ACLU Illinois | CHICAGO COALITION FOR THE HOMELESS | NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

August 28, 2018

VIA EMAIL

Richard Veenstra, Corporation Counsel
Law Department
44 E Downer Pl
Aurora IL 60505
rveenstra@aurora-il.org

Dear Mr. Veenstra:

We write regarding Section 29-16(a)(6) of the Aurora Municipal Code (the "Ordinance"), under which a person commits disorderly conduct if he or she "[g]oes about begging or soliciting funds on the public ways." This absolute ban on begging in Aurora violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution, because "begging" is a form of protected speech. We therefore ask that the Aurora Police Department immediately cease enforcement of the Ordinance, that the City Council take prompt steps to repeal it, and that any pending charges under the Ordinance be dismissed.

Courts have long recognized that requesting money is a form of constitutionally protected speech, and that laws restricting it must adhere to First Amendment norms.[1] Accordingly, courts have for decades rejected wholesale bans on panhandling, such as the one in Aurora's Ordinance.[2]

Moreover, since the landmark ruling of *Reed v. Town of Gilbert, Ariz.*[3] in 2015, every federal court to consider the matter – including the Seventh Circuit – has struck down statutes that specifically target panhandling, including prohibitions on "aggressive" panhandling and panhandling in specific locations.[4] Indeed, just last week the Central District of Illinois invalidated a prohibition on "panhandling while at any time before, during, or after the solicitation knowingly approaching within five feet of the solicited person or intentionally touching the solicited person without the solicited person's consent."[5] These courts have found

---

[1] *See, e.g., Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) (holding charitable solicitation protected by the First Amendment); *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000) (noting that "the Court's analysis in *Schaumburg* suggests little reason to distinguish between beggars and charities in terms of the First Amendment protection for their speech.")
[2] *See, e.g., Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Loper v. New York City Police Department*, 999 F.2d 699 (2nd Cir. 1993).
[3] 135 S. Ct. 2218 (June 18, 2015).
[4] *See Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, No. CV 13-40057-TSH, 2015 WL 6872450 (D. Mass. Nov. 9, 2015); *McLaughlin v. Lowell*, No. 14-10270-DPW, 2015 WL 6453144 (D. Mass. Oct. 23, 2015) *Browne v. City of Grand Junction*, No. 14-cv-00809-CMA-KLM, 2015 WL 5728755 (D. Col. Sep. 30, 2015).
[5] *Norton v. City of Springfield*, 15-3276, 2018 WL 3964800 (C.D. Ill. Aug. 17, 2018).

that laws specifically targeting panhandling are content-based, and are not narrowly tailored to serve a compelling government interest, as the First Amendment requires.

Given these precedents, the Aurora ordinance, which prohibits *all* "begging" at *any* time or place cannot survive a court challenge. First, the Ordinance serves no compelling state interest. Distaste for a certain type of speech, or a certain type of speaker, is not even a *legitimate* state interest, let alone a *compelling* one. Shielding unwilling listeners from messages disfavored by the state is likewise not a permissible state interest. As the Supreme Court explained, the fact that a listener on a sidewalk cannot "turn the page, change the channel, or leave the Web site" to avoid hearing an uncomfortable message is "a virtue, not a vice."[6]

Second, even if the City could identify a compelling state interest, there is no evidence to demonstrate that the Ordinance is "narrowly tailored" to such an interest. Theoretical discussion is not enough: "the burden of proving narrow tailoring requires the County to prove that it actually *tried* other methods to address the problem."[7] The City may not "[take] a sledgehammer to a problem that can and should be solved with a scalpel."[8]

For these reasons, among others, the Ordinance cannot pass constitutional muster. Further, it is simply not good policy. Harassing, ticketing and/or arresting people who ask for help in a time of need is inhumane and counterproductive. Unlawful anti-panhandling ordinances such as Aurora's are costly to enforce and only exacerbate problems associated with homelessness and poverty. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run.[9]

For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter.[10] In opening the Center, Philadelphia Mayor Jim Kenny emphasized, "We are not going to arrest people for being homeless," stressing that the new space "gives our homeless outreach workers and the police a place to actually bring people instead of just scooting them along." These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

The City should place an immediate moratorium on enforcement and dismiss any pending charges under the Ordinance. The City should then promptly repeal the Ordinance and

---

[6] *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992). ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.").

[7] *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015).

[8] *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1294 (D. Colo. 2015) (holding ordinance restricting time, place, and manner of panhandling was unconstitutional).

[9] *See* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), https://www.nlchp.org/documents/Housing-Not-Handcuffs.

[10] *See* Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station,* WHYY (Jan. 30, 2018) https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/.

develop approaches that will lead to the best outcomes for all the residents of Aurora, housed and unhoused alike.

Because the City's enforcement of its ban on "begging" is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the Aurora police will immediately stop enforcing the Ordinance; that any pending charges under the ordinance, or resulting from arrests under the Ordinance, will be dismissed; and that the City Board will swiftly repeal the Ordinance. If the City does not comply, the ACLU of Illinois and the Chicago Coalition for the Homeless will be forced to consider legal options to protect the rights of panhandlers in Aurora.

Should you wish to discuss this further, please do not hesitate to contact Rebecca Glenberg at (312) 201-9740, ext. 316 or rglenberg@aclu-il.org. Thank you for your attention to this matter.

Sincerely,

Rebecca K. Glenberg
Senior Staff Counsel

Diane O'Connell
Community Lawyer
Chicago Coalition for the Homeless

Eric S. Tars
Senior Attorney
National Law Center on Homelessness & Poverty