell their mayor why they can't.

- 1) **Panhandling.** Soliciting “donations or payment” is a form of speech protected by the First Amendment. *See Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980) (“[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests — communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes — that are within the protection of the First Amendment.”). Through the due process clause of the Fourteenth Amendment, the First Amendment applies to a municipal government such as the City. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1268 (11th Cir. 2004); *Homeless Helping Homeless, Inc. v. City of Tampa, Florida*, No. 8:15-CV-1219-T-23AAS, 2016 WL 4162882, at *3 (M.D. Fla. Aug. 5, 2016). When a city attempts to regulate panhandling, it must confront the inherent barriers imposed by this First Amendment protection.
 - a) **Prohibiting Panhandling Based on the Content of the Speech.** The most common method of regulating panhandling in Texas is the “Aggressive Panhandling” approach, in which the City allows panhandling, but prohibits panhandling in an aggressive manner. These “time, place and manner” restrictions may have historically survived under an intermediate scrutiny examination, but are less likely to survive in a post-*Reed* analysis.
 - i) *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including Temporary Directional Signs, Political Signs, and Ideological Signs. Good News Community Church and its pastor, Clyde Reed were cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The Supreme Court held that the sign ordinance was content based, and therefore subject to strict scrutiny:

“The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Regulating the Homeless

Also available as part of the eCourse

[2022 Land Use eConference](#)

First appeared as part of the conference materials for the

26th Annual Land Use Conference session

"Homelessness and Panhandling"