

August 28, 2018

Via E-Mail

Jamie Snyder
City Attorney
P.O. Box 2047
Carbondale, Illinois 62902
jsnyder@explorecarbondale.com

RE: City Code of Carbondale 14-4-10 "Panhandling"

Dear Mr. Snyder,

We write with respect to City Code of Carbondale 14-4-10 "Panhandling" (the "Ordinance"), which prohibits panhandling in a number of manners and locations. These provisions violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution. Since the landmark *Reed v. Gilbert* case in 2015, every panhandling ordinance challenged in federal court – at 25 of 25 to date – including several with features similar to the one in Carbondale ("the City"), has been found constitutionally deficient. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015); *see, e.g. Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 144 F. Supp. 3d 218 (D. Mass. Nov. 9, 2015)); *see also* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>. At least 31 additional cities have repealed their panhandling ordinances when informed of the likely infringement on First Amendment rights. 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." *Norton v. City of Springfield*, 15-3276, 2018 WL 3964800 (C.D. Ill. Aug. 17, 2018). The City's ordinance not only violates the constitutional right to free speech protected by the First Amendment to the United States Constitution, it is also bad policy, and numerous examples of better alternatives now exist which the City could draw on. We call on the City to immediately repeal the Ordinance and instead consider more constructive alternatives or risk potential litigation.

The First Amendment protects peaceful requests for charity in a public place. *See, e.g., United States v. Kokinda*, 497 U.S. 720, 725 (1990) ("Solicitation is a recognized form of speech protected by the First Amendment."). The government's authority to regulate such public speech is exceedingly restricted, "[c]onsistent with the traditionally open character of public streets and sidewalks...." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quotation omitted). As discussed below, the Ordinance is well outside the scope of permissible government regulation.

The Ordinance overtly distinguishes between types of speech based on “subject matter ... function or purpose.” See *Reed*, 135 S.Ct. at 2227 (internal citations, quotations, and alterations omitted; See, e.g., *Norton*, 806 F.3d at 412-13 (“Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”)). The Ordinance defines panhandling as “any request for or solicitation of an immediate donation of money” and then places other restrictions on locations and activities that should not be combined with panhandling. Carbondale, Ill. Code § 14-4-10. The Ordinance is content-based because it restricts the content of a person’s speech—asking for money. It is not neutral because other types of speech, such as political campaigning, catcalling, evangelizing, or asking for signatures are not restricted by the Ordinance.

As a result, the Ordinance is a “content-based” restriction on speech that is presumptively unconstitutional. See *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2232 (2015); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009). Courts use the most stringent standard – strict scrutiny – to review such restrictions. See, e.g., *Reed*, 135 S. Ct. at 2227 (holding that content-based laws may only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling state interest”); *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). The Ordinance cannot survive strict scrutiny because neither does it serve any compelling state interest, nor is it narrowly tailored.

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.” *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.”).

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. It is evident that the Ordinance is not “narrowly tailored” because it outlaws activities that are already banned by other criminal laws. See e.g. *Thayer* at 236. Much of the conduct prohibited by the Ordinance is already prohibited by laws against assault, battery, and obstruction of pedestrian traffic. The only reason to have a special rule against panhandling while committing these offenses is to target homeless people.

The location restrictions in the Ordinance, which outlaws panhandling at bus stops and train stations, near ATMs, and other locations, are also unconstitutional. Unsurprisingly, every court to consider a regulation that, like the Ordinance, bans requests for charity within an identified geographic area has stricken the regulation. See, e.g., *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015); *Cutting v. City of Portland, Maine*, 802 F.3d 79 (1st Cir. 2015); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011) (en banc); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 237 (D. Mass. 2015) (“[M]unicipalities must go back to the drafting board and craft solutions which recognize an individuals... rights under the First Amendment...); *McLaughlin v. City of Lowell*, 140 F. Supp.

3d 177, 189 (D. Mass. 2015); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *13 (D. Colo. Sept. 30, 2015) (ordinance with buffer zone around ATMs and bus stops struck down).

The Ordinance also restricts the manner in which people can ask for a charitable donation, including by prohibiting panhandling in a group of two or more persons. Courts have not hesitated to strike regulations that regulate the manner in which a person can ask for a charitable donation, even where the regulation was supposedly justified by a state interest in public safety. And for good reason: restricting people's behavior on account of their speech is almost always too over-reaching to be narrowly tailored to any compelling governmental interest. *See, e.g., Clatterbuck v. City of Charlottesville*, 92 F. Supp. 3d 478 (W.D. Va. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233 (D. Mass. 2015) (striking down provisions against blocking path and following a person after they gave a negative response); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015) (striking down ordinance that prohibited panhandling in group of 2 or more); *Browne v. City of Grand Junction, Colorado*, 2015 WL 5728755, at *12-13 (D. Colo. Sept. 30, 2015) (“[T]he Court does not believe[] that a repeated request for money or other thing of value necessarily threatens public safety.”).]

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 Carbondale's Panhandling Ordinance 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. *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>.

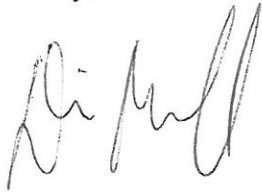
For example, Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. *See* Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station*, WHYY (Jan. 30, 2018) <https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/>. 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's response to the ACLU of Illinois's Freedom of Information Act request in 2016 indicated that the City had cited or arrested people for panhandling 46 times in the preceding 3 years. Moreover, according to press reports, the City has used its panhandling ordinance to drive homeless people out of town by racking up massive fines against them. Because the City's enforcement of its begging ordinance is a serious and ongoing constitutional violation, please respond by September 28, 2018 with your assurances that the Carbondale 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 Carbondale.

Should you wish to discuss this further, please do not hesitate to contact me at (312) 720-1800 or diane@chicagohomeless.org. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane O'Connell". The signature is fluid and cursive, with a large initial "D" and "O".

Diane O'Connell
Community Lawyer
Chicago Coalition for the Homeless

Rebecca K. Glenberg
Senior Staff Counsel
ACLU Illinois

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