NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

May 9, 2018

Mayor Nancy Vaughan
Mayor Pro-Tem Yvonne Johnson
Councilor Sharon Hightower
Councilor Goldie Wells
Councilor Justin Outling
Councilor Nancy Hoffman
Councilor Tammi Thurm
Councilor Marikay Abuzuaiter
Councilor Michelle Kennedy
City Attorney Tom Carruthers
Via EMail

Dear Mayor, Mayor Pro-Tem, Councilors, and City Attorney,

Thank you for this opportunity to share our concerns about the recently-passed ordinance with respect to Chapter 20 of the city code, which effectively criminalizes those who are forced to ask for donations on the streets of Greensboro. The National Law Center on Homelessness & Poverty is the only national legal organization dedicated to ending and preventing homelessness, with more than 25 years of experience in outreach and education, policy advocacy, and impact litigation. Because of this experience, we know that your recently passed law is likely unconstitutional, fails to address the underlying causes of people needing to ask for donations, and will cost the city more in their enforcement than it would to simply provide the housing and services individuals need so they would not have to ask for contributions in the first place.

The ordinance criminalizes the act of soliciting funds in several defined "aggressive" manners and in a number of regulated locations. As the city recognizes in the preamble to the bill, the First Amendment's protections of free speech apply to those who are asking for donations. *See, e.g. Buckley v. Valeo*, 424 U.S. 1 (1976); *Speet v. Schuette*, 726 F.3d 867, 878 (6th Cir. 2013) ("[B]egging, or the soliciting of alms, is a form of solicitation that the First Amendment protects."). The Supreme Court clarified in *Reed v. Town of Gilbert, Ariz.* (135 S. Ct. 2218 (2015)) that it will examine a law as a content-based restriction if (1) the *text* of the law makes distinctions based on speech's "subject matter . . . function or purpose" *or* (2) the *purpose* behind the law is driven by an objection to the content of a message. Subsequent cases have clarified that this applies to ordinances seeking to regulate panhandling (*see Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 135 S. Ct. 2887 (2015), *declaring ordinance unconstitutional on remand*, 2015 WL 6872450, at *15 (D. Mass. Nov. 9, 2015)).

The city already has on its books laws intended to address individuals safety concerns—such as assault and battery—and traffic safety concerns; making a distinction between

putting someone in fear of their safety while asking for donations versus without asking for donations, or blocking passage of someone in a car while protesting versus asking for donations from a person in a car, a content-based distinction. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2231 (2015) ("[A] speech regulation is content based if the law applies to particular speech *because of the topic discussed or the idea or message expressed*.") (emphasis supplied); *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412–13 (7th Cir. 2015). In *McLaughlin v. City of Lowell*, a federal court struck down as unconstitutional in its entirety an almost-identically worded ordinance that restricted "aggressive" panhandling because the prohibitions on "aggressive" conduct were duplicative of existing criminal laws and the ordinance otherwise unnecessarily burdened protected speech. 140 F. Supp. 3d at 192–93; *see also Thayer v. City of Worcester*, 144 F. Supp. at 224, 233 (applying strict scrutiny to ordinance which regulated only aggressive panhandling and not peaceful or passive panhandling and saying "[a]s to Ordinance 9-16, a protracted discussion of this issue is not warranted as substantially all of the Courts which have addressed similar laws since *Reed* have found them to be content based and therefore, subject to strict scrutiny.")

We understand the city received outside advice that this ordinance would pass constitutional muster. That may have been the case prior to 2015, but since the 2015 *Reed* decision, 100% of panhandling restrictions challenged in court have been ruled unconstitutional, including, as noted above, restrictions on so-called "aggressive" panhandling. *See* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual. In 2016, a federal judge in Florida expressed his clear distaste for panhandling in striking down another almost-identically worded ordinance, and stated "Without *Reed*… I would uphold the City's ordinance…" "[n]onetheless, this order dutifully applies *Reed* and resolves the present dispute against the City ..." *Homeless Helping Homeless v. City of Tampa*, No. 8:15-cv-1219-T-23AAS (M.D. Fl. Aug. 5, 2016). The strength of this precedent, even before a sympathetic judge, suggests Greensboro's ordinance will likely meet a similar fate. It would be an unfortunate misuse of resources for Greensboro to invite losing litigation by failing to quickly repeal this ordinance.

