



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

August 31, 2016

SENT VIA U.S. MAIL

Lynn Horner, Mayor
City of La Junta
601 Colorado Ave.
La Junta, CO 81050

Dear Mayor Horner,

Your municipality is one of over thirty in Colorado with a municipal code that makes it a crime to “loiter for the purpose of begging.” La Junta Municipal Code § 9.08.201(a). This ordinance not only unfairly targets poor and homeless persons whose pleas for assistance are protected by the First Amendment, but it is also legally indefensible. We write to ask that La Junta immediately initiate the steps necessary to repeal the ordinance and take it off the books. While the process of repeal is unfolding, law enforcement should be instructed not to enforce this ordinance.

In recent years, this nation and Colorado have seen a marked uptick in enforcement of laws that effectively criminalize homelessness and extreme poverty, including many laws that prohibit individuals from peacefully asking passersby for help.¹ Not only do these anti-begging ordinances violate the constitutional rights of impoverished people, but they are costly to enforce and serve to exacerbate problems associated with homelessness and poverty. Harassing, ticketing and/or arresting poor persons for asking for help is inhumane, counterproductive and – in many cases – illegal. That is why the American Civil Liberties Union of Colorado (“ACLU”) has devoted considerable resources in recent years to reviewing, and sometimes challenging such ordinances.²

¹ See National Law Center on Homelessness and Poverty, *No Safe Place – The Criminalization of Homelessness in U.S. Cities* (2015), available at http://www.nlchp.org/documents/No_Safe_Place.

² Following are recent ACLU actions aimed at challenging laws that criminalize peaceful solicitation of charity:

- In 2013, Colorado Springs repealed an ordinance establishing a “Downtown No Solicitation Zone” after the ACLU obtained a preliminary injunction. As part of the settlement in that case, Colorado Springs paid the ACLU \$110,000 in attorneys’ fees.
- In 2014, in response to a letter from the ACLU, officials in Durango agreed to suspend enforcement of an ordinance that, like the Bennett ordinance, prohibited “loitering . . . for the purpose of begging.” The Durango ordinance has now been repealed.

It is well-settled that peacefully soliciting charity in a public place is protected by the First Amendment. *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.”); *accord Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980). This constitutional protection applies not just to organized charities, but also to the humblest solitary beggar asking for spare change to get through the day. More than twenty years ago, the Second Circuit explained that begging or panhandling is communicative activity that the Constitution protects:

Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation. Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance. We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are

-
- In a 2015 ACLU case, a federal judge ruled that Grand Junction’s panhandling ordinance violated the First Amendment. *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276 (D. Colo. 2015). Grand Junction repealed the ordinance and paid the ACLU \$330,000 in attorneys’ fees.
 - Also in 2015, the ACLU 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 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, the ACLU 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 2015, Durango proposed a new panhandling ordinance to replace the repealed ordinance that prohibited “loitering . . . for the purpose of begging.” The ACLU of Colorado wrote a detailed critique that explained why multiple provisions of the proposed ordinance violated the First Amendment. The Durango Town 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, Loveland, noting the ACLU’s 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 to which the ACLU does not object.
 - In August 2015, in response to a letter from the ACLU, Steamboat Springs agreed to cease enforcement of its ordinance prohibiting loitering for the purpose of begging. A month later, the City repealed the ordinance.
 - In October 2015, in response to a letter from the ACLU, Colorado Springs dismissed hundreds of panhandling charges against individuals who had been cited for peacefully soliciting charity with a sign. In 2016, the City repealed one of its panhandling ordinances and revised the other to leave in place only those provisions to which the ACLU does not object.

communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes.

Loper v. New York Town Police Department, 999 F.2d 699, 700 (2d Cir. 1993).³ In the years since the *Loper* decision, numerous courts have held that various regulations or outright prohibitions of solicitation violate the First Amendment. See, e.g., *Norton v. City of Springfield*, 806 F.3d 411, 412-13 (7th Cir. 2015) (anti-panhandling statute is content-based and subject to strict-scrutiny); *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1287 (D. Colo. 2015) (same); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233 (D. Mass. 2015) (same); *Speet v. Schuette*, 726 F.3d 867, 870 (6th Cir. 2013) (invalidating Michigan’s anti-begging statute, which “bans an entire category of activity that the First Amendment protects”); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549 (4th Cir. 2013) (subjecting regulation of solicitation to strict scrutiny); *ACLU of Idaho v. City of Boise*, 998 F. Supp. 2d 908 (D. Idaho 2014) (issuing preliminary injunction); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624 (S.D. W Va. 2013) (issuing preliminary injunction); *Guy v. County of Hawaii*, 2014 U.S. Dist. Lexis 132226 (D. Hawaii Sept. 19, 2014) (issuing temporary restraining order).

During the litigation of the ACLU’s challenge to Grand Junction’s panhandling ordinance, the federal district court in Colorado underscored the significance of panhandling’s communicative function:

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).

The La Junta ordinance prohibiting loitering for the purpose of begging is far broader than many of the anti-panhandling regulations that courts have struck down in recent years. It prohibits passively, silently, and nonintrusively sitting with a sign that asks for charity, and it applies everywhere in the municipality. The ordinance could not survive a legal challenge. Indeed, the language of La Junta’s loitering ordinance is familiar to our office. In 1996, the ACLU of Colorado filed a class action lawsuit to challenge an antiquated Colorado statute that, like La Junta’s ordinance, prohibited “loitering . . . for the purpose of begging.” After the plaintiffs obtained a preliminary injunction, the defendants agreed to ask the legislature to repeal the statute, and it was repealed in the next legislative session.

Through the ACLU’s investigation, we know that several jurisdictions have actively enforced this outdated ordinance – whether by means of citations, warnings, or move-on orders. Indeed, of the ten municipalities from which we received records, eight had engaged in some

³ Notably, the New York City ordinance at issue in the *Loper* decision was very similar to Bennett’s. The ordinance provided that a person commits a crime when he “Loiters, remains or wanders about in a public place for the purpose of begging.” *Loper*, 999 F.2d at 701. The court held the ordinance violates the First Amendment. *Id.* at 706.

form of illegal enforcement of the ordinance within the last few years. We understand, however, that some municipalities may have allowed this unconstitutional ordinance to stay on the books, but have no intention of enforcing it. Your municipality may be one such jurisdiction. Even if that is the case, it is important to remove this archaic law from the municipal code. Leaving the law on the books raises the very real possibility that, at some point in the future, an energetic law enforcement officer will review the entirety of the municipal code and begin enforcing the ordinance.⁴

Based on the foregoing, we ask La Junta to take the following immediate actions:

- 1. Stop enforcing Section 9.08.201(a). This requires instructing any law enforcement officers charged with enforcing the municipal code that Section 9.08.201(a) is no longer to be enforced in any way, including by issuance of citations, warnings, or move-on orders.**
- 2. Immediately initiate the steps necessary to repeal Section 9.08.201(a).**
- 3. If there are any pending prosecutions under Section 9.08.201(a), dismiss them.**

Please provide a written response to this letter by **September 14, 2016**.

Sincerely,



Mark Silverstein
Legal Director
ACLU of Colorado



Rebecca Wallace
Staff Attorney & Policy Counsel
ACLU of Colorado

cc: Phillip Malouff, La Junta City Attorney - phil@malouff.net

⁴ Indeed, after at least eight years of non-enforcement of its loitering for the purpose of begging ordinance, the Town of Bennett recently cited a homeless man who was simply soliciting donations with a sign. The municipal court set the case for trial, but our office was able to secure a dismissal after we shared with the prosecuting attorney some of the caselaw cited in this letter.