

# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Councilmember Nick Licata  
Seattle City Hall  
PO Box 34025  
Seattle, WA 98124-4025

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April 16, 2010

Dear Councilmember Licata:

Thank you for your inquiry regarding the proposed Seattle ordinance barring “aggressive solicitation”, SMC 15.48.050. The National Law Center on Homelessness & Poverty (NLCHP) is very concerned about the harmful impact the ordinance will have on the constitutional and human rights of homeless Seattle residents. We urge you and the Council to vote against the ordinance and consider a more constructive approach to the issue.

Courts around the country have recognized that begging or solicitation of monetary donations is speech fully protected by the First Amendment. *See Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999); *Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2d Cir. 1993); *Gresham v. City of Indianapolis*, 225 F.3d 899, 904 (7th Cir. 2000). Speech that is effected in traditional public fora, such as sidewalks and public parks, is entitled to the highest level of protection by the courts. *Int’l Soc’y for Krishna Consciousness v. Lee*, 505 U.S. 672, 678 (1992). Content-based regulations, such as the proposed amendments to SMC 15.48.050, must be narrowly tailored to promote a compelling government interest. *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 813 (2000); *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989).

SMC 15.48.050 imposes an unconstitutional burden on speech in violation of the First Amendment by targeting speech based on its content in a manner that is not narrowly tailored enough to withstand strict scrutiny by a court as it does not address a legitimate public interest. The stated purpose for needing to pass this ordinance is that aggressive solicitation is a public safety issue. However, the data the city collected does not indicate that the reason people feel unsafe downtown is directly linked to solicitation. Simply being “concerned” with an issue is not the same as feeling that the issue is a public safety threat.

Even if aggressive solicitation was a public safety threat, this ordinance does nothing to reduce that threat. Rev. Code Wash. (ARCW) § 9A.56.190 (2010) and Rev. Code Wash. (ARCW) § 9A.56.110 (2010) deal with the crimes of robbery and extortion respectively and their language covers the activity with which the council is concerned. Specifically, the statutes cover threats, intimidation, violence and creating fear of injury. The civil ordinance in question does no more to deter these actions than the criminal statutes of the state of Washington. It therefore does not address the alleged compelling state interest.

Further, the complexity of the restrictions and the vagueness of some language in the ordinance violate the Fourteenth Amendment’s Due Process Clause. A law that fails to adequately explain what a person must do to comply with the law and does not set sufficient guidelines to prevent arbitrary enforcement violates the Due Process Clause.

*Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The lack of specific definitions for terms such as “abusive”, “repeatedly”, and “following” create a strong possibility of arbitrary enforcement, and fail to provide the high degree of specificity and clarity required of an ordinance that implicates First Amendment rights. *California Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001).

Beyond the Constitutional problems, both international and local human rights monitors have also raised the criminalization of homelessness as a potential human rights violation, with recommendations to develop constructive alternatives that help homeless persons find housing. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context*, Raquel Rolnik, *Addendum, Mission to the United States of America*, A/HRC/13/20/Add. 4, Feb. 12, 2010; Seattle Human Rights Commission, *Report to the City Council on Bill 116807*, April 6, 2010. Seattle can and should find alternative ways to approach the problems of poverty and homelessness. Instead of pursuing measures that can lead to civil rights violations and consequent costly and burdensome litigation, Seattle should dedicate more time and resources to developing jobs at a living wage, promoting affordable housing, ensuring increased access to healthcare for low-income persons, and other solutions to homelessness.

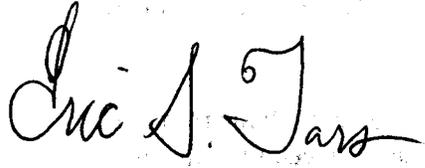
As a policy matter, practices that criminalize homelessness do nothing to address the underlying causes of homelessness. Instead, they drastically exacerbate the problem. In 2004, the Lewin Group issued the results of a nine-city survey that compared jail costs to emergency shelter and permanent supportive housing costs, among other things. According to the survey results, jail costs were two to three times higher than permanent supportive housing or shelter costs. Lewin Group, *Costs of Serving Homeless Individuals in Nine Cities*, [http://documents.csh.org/documents/ke/csh\\_lewin2004.PDF](http://documents.csh.org/documents/ke/csh_lewin2004.PDF) (2004). Moreover, when homeless persons are arrested and charged under these ordinances, they may develop a criminal record, making it more difficult to obtain the employment and/or housing that could help them become self-sufficient. Seattle Human Rights Commission, *Report to the City Council on Bill 116807*, April 6, 2010; National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in American Cities*, [www.nlchp.org/content/pubs/2009HomesNotHandcuffs1.pdf](http://www.nlchp.org/content/pubs/2009HomesNotHandcuffs1.pdf) (2009).

Other cities have found more productive ways to approach issues around homelessness and poverty. For example, in response to community concerns surrounding panhandling in the downtown area of Madison, Wisconsin, the city decided to find a way to address the issue without resorting to punitive measures. The city contracted with two social service agencies to create a downtown outreach program. Instead of arresting or citing those asking for money on the streets, the police work with the outreach team to help connect people with appropriate services. In the first three months of the program, outreach workers worked intensively with 33 individuals, with almost half of them moving into some sort of housing as a result of those contacts.

Another example of a city using its law enforcement resources more wisely is Ft. Lauderdale, FL where the Police Department has partnered with a local non-profit to create an outreach team made up of police officers and a civilian outreach worker who is formerly homeless. In its first five years of operation, the Homeless Outreach Team made over 23,000 contacts with homeless individuals and placed 11,384 people in shelters. Estimates suggest that there are at least 2,400 fewer arrests each year as a result of the Homeless Outreach Team.

NLCHP would be happy to serve as a resource to help Seattle find constructive approaches to homelessness that do not involve criminalizing it. Please feel free to contact me at 202-638-2535 if you have any questions or would like further information on strategies to end homelessness. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Eric S. Tars". The signature is written in a cursive style with a large initial "E" and a stylized "Tars" at the end.

Eric Tars  
Human Rights Program Director