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November 19, 2008

City of Spokane  
City Council Members  
Joe Shogan, City Council President  
Michael Allen  
Bob Apple  
Steve Corker  
Al French  
Nancy McLaughlin  
Richard Rush  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Re: Panhandling Ordinances

Dear City Council Members,

We appreciate the opportunity to provide input on the City's proposed amendments to its solicitation ordinances and understand the difficulty the City faces in providing a safe environment downtown while respecting the rights of all citizens. In large part, the anecdotal testimony at the November 17, 2008 hearing described acts that are clearly not protected speech and are unlawful under current city and state law. Our concern, instead, focuses on the proposals that have the potential to unlawfully impact protected speech or otherwise innocent behavior. As noted at hearing, these ordinances largely target panhandling – a constitutionally protected activity under the First Amendment.

Although we tendered a lengthy legal analysis to Assistant City Attorney Mike Picollo on November 6, 2008, the following is a brief summary of some of the changes we propose:

1. *C34337/10.10.025 Pedestrian and Vehicular Interference*

This ordinance makes it a crime to **knowingly** 1) interfere with pedestrian or vehicular traffic or 2) aggressively solicit.

Proposed changes:

- Change *knowingly* to *intentionally* as to pedestrian interference. A similar ordinance was found constitutional in Seattle where it required actual intent to obstruct rather than merely awareness that one's action might cause others to take evasive action. As is, the ordinance is subject to challenge as overbroad because it criminalizes what is otherwise innocent conduct.
- Return to the original aggressive solicitation language which criminalized solicitation with the specific intent to intimidate. Similar ordinances have been found constitutional where they clearly prohibit intentionally making persons fearful of imminent harm to themselves or others.

2. *C34338/10.10.026 – Sitting or Lying on public sidewalks*

- Include an exception for constitutionally protected expressive activity. See Roulette v. City of Seattle, 850 F. Supp. 1442, 1449 n.8 (1994)(ordinance prohibiting sitting/lying on sidewalks unconstitutional as applied to street musician whose message was difficult if not impossible to communicate without a key board).
- Consider making this a civil infraction as is the ordinance in City of Seattle v. McConahy, 86 Wn. App. 557, 561 (1997) which imposed a fine and/or community service. In fact, the City might want to reconsider decriminalization of all these but aggressive solicitation.

3. *C34340/10.10.027 (B)(1)(b) – Requiring a Special Events Permit for solicitation in the public right-of-way.*

- It is our understanding that the intent was to require special events permits for solicitation in the roadway. This makes more sense where solicitation actually takes place in the streets and thus will cause traffic disruptions and pose safety concerns.

4. *C34340 / 10.10.027 – Solicitation by Coercion*

- The Roulette court required changes to a similar ordinance which attempted to detail acts that would cause a violation of this ordinance, some of which were not constitutional. We recommend sticking with a clearly written aggressive solicitation ordinance.

5. *C34339 / 10.40.010 Peddler Designation*

- Unless active solicitation is defined as aggressive or otherwise unlawful behavior, this ordinance will be an unreasonable restriction on protected speech.
- We also believe it will be seen as a prior restraint on speech and subject to challenge as not narrowly tailored to a compelling state interest. Generally, permit schemes and advance notice requirements have been found reasonable only where these are required for coordination purposes such as crowd management and control. They have rarely passed constitutional muster when applied to individuals.

6. *C34341 / 10.10.028 Solicitations to Occupants of Vehicles*

- This ordinance regulates the message and not the act, and similar ordinances have been invalidated in several states. If traffic safety is the issue, then the ordinance should regulate the act of interference. The ordinance prohibiting solicitation in roadways does just that.

We would welcome the opportunity to discuss these issues further should you wish and thank you for considering our comments.

Sincerely,

CENTER FOR JUSTICE

  
Bonne Beavers  
Attorney