



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

June 29, 2009

VIA EMAIL

Mayor Bruce Hill
brucehill@gjcity.org

Linda Romer Todd
lindat@gjcity.org

Teresa Coons, Mayor Pro Team
teresac@gjcity.org

Gregg Palmer
greggp@gjcity.org

Tom Kenyon
tomk@gjcity.org

Bonnie Beckstein
bonnieb@gjcity.org

Bill Pitts
billp@gjcity.org

Re: Proposed Emergency Ordinances re Solicitation

To the members of the Grand Junction City Council:

Tonight, the City Council will consider two ordinances that threaten constitutional rights to free expression and due process of law. The ordinances are proposed to be enacted as emergency measures, to take effect immediately. The text of these ordinances, however, has been available to the council and to the public for less than a full business day. The council should not be in such a hurry to dispense with the full and reasoned consideration that citizens have a right to expect in the case of legislation affecting the exercise of fundamental constitutional rights. This is especially true in light of the specific text proposed for adoption, which, perhaps reflecting the haste in which it was evidently written, contains serious flaws in both conception and execution.

The council should know that solicitation of funds is expression that is protected by the First Amendment and Article II, Section 10 of the Colorado Constitution. This is as true whether the solicitor is an employee of the American Cancer Society, a firefighter passing a boot, or an unemployed person asking for help to get through the next day. Regulations of solicitation in public places are subject to challenge as violations of the right of free expression. In such a challenge, the City bears the burden of proving that the regulations comply with the Constitution.

In addition, criminal laws must conform to the requirements of due process. That means that the text of the laws must provide fair notice of what conduct is forbidden. The laws cannot be so vague that they wind up delegating to the police officer on the street the job of deciding what conduct complies with the ordinance and what conduct is prohibited.

The proposed ordinance regulating solicitation near roadways should not be adopted on an emergency basis. The council should question whether this ordinance is truly meant as a safety measure or whether, as in other communities, the safety rationale is a pretext for the proponents' true motivation: to push the homeless and unemployed out of sight. Hawking to stopped vehicles and soliciting contributions from their drivers is one of few ways that persons without an advertising budget can get their message or their plea to the public. While courts have allowed reasonable time, place, and manner regulations of this constitutionally-protected activity, the council should ask whether the needs of traffic and community safety really require the proposed ban on virtually all forms of such direct solicitation in the city. Because this measure will diminish the scope and availability of activity protected by the right of free expression, it is particularly inappropriate for the council to adopt this ban as an "emergency measure" with immediate effect.

The "Aggressive Solicitation" ordinance is overbroad, unduly vague, and unjustifiably criminalizes ordinarily legal and constitutionally-protected activity. Despite its title, the ordinance is not limited to solicitation that is conducted according to the "aggressive manner" defined in the ordinance. The "Aggressive Solicitation" ordinance contains 14 provisions, 13 of which regulate or forbid ordinary solicitation that is not conducted in an aggressive manner. The definition of solicitation is so broad, however, that it applies to a person asking his companion for change for bus fare or for the parking meter. Thus the proposed ordinance makes it a crime for a passenger to ask the driver for a quarter to put into the parking meter. According to the ordinance, a person standing in line for a movie with a friend has illegally solicited in an "aggressive manner" (in violation of subsection (a)) if he asks his friend for a dollar so that he has enough for a ticket. That same person violates another portion of the ordinance (subsection (h)) if it turns out that he already had a dollar in his pocket that he was intending to save to buy popcorn. Subsection (g) makes it a crime to solicit "after consuming alcohol." How long after? An hour? A day? A month? Does any person who has ever had a drink at any time risk jail time if he or she asks a friend for a dollar? Does a customer in a bar violate the ordinance by asking a friend to buy a beer?

These points and questions are illustrative; they are not meant as an exhaustive critique of the multiple provisions of the proposed ordinance. Indeed, there is not time for a full review before tonight's council meeting. The council should take more time so that it can draft and consider a measure that addresses the problems it perceives in a pinpointed manner without burdening ordinarily lawful constitutionally-protected activity and without leaving the interpretation of the ordinance to the police officer on the beat.

Sincerely,



Mark Silverstein
Legal Director, ACLU of Colorado