



October 27, 2015

VIA ELECTRONIC MAIL

Honorable Ray Stephanson, Mayor
Members of the Everett City Council
City of Everett City Hall
2930 Wetmore Ave
Everett, WA 98201

Re: CB 1509-40: Amending Ordinance 1353-87 concerning Aggressive Begging
October 28 Meeting, Agenda Item #9

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON

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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Mayor Stephanson and Members of the Everett City Council:

The American Civil Liberties Union of Washington (ACLU-WA)¹ writes to urge the Everett City Council to reject the proposed amendments to Everett's "aggressive begging" law, Chapter 9.52 of the Everett Municipal Code (EMC). These amendments are unconstitutional, ineffective, and unnecessarily costly and punitive. They would take Everett further in the direction of criminalization of homelessness, and run directly counter to the constructive approach of the Mayor's proposals for additional funding for social workers and building permanent supportive housing units. Moreover, the measure is being rushed toward council passage with unnecessary haste, ignoring the usual procedure of three readings.

There are numerous reasons why the amendments proposed in CB 1509-40 should be rejected. We agree with the reasons for rejection described in the comments submitted by the Homeless Rights Advocacy Project of Seattle University Law School. However, we urge the Council to consider the following additional reasons for rejecting the amendments, as well.

The proposed amendments include an overbroad definition of aggressive panhandling, which will potentially open the city up to costly litigation. Begging and panhandling are constitutionally protected free speech, as explained in our April 15, 2015 letter to this Council, and as a federal court explained just last week in *McLaughlin v. City of Lowell*². See, e.g., *Vill. of Schaumburg v. Citizens for a Better Env't.*, 444 U.S. 620, 632 (1980), and the other authorities cited in our April 15 letter and in *McLaughlin*. Holding a sign saying "need help" or "God bless" or "disabled

¹ ACLU-WA is a statewide, non-partisan, non-profit organization with over 50,000 members and supporters, dedicated to the preservation and defense of constitutional and civil liberties, including the right of free speech, which includes begging. Locally and nationally, the ACLU has successfully challenged begging ordinances which violate the right to free speech.

² Case No. 14-10270-DPW, U.S. District Court, D.Mass., Dkt. #139, ruling filed 10/23/15.

veteran” remains constitutionally protected free speech, even if someone passing by may feel pressured or uncomfortable by such a message. *McLaughlin*, p. 8-10, 14, 18-21. “[A]t stake is ‘the right to engage fellow human beings with the hope of receiving aid and compassion.’” *Id.* The *McLaughlin* ruling clearly points out that economic motives do not provide grounds for ignoring the Constitution: “For First Amendment purposes, economic revitalization might be important, but it does not allow the sensibilities of some to trump the speech rights of others.” *McLaughlin* at p. 21, citing a case arising out of Washington.

The proposed amendments in CB 1509-40 fail to draw the proper constitutional line between legally protected free speech and criminal activity. They cause the ordinance to be both overbroad and vague. The *McLaughlin* court explained that just because an ordinance labels certain forms of panhandling to be “aggressive” does not mean that the ordinance will pass constitutional muster.

Everett’s proposed ordinance defines “intimidate” to mean “to engage in conduct that would make a reasonable person fearful or feel compelled.” It wrongly removes the requirement that the person reasonably fear bodily harm. As a result, a panhandler could be subject to arrest and jail despite having no intent to harm or even threaten another person.

The government may prohibit conduct that puts a person in fear that they will suffer imminent bodily harm or the commission of a criminal act if they do not hand over money. *McLaughlin, supra.* Indeed, Everett’s existing aggressive begging ordinance, EMC Chapter 9.52, prohibits panhandling that is in fact criminal conduct. However, the proposed amendments to the Everett ordinance will prohibit conduct that may not be constitutionally punished.

The proposed amended ordinance is also flawed from a policy perspective. Arresting and/or jailing panhandlers is costly and unneeded.³ While the existing penalties of fine and forfeiture are not effective in deterring panhandling, there is no evidence that the threat of jail time will be any more effective in deterring or “leveraging” panhandlers into services as the proposed ordinance claims. Instead, law enforcement officers should have access to services that address the underlying problems of people with mental illness and addiction and those who are homeless. Arrests and jailing instead perpetuate the cycle of homelessness and criminalization. Moreover, the *McLaughlin* ruling strongly criticized making claims about promoting public safety which are offered without supporting evidence, as Everett’s proposal does.

The proposed ordinance would also waste the taxpayers’ money. Regardless of the jail that the City uses, arrests and jail cost the City money that could otherwise be put to more beneficial uses. Further, jail time may disrupt the individual’s access to services and benefits, and may remove opportunities for housing and employment for

³ Everett already has 11 ordinances criminalizing homelessness, and is tied for fourth-most in the state. Justin Olson & Scott MacDonald, WASHINGTON’S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT (Sara Rankin ed., 2015).

those individuals. Adopting this proposal may also put Everett at risk of losing important federal housing funding that it receives through Snohomish County. The Department of Housing and Urban Development recently issued a guidance stating that it will distribute funding based in part on which communities avoid the criminalization of homelessness.⁴ Adopting this proposal would move Everett in the wrong direction, and could put the city at risk of losing this funding.

In sum, the Council should not invite litigation by adopting proposed ordinance CB 1509-40. Rather, Everett should table the proposal and instead focus on utilizing the tools it already has to address criminal behavior, and allocate resources toward providing services for those in need.

Sincerely,



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Cc: Paul Roberts, Council Member, Position 1
Jeff Moore, Council Member, Position 2
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Scott Bader, Council Member, Position 5
Brenda Stonecipher, Council Member, Position 6
Judy Tuohy, Council Member, Position 7
James Iles, City Attorney
David Hall, Assistant City Attorney
Ramsey Ramerman, Assistant City Attorney
Sharon Fuller, City Clerk

⁴ See, e.g., <http://nationalhomeless.org/hud-puts-teeth-into-effort-to-stop-criminalizing-homeless-people/>