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VIA EMAIL

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Dear Messrs. Baricevic and Chatham:

We write regarding Section 98-3 of the East St. Louis Code of Ordinances (the “Ordinance”), which makes it unlawful for a person without “a lawful permit or legal authority while on, at or adjacent to a public street, sidewalk, alley or right-of-way, to solicit a ride, seek contributions or employment, or to offer goods or services for sale to another who is a motorist or pedestrian” (Section A), or for such a person to obstruct vehicle or pedestrian traffic “by soliciting or loitering” (Section B). Both sections of the Ordinance violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution. We therefore ask that the East St. Louis 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.

Section A of the Ordinance amounts to a wholesale ban on panhandling on public ways in the City. 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 complete bans on panhandling, such as the one in Section A.²

Moreover, since the landmark ruling of *Reed v. City of Gilbert, Ariz.*³ in 2015, every federal court to consider the matter – including the Seventh Circuit – has struck down statutes

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).

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

Under the post-*Reed* cases, both sections of the Ordinance are unconstitutional. 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

To the extent that Section B of the Ordinance is meant to further “public safety,” it is still unconstitutional because it is not narrowly tailored to serve that important government interest. The City may prohibit the obstruction of pedestrian and vehicular traffic, but it may not specially target panhandling for regulation. Panhandlers pose no greater threat to public safety than does any other person who obstructs traffic. (Please note that although this letter focuses on panhandling prohibitions, it is also unconstitutional to target “loitering” as Section B does.⁷)

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 the one in East St. Louis 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.⁸

For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a City subway station by donating an abandoned section of the station to a service provider for use as a day shelter.⁹ In opening the Center, Philadelphia Mayor Jim Kenny

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).

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 *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

⁸ 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>.

⁹ 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/>

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 to avoid litigation, and then develop approaches that will lead to the best outcomes for all the residents of East St. Louis, housed and unhoused alike.

Because the City’s enforcement of the Ordinance is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the East St. Louis 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 East St. Louis.

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,



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