



NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

July 17, 2019

Mayor Michael S. Purzycki
Louis L. Redding City/County Building
800 N. French Street, 9th Floor
Wilmington, DE 19801

RE: City of Wilmington's Panhandling Ordinance

Dear Mayor Purzycki:

We write on behalf of the ACLU of Delaware and the National Law Center on Homelessness & Poverty about Wilmington's panhandling ordinance, Wilmington Code Section 36-221, *et seq.* Since the landmark Supreme Court case *Reed v. Gilbert* was decided in 2015, every panhandling ordinance challenged in federal court—36 of 36 to date—including many with features similar to the ones in Wilmington, has been found unconstitutional or resulted in the repeal of that ordinance.¹ Wilmington's ordinance similarly violates the constitutional right to free speech protected by the First Amendment to the United States Constitution, and it is also bad policy. We call on the City to immediately repeal the Ordinance and instead consider more constructive alternatives.

The First Amendment protects peaceful requests for charity in a public place.² The government's authority to regulate such public speech is highly restricted on public streets and sidewalks.³ Wilmington's panhandling ordinance is outside the scope of permissible government regulation because it punishes speech based on its content.⁴ The Ordinance prohibits individuals from a particular kind of speech act—soliciting for a donation of money—in a wide variety of circumstances, including after sunset and before sunrise; in certain locations, such as a bus stop or public transportation facility; and in certain manners, including “[b]y coming within three feet of the person [being] solicited” or “in a group of two or more persons.” *See* Wilm C. §§ 36-222, 36-223(1) & (3), 36-224(1) & (5). And even an individual who complies with these restrictions

¹ *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (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>.

² *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.”).

³ *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

⁴ *See Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412-13 (7th Cir. 2015); (“Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”).

would need to obtain a permit from the police department in order to solicit for donations for more than five days in a calendar year.

Courts use the most stringent standard—strict scrutiny—to review such content-based speech restrictions.⁵ Wilmington’s ordinance cannot survive strict scrutiny. Even if the City could identify a compelling government interest, there is no evidence to demonstrate that the Ordinance is “narrowly tailored” to such an interest. Theoretical discussion is not enough: “the burden of proving narrow tailoring requires the County to prove that it actually *tried* other methods to address the problem.” *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015). The City may not “[take] a sledgehammer to a problem that can and should be solved with a scalpel.” *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1294 (D. Colo. 2015) (holding ordinance restricting time, place, and manner of panhandling was unconstitutional).

Unsurprisingly, every court to consider a regulation that bans requests for charity within an identified geographic area, as Wilmington’s ordinance does in multiple ways, has stricken the regulation.⁶ Courts have also struck down laws 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. Restricting behavior when it is accompanied only by certain speech content is almost always too over-reaching to be narrowly tailored to any compelling governmental interest.⁷ The Ordinance also restricts panhandling to daylight hours. Courts regularly strike down such restrictions.⁸

In addition to being unconstitutional, Wilmington’s panhandling ordinance is bad policy. Harassing, ticketing, or arresting people who ask for help in a time of need is inhumane and counterproductive. These ordinances are costly to enforce and only exacerbate problems associated with homelessness and poverty. Other communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city

⁵ 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”).

⁶ See, e.g., *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015) (striking down an ordinance that banned vocal panhandling in a city’s downtown area, as well as within twenty feet of a bank, ATM, check-cashing business, transit stop, public restroom, pay telephone, theater, outdoor seating area, and associated parking areas);

⁷ 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); *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.”).

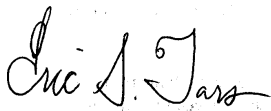
⁸ See, e.g., *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 580 (6th Cir. 2012) (striking down six p.m. curfew for door-to-door solicitation).

agencies, and elected officials—happier in the long run. For example, Philadelphia recently reduced the number of homeless people asking for money in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

We all want a Wilmington where homeless people are not forced to beg on the streets. Criminalizing any aspect of panhandling is not the best way to get to this goal. The City should place an immediate moratorium on enforcement and then proceed with a rapid repeal of the ordinance to avoid potential litigation. We would be happy to meet with city officials to discuss alternative approaches that will lead to better outcomes for all the residents of Wilmington, housed and unhoused alike.

Please contact us at your earliest convenience to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric S. Tars". The signature is fluid and cursive, with the first name "Eric" being more prominent.

Eric S. Tars
Legal Director, National Law Center on Homelessness & Poverty

A handwritten signature in black ink, appearing to read "Ryan Tack-Hooper". The signature is fluid and cursive, with the first name "Ryan" being more prominent.

Ryan Tack-Hooper
Legal Director, ACLU of Delaware, Inc.

cc: Robert M. Goff, Jr., Esq.