



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

September 14, 2015

SENT VIA EMAIL: CityAtty@springsgov.com

Wynetta Massey, City Attorney
Colorado Springs City Attorney's Office
30 S. Nevada Ave., Suite 501
Colorado Springs, CO 80903

Dear Ms. Massey:

The Colorado Springs Police Department, City Attorney's Office, and Municipal Court are illegally enforcing the City's panhandling laws against impoverished people who have not violated those laws. The City's practice has resulted in poor people being fined and imprisoned – for as long as 90 days – under circumstances that cannot be legally or morally justified.

Colorado Springs' panhandling ordinances, Sections 9.2.111 and 10.18.112 of the Colorado Springs Municipal Code (CMSC), exempt from their reach passive solicitation – meaning the text of the ordinances specify that persons who merely display a sign that invites charity do not violate the law. Nevertheless, Colorado Springs police, city attorneys and judges are enforcing these ordinances against solicitors experiencing poverty or homelessness who ask for charity simply by displaying a sign. Such enforcement illegally targets impoverished persons whose pleas for assistance do not violate Colorado Springs' solicitation laws.

We write to insist that Colorado Springs immediately (1) stop this illegal enforcement of its solicitation laws; (2) dismiss pending prosecutions of persons charged with passive soliciting; and (3) initiate proceedings to vacate the convictions and sentences of unrepresented defendants who are victims of this unlawful practice.¹

Requests for donations, whether made by an organized charity or the humblest of beggars, constitute expression protected by the First Amendment. Earlier this summer, in a ruling on the ACLU's pending challenge to Grand Junction's panhandling ordinance, the federal district court in Colorado explained the significance of panhandling's communicative function:

¹ The ACLU harbors serious doubts as to the constitutionality of Colorado Springs' restrictions on solicitation. The subject of this letter, however, is limited to the City's extra-legal enforcement of its solicitation ordinances against individuals who have not violated those ordinances. We save for another day discussion of our view that the ordinances, as actually written, violate the First Amendment.

This court believes that panhandling carries a message. Often, a request for money conveys conditions of poverty, homelessness, and unemployment, as well as a lack of access to medical care, reentry services for persons convicted of crimes, and mental health support. The City's attempt to regulate this message is an attempt to restrain the expression of conditions of poverty to other citizens.

Browne v. City of Grand Junction, 2015 U.S. Dist. Lexis 73834, *12-*13 (D. Colo. June 8, 2015). Because of the important communicative function of requests for charity, as well as overwhelming evidence that many cities enforce solicitation laws in an unfair and discriminatory manner against people experiencing poverty and homelessness, the ACLU has devoted considerable resources in recent years to reviewing and sometimes challenging municipal restrictions on panhandling.²

The City's two panhandling ordinances, sections 9.2.111 and 10.18.112 of the CSMC,³ define "soliciting" as follows:

To knowingly approach, accost or stop another person in a public place and to make a request, whether by spoken words, bodily gestures, written signs or other

² As you know, in 2012, the ACLU challenged a Colorado Springs ordinance that attempted to create a "Downtown No Solicitation Zone." After the ACLU obtained a preliminary injunction, the City repealed the ordinance and paid the ACLU \$110,000 in attorney's fees. Other examples of the ACLU's recent work on this issue include:

- In 2014, the ACLU challenged a new Grand Junction ordinance that regulated panhandling. Grand Junction promptly repealed or modified most (but not all) of the challenged provisions, and litigation remains pending.
- Later in 2014, in response to a letter from the ACLU, officials in Durango agreed to suspend enforcement of an ordinance prohibiting "loitering . . . for the purpose of begging." The Durango ordinance has now been repealed.
- In August 2015, in response to a letter from the ACLU, Steamboat Springs agreed to cease enforcement of a similarly-worded ordinance.
- Earlier this year, we filed a class action lawsuit challenging Fort Collins's enforcement of its panhandling ordinance. After legal briefing on the ACLU's motion for a preliminary injunction, Fort Collins promptly repealed all of the challenged provisions. As part of the subsequent settlement, Fort Collins paid the ACLU \$82,500 in attorney's fees.
- In the spring of 2015, we learned that Telluride had approved, on first reading, a new ordinance that regulated panhandling. After receiving a letter from the ACLU, the town council changed course and adopted a scaled-down version that included only four provisions to which the ACLU did not object.
- In May, the City of Durango proposed a new panhandling ordinance to replace the ordinance that prohibited "loitering . . . for the purpose of begging." The ACLU wrote a detailed critique that explained why multiple provisions of the proposed ordinance violated the First Amendment. The Durango City Council then changed course and settled on a scaled-down version that included only a handful of provisions to which the ACLU did not object.
- In July, 2015, the City of Loveland, noting the court challenges to the Fort Collins and Grand Junction panhandling ordinances, adopted significant revisions to its panhandling ordinance. Loveland's revised ordinance leaves in place only four provisions that mirror provisions in the Fort Collins ordinance that the ACLU declined to challenge.

