

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
CASE NO. 11-33223 CA 25

SILVIO MEMBRENO and
FLORIDA ASSOCIATION OF
VENDORS, INC.,

Plaintiffs

v.

THE CITY OF HIALEAH, FLORIDA,

Defendant. /

**ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT
AND FINAL JUDGMENT IN FAVOR OF CITY OF HIALEAH**

THIS CAUSE came before the Court on Defendant City of Hialeah's Motion for Summary Judgment ("City's Motion") and Plaintiffs' Amended Motion for Summary Judgment ("Plaintiffs' Motion"). The Court, having reviewed the City's Motion, Plaintiffs' Motion, and the file, having heard argument of counsel on June 13, 2014, and being otherwise fully advised in the premises, it is **HEREBY ORDERED AND ADJUDGED:**

The City's Motion is **GRANTED**, and Plaintiffs' Motion is **DENIED** as follows:

This case arises out of Plaintiffs' challenges to the constitutionality of sections 18-302 and 18-304 of the City's Code of Ordinances Chapter 18, Article VI, Division 2 (the "Ordinance"). These sections regulate itinerant vendors and peddlers in the City. Plaintiffs, who are peddlers and itinerant vendors in the City, argue that the Ordinance violates the vendors' right to be rewarded for industry and Florida's due process clause and that the Ordinance is unconstitutionally vague. In their three-count Amended Complaint, Plaintiffs seek declaratory relief and a permanent injunction. Plaintiffs also assert one count for *ultra vires* application of

Fla. Stat. § 337.406, alleging that the City's enforcement of a portion of this provision within a municipality exceeds statutory authority and is therefore invalid.

The Court finds that there is no fundamental right at issue, and the parties do not dispute that the rational basis standard applies. In accordance with the rational basis standard and for the reasons argued by the City on the record, the Court finds that there are legitimate interests supporting the challenged Ordinance provisions and that the challenged Ordinance provisions are rationally related to such legitimate government interests. The Court also finds that Section 18-302 of the Ordinance is not unconstitutionally vague because, as a matter of law, it puts individuals of common intelligence and understanding on notice of the conduct that is proscribed. Therefore, the Court grants summary judgment in favor of the City on Count I.

As to Count II, the Court finds that the language of Fla. Stat. § 337.406(1) is facially clear that it is applicable within a municipality, and thus the City's enforcement of the statute is not *ultra vires*.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the City's Motion is **GRANTED** for the reasons stated on the record, and Plaintiffs' Motion is **DENIED** for the reasons stated on the record.

Final judgment is entered in favor of the City and against Plaintiffs. Plaintiffs shall take nothing from their claims against the City and shall go hence without day. This Court reserves jurisdiction to determine all appropriate costs associated with this matter.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/23/14.



JORGE E. CUETO
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials JEC

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.
Copies furnished to:

All parties listed on the attached Service List

SERVICE LIST

Michael Fertig
Jennifer Cohen Glasser
Akerman LLP
1 SE 3rd Avenue, 25th Floor
Miami, Florida 33131

Justin Pearson
Claudia Edenfield
Institute for Justice
999 Brickell Avenue, Suite 720
Miami, FL 33131