

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

OCCUPY FORT MYERS, CINDY BANYAI,
STEPHANIE DARST, CHRISTOPHER
FAULKNER, F. FRANK GUBASTA, ZACHARY
KUHN, HILARY MAINS, MATT McDOWELL,
MICHELLE MEYER, LUIS OSPINA, RYAN
POGUE, FRANK PRATT, MARLENE ROBINSON,
and JUSTIN VALO,

Plaintiff,

vs. Case No. 2:11-cv-00608-FtM-29DNF

CITY OF FORT MYERS,

Defendant.

PRELIMINARY INJUNCTION

This matter came before the Court on Plaintiffs' Motion for Preliminary Injunction, filed on October 25, 2011. (Doc. #74.) Plaintiff's Verified Complaint (Doc. #1) alleges that four ordinances of the City of Fort Myers, Florida on their face violate plaintiffs' constitutional rights. For the reasons stated in an Opinion and Order filed November 15, 2011 (Doc. #47), the Court granted in part and denied in part Plaintiffs' Motion for Preliminary Injunction.

The Court finds, as more fully set forth in the Opinion and Order, which is incorporated herein, the following:

1. Plaintiffs have established that they are substantially likely to succeed on the merits as to the claims that Ordinance 86-153(a) is unconstitutional on its face as a violation of the First Amendment to the United States Constitution. Ordinance 86-153(a) states:

- (a) No parade or procession upon any street of the city, and no open-air public meeting upon any public property shall be permitted unless a special permit shall first be obtained. Any person desiring a permit under this section shall make written application to the chief of police or some duly authorized member of the police

department. Permits issued under this section shall be printed or written, duly signed by the chief of police or some duly authorized member of the police department after approval, and shall specify the day, hour, place and purpose of such parade, procession or open-air public meeting.

Fort Myers, Fla. Ordinance § 86-153(a).

2. Plaintiffs have established that they are substantially likely to succeed on the merits as to the claims that the **highlighted** portion of Ordinance 58-156(a) is unconstitutional on its face as a violation of the First Amendment to the United States Constitution. Ordinance 58-156(a) states:

Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours shall be posted for public information. Normal park hours are 6:00 a.m. to 10:30 p.m. unless posted otherwise by the recreation manager. **Such hours shall be deemed extended by the recreation manager as necessary to accommodate athletic sports events, or cultural or civic activities.**

Fort Myers, Fl., Code of Ordinances § 58-156(a).

3. Plaintiffs have established that they are substantially likely to succeed on the merits as to the claims that the **highlighted** portion of Ordinance 58-154(6) is unconstitutional on its face as a violation of the First Amendment to the United States Constitution. Ordinance 58-154(6) states:

(6) Loitering and boisterousness. Sleep **or protractedly lounge** on the seats, benches, or other areas, or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct **or behavior tending to a breach of the public peace.**

Fort Myers, Fl., Code of Ordinances § 58-154(6).

4. Plaintiffs have established that there is a substantial threat

of irreparable injury if a preliminary injunction is not granted which prohibits enforcement of the Ordinance 86-153(a) and the highlighted portions of Ordinance 58-156(a) and Ordinance 58-154(6).

5. Plaintiffs have established that their injury resulting from enforcement of these Ordinances outweighs the potential injury to the City of Fort Myers if the preliminary injunction is granted; and

6. Plaintiffs have established that an injunction barring enforcement of these Ordinances would not harm or do a disservice to the public interest.

Accordingly, it is now

ORDERED:

1. Until further order of the Court, the City of Fort Myers, Florida, and all of its officials, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are enjoined and restrained from taking any action, directly or indirectly, to enforce:

(a) the entirety of Ordinance 86-153(a), which states:

No parade or procession upon any street of the city, and no open-air public meeting upon any public property shall be permitted unless a special permit shall first be obtained. Any person desiring a permit under this section shall make written application to the chief of police or some duly authorized member of the police department. Permits issued under this section shall be printed or written, duly signed by the chief of police or some duly authorized member of the police department after approval, and shall specify the day, hour, place and purpose of such parade, procession or open-air public meeting.

(b) the **highlighted** portion of Ordinance 58-156(a), which states:

Except for unusual and unforeseen emergencies,

parks shall be open to the public every day of the year during designated hours. The opening and closing hours shall be posted for public information. Normal park hours are 6:00 a.m. to 10:30 p.m. unless posted otherwise by the recreation manager. **Such hours shall be deemed extended by the recreation manager as necessary to accommodate athletic sports events, or cultural or civic activities.**


(c) The **highlighted** portion of Ordinance 58-154(6), which states:

(6) Loitering and boisterousness. Sleep **or protractedly lounge** on the seats, benches, or other areas, or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct **or behavior tending to a breach of the public peace.**

2. Plaintiffs shall post a cash or surety bond with the Clerk of Court of \$100.00 **within five (5) days** of this Preliminary Injunction for the payment of such costs and damages as may be incurred or suffered by defendant should it later be determined that defendant was wrongfully enjoined.

3. This Preliminary Injunction is binding upon defendant, its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the Preliminary Injunction by personal service or otherwise.

DONE AND ORDERED at Fort Myers, Florida, this 15th day of November, 2011.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record