³ A violation of Section 9.2.111 is punishable by a fine of up to \$2500 and up to 189 days in jail. A violation of Section 10.18.112 is not a jailable offense; the maximum punishment is a fine of up to \$500.

means, for a gift of money or other thing of value. Soliciting includes, but is not limited to, seeking a donation where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the purchase is in substance a donation, or begging or panhandling. **Soliciting does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person, other than in response to an inquiry by that person.**

CSMC 9.2.111(B) (emphasis added); *see* CSMC 10.18.112(B), (C) (adopting the definition of “soliciting” contained in CSMC 9.2.111).

As the bolded portion of the “soliciting” definition makes clear, individuals who seek charity by passively holding a sign do not violate either ordinance. Nonetheless, the ACLU’s investigation has revealed that the Colorado Springs Police Department regularly enforces both ordinances against impoverished individuals who passively ask for charity by displaying a sign. Instead of dismissing these baseless citations, Colorado Springs city attorneys have been prosecuting these cases, even though the narrative portion of the citation fails to show any violation of either ordinance. In addition, Colorado Springs municipal court judges have been entering convictions and sentencing these passive, sign-holding solicitors – to as long as 90 days in jail – even though they had not violated the law.

As a starting point, our investigation has confirmed that the Colorado Springs Police Department is regularly issuing citations to sign-holding solicitors who have not violated the City’s solicitation laws. We have reviewed all of the citations the Colorado Springs Police Department has issued for violation of Section 9.2.111 since January 2013. More than one-third of the citations reflect that they were issued to a person who was displaying a sign inviting charity. For instance, in Summons Number E131740, the police cited a man who was “standing idly about” with a sign that read: “Have a Great Day and God Bless, Homeless, Hungry and I am humbly thankful because I wouldn’t make it otherwise.” The police confiscated the sign as “evidence.” Another citation, Summons 3071055-2, details a police chase, wherein two police officers pursued a non-aggressive, sign-holding panhandler, even searching nearby businesses for the man. When the police “caught” the man, they cited him for violating Section 9.2.111, even though the police narrative in the citation does not even suggest that the man was doing anything other than holding a sign requesting charity. These citations, and others, plainly do not reflect a violation of the ordinance.

Likewise, Colorado Springs is frequently – and illegally – enforcing Section 10.18.112 against poor and homeless solicitors who are not violating the ordinance – they are simply requesting charity passively by holding a sign. Since January 2013, the Colorado Springs Police Department has issued 892 citations for violation of Section 10.18.112. To date, we have had the opportunity to review only two dozen of these citations. Over 90 percent were issued to persons who were holding a sign inviting charity. For instance, in Summons E107575, the officer cited a panhandler for simply displaying a sign that read “Anything is a blessing have a good day and god bless you.” Similarly, the narrative of Summons E107574 reflects that the officer issued a citation because he observed the defendant displaying a sign that read: “If you would please

anything you can give is a big help to me.” The conduct the officers describe in these citations is precisely the conduct that the City’s panhandling ordinances *exempt* from regulation. We fully expect that, if the City were to review all of the active and pending citations for alleged violations of CSMC Section 10.18.112 – as it should – it will find that the overwhelming majority were issued to sign-holding passive solicitors who plainly did not violate the ordinance.⁴

The City Attorney’s Office should dismiss solicitation charges when the police officer’s narrative of the defendant’s conduct fails to describe a violation of either panhandling ordinance. Instead, the City Attorney’s Office has taken the police department’s extra-legal enforcement to the next level. Rather than dismissing charges, the City Attorney’s Office has regularly prosecuted the panhandling cases in Colorado Springs Municipal Court, usually against poor or homeless defendants who have no attorney to point out that they are accused of conduct that does not violate the panhandling ordinances.

To date, we have had the opportunity to review only a handful of complete court files reflecting enforcement of the City’s panhandling laws. The ones we have reviewed confirm not only that the City Attorney’s Office is prosecuting sign-holding panhandlers who have not violated either ordinance, but also that municipal court judges are entering convictions. For instance, in Case Number 14M15155, a homeless woman was erroneously cited for violation of Section 9.2.111 for “standing at a stoplight” and holding a “sign stating ‘Anything Helps.’” (Summons 3023126-0.) It is beyond dispute the conduct described in the citation did not violate either of the City’s panhandling ordinances, as holding a sign inviting assistance is expressly exempted from the City’s definition of “soliciting.” When she failed to appear to address the bogus charge, a warrant issued for her arrest, and she was jailed. Instead of dismissing the case, the City Attorney’s Office prosecuted and offered to let the woman plead guilty to violating Section 10.18.112 (which she did not violate). The municipal court judge, in turn, accepted the guilty plea and sentenced the defendant pursuant to the plea deal, without ever reviewing with the defendant the definition of “soliciting” in the ordinance, discussing the exemption for passive solicitation, or pointing out that the police narrative did not reflect actions by the defendant that could possibly constitute a violation of the ordinance.⁵

