

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, and DAVID H.
PICKUP,

CASE NO. 8:17-cv-2896-T-36AAS

Plaintiffs,

v.

CITY OF TAMPA,

Defendant.

DEFENDANT, CITY OF TAMPA'S, NOTICE OF FILING DVDs WITH THE
CLERK OF COURT IN ACCORDANCE WITH THE COURT'S ORDER DATED
MARCH 15, 2018

In accordance with the Court's Order dated March 15, 2018 (Doc. 51), a copy of which is attached hereto as Exhibit "A", Defendant City of Tampa ("City") is hereby filing with the Clerk of Court a true and correct copy of DVDs of City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017, and April 6, 2017. On January 10, 2018, the City's counsel provided Plaintiffs' counsel, via overnight mail, with a true and correct copy of the aforesaid DVDs of City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017 and April 6, 2017.

Respectfully submitted,

/s/ Jerry M. Gewirtz

Jerry M. Gewirtz, Esquire

Florida Bar No. 0843865

Primary: Jerry.Gewirtz@tampagov.net

Secondary: Kimber.Spitsberg@tampagov.net

Robin Horton Silverman, Esquire

Florida Bar No. 0027934
Primary: Robin.Horton-Silverman@tampagov.net
Secondary: Laytecia.McKinney@tampagov.net
5th Floor, City Hall, 315 E. Kennedy Boulevard
Tampa, Florida 33602
Telephone: (813) 274-8996
Facsimile: (813) 274-8777
Attorneys for Defendant, City of Tampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2018 the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system, which will also send a notice of electronic filing to all counsel of record.

By: /s/ Jerry M. Gewirtz
Jerry M. Gewirtz, Esquire

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO and
DAVID H. PICKUP,

Plaintiffs,

v.

Case No.: 8:17-cv-2896-T-36AAS

CITY OF TAMPA,

Defendant.

ORDER

The City of Tampa asks the court to take judicial notice of: a certified copy of Tampa City Ordinance 2017-47; a certified copy of the City Clerk file related to Ordinance 2017-47; Tampa City Council meeting transcripts; and DVDs of Tampa City Council meetings. (Docs. 24–27). Messrs. Vazzo and Pickup object to the City of Tampa’s requests. (Doc. 44).

I. GENERAL BACKGROUND

Messrs. Vazzo and Pickup challenge the constitutionality of Ordinance 2017-47. (Doc. 1). As part of their claim, Messrs. Vazzo and Pickup request declaratory, preliminary, and permanent injunctive relief, as well as damages. (*Id.*). They also moved for a preliminary injunction enjoining the City of Tampa’s enforcement of Ordinance 2017-47. (Doc. 3). The City of Tampa (“the City”) responded to the plaintiffs’ request for a preliminary injunction and moved to dismiss the case. (Docs. 22, 23). The City also submitted four notices of filing materials the City claims are relevant to the court’s determination in the underlying case. (Docs. 24–27). The court construes these notices of filing as motions to take judicial notice of the City’s exhibits.

II. DISCUSSION

The City moves for judicial notice of four categories of evidence. (Docs. 24–27). First, the City asks the court to take judicial notice of a certified copy of Ordinance 2017-47. (Doc. 24). The City points out that Ordinance 2017-47 is central to the plaintiffs’ claims. (*Id.* at 2). This certified copy includes sixteen documents on which the City claims it relied when enacting Ordinance 2017-47. (*Id.*, Ex. 1–7). The City asserts that the court should take judicial notice of the certified copy of Ordinance 2017-47, including the sixteen documents upon which the City relied in enacting Ordinance 2017-47, so the court can consider the ordinance in its entirety before ruling on its constitutionality. (*Id.* at 3).

Second, the City asks the court to take judicial notice of a certified copy of the City Clerk file related to Ordinance 2017-47. (Doc. 25). The City Clerk file includes: memoranda; correspondence; agendas; drafts of Ordinance 2017-47; letters to the Tampa City Council from a licensed social worker, a minister, and a doctor; and material from the Family Research Council. (*Id.*, Ex. 1–2). The City claims these materials are “central” to the plaintiffs’ challenge on the constitutionality of Ordinance 2017-47. (*Id.* at 2).

Third, the City asks the court to take judicial notice of transcripts of Tampa City Council meetings in which individuals offered public comments on Ordinance 2017-47 prior to its enactment. (Doc. 26). The proffered transcripts are excerpts in which the public presented testimony about the subject matter Ordinance 2017-47 would cover. (*Id.*, Ex. 1–4). The City asserts that the transcripts are authentic and would assist the court in determining the ordinance’s constitutionality. (*Id.* at 2–3).

Last, the City asks the court to take judicial notice of DVDs of the Tampa City Council

meetings in which the council presented Ordinance 2017-47 for reading and adoption. (Doc. 27). The City claims that the DVDs include public testimony from individuals about the ordinance's subject matter. (*Id.* at 2). The City requests leave to submit the DVDs with the Clerk of Court. (*Id.*). The City argues the court should take judicial notice of the DVDs once submitted because the DVDs are authentic and the best evidence of Tampa City Council proceedings relating to Ordinance 2017-47. (*Id.* at 2–3).

