

August 28, 2018

**VIA EMAIL**

Martin J. Shanahan, Jr., Corporation Counsel  
City Hall  
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Dear Mr. Shanahan:

We write regarding Sections 21-5(e) and 22-2(a) of the Joliet Municipal Code (collectively, the Ordinances). Section 21-5(3) states that a person commits disorderly conduct when he knowingly “[g]oes about begging or soliciting funds on the public ways, except as provided in this Code or other ordinances of the city.” Section 22-2(a) provides that “[n]o person shall stand on a highway or street for the purpose of soliciting contributions from the occupant of any vehicle” except for licensed charitable organizations engaged in statewide fundraising activity. The Ordinances violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution, because “begging” and solicitation are forms of protected speech. We therefore ask that the Joliet Police Department immediately cease enforcement of the Ordinances, that the City Council take prompt steps to repeal them, and that any pending charges under the Ordinances 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.<sup>1</sup> Accordingly, courts have for decades rejected wholesale bans on panhandling, such as the one in Section 21-5(e).<sup>2</sup>

Moreover, since the landmark ruling of *Reed v. Town of Gilbert, Ariz.*<sup>3</sup> in 2015, every federal court to consider the matter – including the Seventh Circuit – has struck down statutes that specifically target panhandling.<sup>4</sup> 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

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<sup>1</sup> 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.”)

<sup>2</sup> 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).

<sup>3</sup> 135 S. Ct. 2218 (June 18, 2015).

<sup>4</sup> 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).

touching the solicited person without the solicited person’s consent.”<sup>5</sup> 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 these precedents, Section 22-2(a) is also 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.”<sup>6</sup>

To the extent that Section 22-2(a) 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 regulate persons entering streets and highways, but it may not specially target panhandling for such regulation. Entering a street to ask for money is no more dangerous than entering a street for any other purpose. If it were, the City would not allow licensed charitable organizations to engage in exactly the same conduct.

For these reasons, among others, the Ordinances cannot pass constitutional muster. Further, they are 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 Joliet’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.<sup>7</sup>

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.<sup>8</sup> 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 Ordinances. The City should then promptly repeal the Ordinances,

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<sup>5</sup> *Norton v. City of Springfield*, 15-3276, 2018 WL 3964800 (C.D. Ill. Aug. 17, 2018).

<sup>6</sup> *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.”).

<sup>7</sup> 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>.

<sup>8</sup> See Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station*, WHY Y (Jan. 30, 2018) <https://why.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/>.

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

Because the City's enforcement of the Ordinances is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the Joliet police will immediately stop enforcing the Ordinances; that any pending charges under the Ordinances, or resulting from arrests under the Ordinances, will be dismissed; and that the City Council will swiftly repeal the Ordinances. 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 Joliet.

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](mailto:rglenberg@aclu-il.org). Thank you for your attention to this matter.

Sincerely,



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