We have reviewed the records of several court cases in which the municipal court judge sentenced a person to jail for requesting charity with a sign, conduct that does not violate either of the City’s solicitation ordinances. For instance, in Case Number 15M17624, the municipal court sentenced one passive solicitor to **10 days in jail** for

⁴ We are confident that the citations erroneously issued to passive solicitors represent only a portion of police officers’ extra-legal enforcement of the City’s solicitation laws. Many citations note that the officer had previously warned the particular solicitor that his or her activity violated the City’s panhandling restrictions. Oral warnings and move-on orders issued to persons who merely display a sign surely represent a sizeable addition to the scope of the extra-legal enforcement that is documented in written citations. Although informal warnings do not result in jailing or a fine, such extra-legal enforcement deters and chills persons from carrying out communications that are not regulated by the City’s ordinances and, in addition, are protected by the First Amendment.

⁵ See *Transcript*, Case No. 14M15155, July 3, 2014.

holding a sign requesting charity within 20 feet of the entrance to a building . In another particularly disturbing case, the police cited a 58-year-old homeless man for soliciting with a sign. The municipal court judge accepted the defendant's guilty plea and imposed a staggeringly-severe sentence of **90 days in jail**.⁶ Setting aside the irrationality and cruelty of such a grave punishment for displaying a sign inviting charity, this exercise of the court's most extreme enforcement power – incarceration – was imposed for conduct that does not violate the City's ordinances.

The records of the police and the Colorado Springs Municipal Court reflect additional examples of this unjustifiable and illegal enforcement of the panhandling ordinances against persons who were not violating those ordinances. In these cases, all three major arms of the municipal criminal justice system – police, prosecutors, and the municipal court – played a culpable role in citing, prosecuting, convicting and sentencing poor and homeless people, sometimes to jail, for a crime they did not commit.

These astounding extra-legal exercises of power by the Colorado Springs Police Department, the City Attorney's Office, and the Municipal Court strongly suggest that none of these offices are respecting the limits of their legal authority, at least when it comes to poor and homeless people, who are often without adequate resources, knowledge or legal counsel to protect their own rights. The police lacked any authority to cite these passive solicitors. The City Attorney's office, which should be a backstop to catch such extra-legal enforcement by the police, has an ethical obligation to know and understand the law and to decline prosecution when the police report does not reflect a violation. Instead, the City Attorney prosecutes passive sign-holding solicitors even though the City's solicitation laws provide no basis for doing so. Likewise, the Municipal Court has imposed sentences of fines and jail after accepting guilty pleas from impoverished, unrepresented defendants for violation of what is essentially a non-existent, imaginary law. In doing so, the Municipal Court has repeatedly abdicated its responsibility to follow the law faithfully, to ensure that a finding of guilt actually has a factual basis, and to act as a bulwark against overreaching by the City's police and prosecutors.

Based on the foregoing, we believe it is evident that, instead of meting out justice, the City of Colorado Springs has been wielding its enforcement powers to target poor and homeless people for extra-legal, discriminatory and fundamentally unfair treatment. We urge the City of Colorado Springs to rethink how the City's criminal justice system interacts with residents who are experiencing poverty and homelessness and to chart a new course.

Conclusion

The City must, at minimum, take immediate action to end its illegal enforcement practices by doing the following:

- (1) Order the Colorado Springs Police Department, the Colorado Springs City Attorney's Office and the Colorado Springs Municipal Court to stop enforcing CSMC Sections 9.2.111 and 10.18.112 against passive solicitors;

⁶ See *Transcript*, Case No. 14M33998, January 6, 2015.

- (2) Review all pending prosecutions under CSMC Sections 9.2.111 and 10.18.112 and dismiss any that reflect enforcement against passive solicitors; and
- (3) Review all convictions under CSMC Sections 9.2.111 and 10.18.112 with active sentences – including incarceration, probation, or pending fines – and reverse any convictions and rescind any sentences that were based on convictions for passive solicitation.

Please provide a written response to this letter **by September 28, 2015**.

Sincerely,



Mark Silverstein
Legal Director, ACLU of Colorado



Rebecca Wallace
Staff Attorney, ACLU of Colorado

Cc: Anne H. Turner, Colorado Springs City Attorney's Office – aturner@springsgov.com