

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JUDITH MINAHAN and JOANN
O'CONNELL,

Plaintiffs,

v.

Case No. 2:14-cv-629-FtM-29DNF

CITY OF FORT MYERS, FLORIDA
and DAVID CONTICELLI, Fort
Myers Police Officer, in his
personal and official capacities,

Defendants.

CONSENT JUDGMENT AND ORDER

Upon stipulation and consent of the parties, the Court finds as follows:

1. The Plaintiffs exercise their First Amendment rights in public forums in the City of Fort Myers, Florida. In particular, for approximately the last ten years, the Plaintiffs have exercised their First Amendment rights on the public sidewalk located at 3900 Broadway Avenue, Fort Myers, Florida (hereafter “the complex”).

2. On October 2, 2014, the Defendant, David Conticelli (“Officer Conticelli”), an officer with the Police Department of the Defendant, City of Fort Myers (the “City”), discussed the scope and applicability of Section 86-2, Subpart A of Chapter 86 of the Code of Ordinances of the City of Fort Myers, entitled “Cruising” (hereafter “the Ordinance”) with the Plaintiffs and two other individuals on the public sidewalk in front of the complex.

3. On October 28, 2014, the Plaintiffs brought this action alleging that the Ordinance violates their constitutional rights, both on its face and as applied to their speech and activities on public sidewalks.

4. On December 16, 2014, this Court granted in part and denied in part the Plaintiffs' motion for a preliminary injunction.

5. The Plaintiffs and the Defendants (the "Parties") subsequently reached an agreement to settle this action, as set forth herein.

**NOW, THEREFORE,
IT IS HEREBY ORDERED AND ADJUDGED:**

1. Except as otherwise provided herein, the Plaintiffs may engage in the following activities on the public sidewalk at the complex: (i) standing in one place, (ii) sitting in chairs, (iii) sidewalk counseling, (iv) praying, (v) holding signs, (vi) engaging with pedestrians who wish to engage with them, (vii) engaging with individuals in vehicles who wish to engage with them, and/or (viii) distributing literature to those who wish to receive it.

2. The Plaintiffs may not engage in any of the conduct listed immediately above in paragraph 1(i) through (viii) in a manner that hinders or impedes the free and uninterrupted passage of vehicles, traffic, or pedestrians. As such, the Plaintiffs may engage in the conduct listed in paragraph 1(i) through (viii) so long as they (i) move aside so that pedestrians who choose not to engage with them can continue on their way, and (ii) do not engage with vehicles in such a way that those vehicles prevent other vehicles from entering and/or exiting the complex.

3. When a vehicle approaches the entrance or exit to the complex, the Plaintiffs may attempt to communicate to the vehicle's occupants through signs, verbal

communications, movements, and the like, the fact that they desire to share information with them, provided, however, that the Plaintiffs shall not do so in such a way that it causes that vehicle to prevent other vehicles from entering and/or exiting the complex.

4. In addition, the Plaintiffs may approach, engage in conversations with, and hand literature to individuals who are located inside vehicles entering or leaving the complex, provided, however, that the Plaintiffs shall not do so in such a way that it causes that vehicle to prevent other vehicles from entering and/or exiting the complex.

5. When the Plaintiffs attempt to initiate a discussion with individuals who are inside a vehicle entering or leaving the complex, the Plaintiffs will remain on the public sidewalk and/or the public right of way.

6. The Plaintiffs will not physically block the path of any vehicle, thereby preventing the occupants from continuing to drive into or out of the complex, nor will the Plaintiffs state or imply that they are parking attendants or otherwise affiliated with the property owner or any of the tenants at the complex.

7. If, during the course of the Plaintiffs' interactions with any interested drivers and/or passengers, another vehicle approaches the same entrance to, or exit from, the complex, heading in the same direction as the temporarily stopped vehicle, the Plaintiffs will promptly end their discussion. A momentary, unintended delay experienced by the vehicle approaching the same entrance to, or exit from, the complex heading in the same direction as the temporarily stopped vehicle while Plaintiffs promptly end their discussion will not be deemed to be a violation of this Consent Judgment and Order and/or the Ordinance.

8. The Ordinance shall be interpreted and enforced by the Defendants against the Plaintiffs in a manner consistent with this Consent Judgment and Order.

9. Before any party seeks any relief with respect to this Consent Judgment and Order, the party's counsel shall confer with opposing counsel in a good faith effort to resolve the issues about which the party intends to seek relief. Should that fail to resolve the issues, the party's counsel shall file a statement certifying that he has conferred with opposing counsel and the sides were unable to resolve the issues.

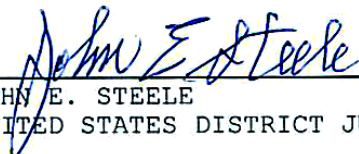
10. The City agrees that it will inform the Chief of the Fort Myers Police Department about the terms of this Consent Judgment and Order and provide him with a copy of it.

11. All claims against Officer David Conticelli as set forth in the complaint in this action are dismissed with prejudice.

12. The claims against the City, as set forth in the complaint in this action, are hereby dismissed. This Court shall retain jurisdiction over the Plaintiffs and the City and the subject matter of this action for the purpose of enforcing this Consent Judgment and Order.

13. The Parties shall bear their own attorneys' fees and costs in this action.

14. The Clerk shall terminate all pending motions and deadlines, and close the file.



JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

Dated: February 27, 2015