

August 28, 2018

**VIA EMAIL**

Maureen Riggs, City Attorney  
City Hall  
619 16th Street  
Moline, IL 61265  
mriggs@moline.il.us

Dear Ms. Riggs:

We write regarding Section 20-6104 of the Moline Code of Ordinances (the “Ordinance”), which prohibits panhandlers from standing “on or in the vicinity of a roadway” to request contributions but allows other speakers to do so. The Ordinance violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution, because it is overbroad and because it draws distinctions based on the content or viewpoint of a person’s speech. We therefore ask that the Moline 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.<sup>1</sup> Since the landmark ruling of *Reed v. Town of Gilbert, Ariz.*<sup>2</sup> in 2015, every federal court to consider the matter—including the Seventh Circuit—has struck down statutes that specifically target panhandling.<sup>3</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 touching the solicited person without the solicited person’s consent.”<sup>4</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.

The City’s Ordinance discriminates based on content in two ways. First, it addresses solicitation for rides, employment, or contributions, but not other forms of solicitation, such as a

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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> 135 S. Ct. 2218 (June 18, 2015).

<sup>3</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).

<sup>4</sup> *Norton v. City of Springfield*, 15-3276, 2018 WL 3964800 (C.D. Ill. Aug. 17, 2018).

request for petition signatures. Second, the Ordinance allows registered, licensed charities engaged in statewide fundraising to go into the streets to ask for contributions, but not anybody else—including local charities or individuals seeking personal contributions.

Even if the Ordinance were not content-based, courts before and after *Reed* have held that similar ordinances violated the First Amendment because they were overbroad; that is, they prohibited substantially more speech than necessary to serve an important government interest. For example, in *Reynolds v. Middleton*,<sup>5</sup> the Fourth Circuit found that an ordinance prohibiting panhandling in the roadway violated the First Amendment because the county had not shown that less restrictive means were ineffective.

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 Moline’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>6</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>7</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 Ordinance. The City should then promptly repeal the Ordinance to avoid litigation, and instead develop approaches that will lead to the best outcomes for all the residents of Moline, housed and unhoused alike.

Because the City’s enforcement of its roadway solicitation ordinance is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the Moline 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 Council 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 Moline.

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<sup>5</sup> 779 F.3d 222 (4th Cir. 2015).

<sup>6</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>7</sup> 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/>

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,



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