Messrs. Vazzo and Pickup object to each of the City's requests for judicial notice. (Doc. 44). They argue that the City's evidence is irrelevant, reasonably disputed, and contains hearsay. (*Id.* at 2). Specifically, Messrs. Vazzo and Pickup argue that the testimony contained in the evidence the City proffers is irrelevant to their First Amendment challenge to Ordinance 2017-47. (*Id.* at 5). Vazzo and Pickup submit that testimony supporting Ordinance 2017-47 does not permit the City to infringe on the plaintiffs' constitutional rights. (*Id.*). Also, Messrs. Vazzo and Pickup oppose judicial notice of the public testimony the City proffers because, according to the plaintiffs, that testimony "is composed entirely of hearsay and double hearsay from ideological supporters of the Ordinance." (*Id.* at 6). The plaintiffs claim that the public statements, despite being entered into the City Council's legislative record, cannot be judicially noticed because the City failed to prove the truth of the statements. (*Id.* at 9–10). According to the plaintiffs, judicial notice of the City's proffered public statements would be an abuse of discretion because the statements are irrelevant. (*Id.* at 10–11).

A court may take judicial notice of an adjudicative fact that is not subject to reasonable dispute if the fact (1) is generally known within the court's jurisdiction, or (2) can be readily determined by sources whose accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b).

Adjudicative facts are facts relevant to a determination of claims presented in a case. *Dippin' Dots, Inc. v. Frosty Bites Dist., LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004) (citation omitted). The effect of judicial notice under Rule 201 is to preclude a party from introducing contrary evidence. *U.S. v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (citation omitted). Thus, for a fact to be judicially noted under Rule 201(b) it must be indisputable. *Id.* (citation omitted). Courts may not take judicial notice of hearsay statements subject to reasonable dispute. *Id.* at 1153–54.

The court will analyze the materials the City submitted in two categories.

A. Certified Copy of Ordinance 2017-47

Ordinances that are central to a case are judicially noticeable. *Peterson v. City of Greenville*, 373 U.S. 244, 256–57 (1963). If the party requesting judicial notice of a fact provides the court with necessary information to determine the accuracy of the fact to be noticed, the court must take judicial notice. Fed. R. Evid. 201(d).

Here, the City provided the court with a certified copy of Ordinance 2017-47, which is at the heart of this litigation. (Doc. 24, Ex. 1–7). Messrs. Vazzo and Pickup do not dispute the authenticity of the City's certified copy of the ordinance. Therefore, it is appropriate to take judicial notice of the City's certified copy of Ordinance 2017-47.

B. City Clerk File, Transcripts, and DVDs

A court may take judicial notice of relevant public documents for the purpose of determining what the documents contain and not to prove the truth of the documents' contents. *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999). This rule also applies to videos, articles, and public proceedings. *Turner v. Wells*, 879 F.3d 1254, 1272 (11th Cir. 2018); *N.L.R.B. v. Goya Foods of Fla.*, 525 F.3d 1117, 1138 n.30 (11th Cir. 2008). However, the materials

must still be relevant under Federal Rule of Evidence 401. *Vallot v. Cent. Gulf Lines, Inc.*, 641 F.2d 347, 351 (5th Cir. Unit A 1981).¹

Here, the City Clerk file, the transcripts of the legislative proceedings about Ordinance 2017-47, and the DVDs of the legislative proceedings, are public materials. Messrs. Vazzo and Pickup do not dispute the authenticity of these three materials the City submitted. Instead, Messrs. Vazzo and Pickup argue that the statements contained in the City Clerk file, transcripts, and DVDs contain hearsay statements that should not be judicially noticed. (Doc. 44, pp. 7–10). The plaintiffs are correct. Therefore, it would only be appropriate to take judicial notice of the City Clerk file, transcripts, and DVDs for the fact that those are official public materials related to Ordinance 2017-47. The court may not take judicial notice of the truths alleged in the public materials because the truth of those statements are reasonably disputed by the plaintiffs.

Messrs. Vazzo and Pickup argue the public materials are irrelevant to their underlying cause of action. (Doc. 44, pp. 3–6, 10–11). They argue that because public testimony cannot justify a law that violates the First Amendment, the materials including public testimony are not relevant to this case. (*Id.*). However, in its response to the plaintiffs' motion for a preliminary injunction, the City argues that the court should employ intermediate scrutiny in determining the constitutionality of Ordinance 2017-47. (Doc. 23, pp. 8–16). To withstand intermediate scrutiny, the government must prove that its challenged law serves important governmental objectives and that the law is substantially related to achieving those objectives. *Craig v. Boren*, 429 U.S. 190, 197 (1976). In applying intermediate scrutiny in *Craig*, the Supreme Court noted that legislative materials would have helped the Court determine the government objectives served by the

¹ The Eleventh Circuit adopted the former Fifth Circuit's decisions as binding precedent. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

challenged law in that case. *Craig*, 429 U.S. at 200 n.7. Thus, legislative history is relevant in a case in which intermediate scrutiny may apply. *See* Fed. R. Evid. 401 (stating that evidence is relevant if it has any tendency to make a fact more probable and is of consequence to determining the case). Therefore, the City's legislative materials, which include public testimony, are relevant to its defense of Ordinance 2017-47.

III. CONCLUSION

The City's construed motions for judicial notice (Docs. 24–27) are **GRANTED** to the extent that the court judicially notes that the City's Clerk file, transcripts, and DVDs are official public materials related to Ordinance 2017-47. The court does not take judicial notice of the truth of the statements contained in the City's Clerk file, transcripts, or DVDs. The City may submit with the Clerk of Court a true and correct copy of its DVDs of City Council meetings held on: February 16, 2017; March 2, 2017; March 16, 2017; and April 6, 2017.

ORDERED in Tampa, Florida on this 15th day of March, 2018.



AMANDA ARNOLD SANSONE
United States Magistrate Judge