Regardless of the constitutionality, this bill is poor public policy. Whether initially sentenced to a civil fine or imprisonment, most often homeless persons cannot pay fines, and because they miss notices to appear in court due to a lack of permanent address, it is a fine that is likely to turn into a bench warrant and a criminal arrest. As stated by the Department of Justice in the context of its argument regarding an anti-camping ordinance in *Bell v. Boise*, but equally applicable here:

> Criminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness… Issuing citations for public sleeping forces individuals into the criminal justice system and creates additional obstacles to overcoming homelessness. Criminal records can create barriers to employment and participation in permanent, supportive housing programs. Convictions under these municipal ordinances can also lead to lengthy jail sentences based on the ordinance violation itself, or the inability to pay fines and fees associated with the ordinance violation…Finally, pursuing charges against individuals for sleeping in public imposes further burdens on scarce public defender, judicial, and carceral resources. Thus, criminalizing homelessness is both unconstitutional and misguided public policy, leading to worse outcomes for people who are homeless and for their communities.

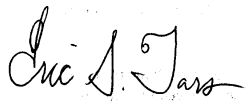
Bell v. Boise, et. al., 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015).

Numerous studies have shown that communities actually save money by providing housing and services to those in need, rather than cycling them through expensive hospital and jail systems. *See* National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), https://www.nlchp.org/documents/Housing-Not-Handcuffs. If Greensboro is truly concerned about the existence of panhandlers on its streets, the best way to address the problem is by removing the need for people to solicit donations in the first place, by providing adequate housing and services, rather than making it harder for people to exit homelessness due to civil and criminal penalties. Our reports document numerous case studies of constructive alternatives to criminalization; if the city would like, we would be happy to work with you to implement solutions that work for everyone.

Albuquerque, New Mexico has reduced complaints about panhandling from a half dozen per week to a few a month by adopting the "There's A Better Way" program, funding a van to bring panhandlers to $10/hour day labor positions and access service providers, which have led to hundreds being able to find permanent employment, and many accessing housing or services. *See* Rick Nathanson, *Better Way program gets upgrade,* Albuquerque Journal (Dec. 16, 2016) https://www.abqjournal.com/911008/better-way-program-gets-upgrade.html. Denver has also recently expanded a similar program after seeing dramatic success. *See* John Murray, *After Denver hired homeless people to shovel mulch and perform other day labor, more than 100 landed regular jobs*, Denver Post (Jan. 16, 2018), https://www.denverpost.com/2018/01/16/denver-day-works-program-homeless-jobs/. Philadelphia, PA recently greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. *See* Nina Feldman, *Expanded Hub of Hope homeless center opening under Suburban Station,* WHYY (Jan. 30, 2018) https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/. In opening the Center, Philadelphia Mayor Jim Kenny emphasized "We are not going to arrest people for being homeless," stressing that the new space "gives our homeless outreach workers and the police a place to actually bring people instead of just scooting them along." These programs are how cities actually solve the problem of homelessness, rather than merely addressing its symptoms.

We can all agree that we would like to see a Greensboro where homeless people are not forced to beg on the streets. But whether examined from a legal, policy, fiscal, or moral standpoint, criminalizing any aspect of panhandling is not the best way to get to this goal. We suggest an immediate moratorium on enforcement and rapid repeal to avoid potential litigation, and working with us and local advocates to develop approaches that will lead to the best outcomes for the residents of Greensboro, housed and unhoused alike. Should you have further questions, please do not hesitate to contact me at etars@nlchp.org or 202-464-0034.

Sincerely,



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