

NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 08 CR 12362

STATE OF NORTH CAROLINA)
)
v.)
)
PETER N. BARBEAU)
)
_____)

ORDER

RECEIVED DISTRICT COURT DIVISION
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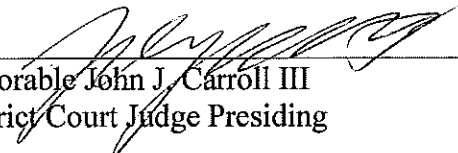
THIS CAUSE was heard before the undersigned District Court Judge assigned to hold court at the October 27, 2008 term of New Hanover County District Court upon the Defendant's Motion to Dismiss. The Court has reviewed the pleadings, the submissions of the parties, and has heard the arguments of counsel and is of the opinion that Wilmington Code of Ordinances Section 6-16(b)(6), is an overbroad and hence unconstitutional restriction on speech in violation of the First Amendment to the United States Constitution. *Davenport v. City of Alexandria*, 748 F.2d 208 (4th Cir. 1984) & 710 F.2d 148 (4th Cir. 1984); *Goldstein v. Town of Nantucket*, 477 F. Supp. 606 (D. Mass. 1979); *Friedrich v. City of Chicago*, 619 F. Supp. 1129 (N.D. Ill. 1985).

Live entertainment is protected speech under the First Amendment. *Davenport*, 710 F.2d at 150 n.6. Further, "the law draws no distinction between expression which generates a profit and expression which does not." *Id.* Solicitation statutes, such as Wilmington's, that effect a total ban on solicitation are not narrowly tailored and do not leave open ample alternatives for communication. *Davenport*, 748 F.2d at 210 (quoting *Davenport*, No. 81-709A (E.D. Va. Nov. 16, 1983); *Loper v. New York City Police Dep't*, 999 F.2d 699, 704-05 (2d Cir. 1993); *Thompson v. City of Chicago*, No. 01 C 6916, 2002 WL 31115578, at *4 (N.D. Ill. Sept. 24, 2002).

Pursuant to N.C.G.A. § 15A-954(a)(1), this Court “on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that . . . [t]he statute alleged to have been violated is unconstitutional on its face or as applied to the defendant.”

NOW THEREFORE, based on the foregoing, it is ORDERED, ADJUDGED and DECREED that this case is dismissed with prejudice, based on the unconstitutionality of Wilmington Code of Ordinances Section 6-16(b)(6), both on its face and as applied to Defendant .

This the 3 day of Nov, 2008.



Honorable John J. Carroll III
District Court Judge Presiding