



April 15, 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 1503-05: Prohibiting The Solicitation Of Donations Or Contributions

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON
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SEATTLE, WA 98164
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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Mayor Stephanson, City Attorney Iles, and Members of the Everett City Council:

The American Civil Liberties Union of Washington (ACLU-WA) writes to urge the Everett City Council to reject the proposed amendments to Title 8 of the Everett Municipal Code. They are unconstitutional and unnecessary. The ACLU-WA is a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties. Locally and nationally, the ACLU has successfully challenged ordinances containing provisions similar to, or even less restrictive than, the anti-solicitation provisions contained in the proposed EMC 8.09.

This proposal to criminalize certain activities within 60 feet of any traffic signal or on any median strip is an unconstitutional restriction on protected speech and should not be enacted. Federal and state courts repeatedly have made it clear that asking for money in a traditional public forum such as a sidewalk is constitutionally protected free speech.¹

Peacefully holding a sign on the sidewalk, even within 60 feet of a traffic signal, is protected by the Constitution. Washington courts have consistently upheld the right to display signs in traditional public forums, including sidewalks and parking strips.² They have not hesitated to strike down overbroad laws interfering with the right to free speech.³

¹ *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); *Berger v. City of Seattle*, 569 F.3d 1029, 1050 (9th Cir. 2009) (*en banc*); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 553 (4th Cir. 2013) ("[T]he speech and expressive conduct that comprise begging merit First Amendment protection."); *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 793 (9th Cir. 2006); *ACLU of Idaho v. City of Boise*, Mem. Decision (D. Idaho Jan. 2, 2014); *City of Spokane v. Marr*, 129 Wn. App. 890, 894, 120 P.3d 652 (2005); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 946 (9th Cir. 2011) (holding that an ordinance which prohibited attempted solicitation plainly addressed speech in addition to conduct).

² *Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993); *Bering v. SHARE*, 106 Wn.2d 212, 721 P.2d 918 (1986); *Comite supra*.

³ *Marr, supra*; *Comite supra*; *State v. Immelt*, 173 Wn.2d 1, 267 P.3d 305 (2011).

The ordinance is also problematic because it creates unnecessary distinctions between the types of signs or forms of communication used by the speaker: individuals cannot hold a sign encouraging an immediate exchange of money or objects, but they may hold a sign that encourages others to go to a website or physical address for the exchange.

Despite the proponent's assertion that the ordinance is not targeted at any specific group, protestors will still be allowed to protest, companies still allowed to advertise for their businesses, politicians still allowed to waive campaign signs, religious organizations still allowed to preach their message, and students still allowed to solicit donations for a fundraiser or car wash as long as the actual exchange of money takes place a few blocks away. Panhandlers, however, will not be allowed to ask for help.

EMC 8.09 purports to "provide for and promote the health, safety and welfare of the general public." While the health, safety and welfare of the general public are legitimate government concerns, the ordinance does not actually address these concerns. Rather than limiting the prohibition to actual interference with vehicle traffic (conduct already illegal, as discussed below), the ordinance creates a presumption that some activities within 60 feet of a traffic signal or within the median automatically affect the health, safety, and welfare of the general public, while others do not. If the City is concerned with traffic interference or driver distractions, the ordinance should simply prohibit activity when it actually blocks vehicle or pedestrian traffic.

Instead, the ordinance criminalizes someone passively holding a sign that asks for money. Yet, a person blaring music and dancing around with a sign advertising a car wash down the street that actually could actually distract drivers would not be punished by the ordinance. This disparate treatment demonstrates a lack of rational basis for the ordinance, and falls far short of the strict scrutiny requirements applied by courts when government regulates constitutionally protected speech.

The restrictions imposed by the proposed ordinance also are unnecessary. The City of Everett has at least two other ordinances at its disposal that specifically target conduct that interferes with traffic. For example, EMC 9.52.010 makes it unlawful for an individual to "beg[] in a manner that hinders or obstructs the free passage of any person in a public place," which would include persons driving on public roads. Additionally, EMC 9.60.010 prohibits persons from obstructing, preventing, or interfering with the free and unobstructed use of streets and sidewalks by other persons. The City can use either ordinance to prevent conduct that specifically threatens the safety and welfare of its citizens.

We understand that the proponents of this amendment assert that the proposal is a constitutional restriction on speech because it seeks to prevent secondary effects (e.g., criminal conduct). They analogize restrictions on panhandling to regulations of adult movie theaters. They rely on the decision in the *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). This argument is unfounded and has been rejected in other court decisions. The proposed amendment unconstitutionally outlaws particular

protected speech within 60 feet of a signaled intersection, but allows other, potentially more distracting speech in that same location.⁴

We urge you to reject proposed ordinance CB 1503-05. The Council should not invite litigation by adopting this unconstitutional measure. Instead, Everett should focus on utilizing the tools it already has to address criminal behavior, and should allocate resources toward providing services for those in need, as the Streets Initiative Task Force has been considering.

Sincerely,



JENNIFER SHAW
Deputy Director

Cc: Sharon Fuller, Everett City Clerk
Deb Williams, City Council Administrative Coordinator
Paul Roberts, Council Member, Position 1
Jeff Moore, Council Member, Position 2
Scott Murphy, Council Member, Position 3
Ron Gipson, Council Member, Position 4
Scott Bader, Council Member, Position 5
Brenda Stonecipher, Council Member, Position 6
Judy Tuohy, Council Member, Position 7
James Iles, City Attorney
Ramsey Ramerman, Assistant City Attorney
David Hall, Deputy City Attorney

⁴ See, *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 394, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). *Boos v. Barry*, 485 U.S. 312 (1988) (rejecting the analysis used in the *Renton* adult movie theater case, as applied to a law that made it unlawful to display certain kinds of signs within 500 feet of a foreign embassy); *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 (9th Cir. 2013) (rejecting the secondary effects argument used in *Renton* in analyzing a bill which made it unlawful for a “motor vehicle occupant to hire or attempt to hire a person for work . . . from a stopped car that impedes traffic, or for a person to be hired in such a manner” and finding the bill to be content based); *Collier supra* (declining to apply the *Renton* analysis to a restriction on political signs posted in a parking strip).