

LEGAL SERVICES OF NORTHERN CALIFORNIA

Laurance Lee, State Bar No. 301482

Elise Stokes, State Bar No. 288211

Sarah Ropelato, State Bar No. 254848

515 12th Street

Sacramento, CA 95814

Telephone: (916) 551-2150

Facsimile: (916) 551-2196

E-mail: llee@lsnc.net

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF NORTHERN CALIFORNIA, INC.

Abre' Conner, State Bar No. 306024

Alan Schlosser, State Bar No. 049957

William S. Freeman, State Bar No. 82002

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 621-2493

Facsimile: (415) 255-8437

E-mail: aconner@aclunc.org

Attorneys for Plaintiff Sacramento Regional Coalition to End Homelessness, James Lee Clark, and Sacramento Homeless Organizing Committee

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SACRAMENTO REGIONAL COALITION
TO END HOMELESSNESS, JAMES LEE
CLARK, AND SACRAMENTO
HOMELESS ORGANIZING COMMITTEE,

Plaintiffs,

v.

CITY OF SACRAMENTO,

Defendant.

Case No.: 2:18-CV-00878-MCE-AC

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: May 31, 2018

Time: 2:00 p.m.

Courtroom: 7

PLEASE TAKE NOTICE that at 2:00 p.m. on May 31, 2018, in Courtroom 7 of the above-entitled Court, located at 501 "I" Street, Sacramento, California 95814, Plaintiffs, by and through their undersigned counsel, will and hereby do move this Court pursuant to Fed. R. Civ. P. 65(a) for issuance of an Order granting a preliminary injunction prohibiting and enjoining the Defendants, their officials, officers, agents, employees, contractors, and any other persons acting for them, with them, through or on their behalf, who have received actual notice of that Order, from enforcing Sacramento City Ordinance No. 2017-0054, codified as Chapter 8.134 of the Sacramento City Code.

Plaintiffs so move on the grounds that the Ordinance violates their rights of free speech under the First Amendment to the U.S. Constitution and Article I, Section 2 of the California Constitution.

This motion is supported by the Memorandum of Points and Authorities; the Declarations of Bob Erlenbusch, Paula Lomazzi and Abre' Conner; and the [Proposed] Order, all filed contemporaneously herewith; on the pleadings and papers on file in this action; and on such argument as may be adduced at the hearing hereof.

Pursuant to Local Rule 231(d)(3), Plaintiffs request the opportunity to present oral argument in support of this motion but do not anticipate that they will present oral testimony. Plaintiffs estimate that 30 minutes will be required for the hearing.

Dated: April 27, 2018

LEGAL SERVICES OF NORTHERN CALIFORNIA
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.

By: /s/ Abre' Conner
ABRE' CONNER

Attorneys for Plaintiffs

LEGAL SERVICES OF NORTHERN CALIFORNIA
Laurance Lee, State Bar No. 301482
Elise Stokes, State Bar No. 288211
Sarah Ropelato, State Bar No. 254848
515 12th Street
Sacramento, CA 95814
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Facsimile: (916) 551-2196
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND	2
III.	LEGAL STANDARD	6
IV.	ARGUMENT	7
A.	PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS BECAUSE THE ORDINANCE IS UNCONSTITUTIONAL ON ITS FACE.....	7
	1. Panhandling Is Speech Protected By The First Amendment	7
	2. Regulation Of Speech That Takes Place In A Traditional Public Forum Is Particularly Disfavored	7
	3. Since The Ordinance Regulates The Content Of Protected Speech In A Public Forum, It Is Presumptively Invalid And Subject To Strict Scrutiny.....	8
	4. The Ordinance Cannot Survive Strict Scrutiny	11
	a. The City Cannot Meet Its Burden Of Establishing That The Ordinance Is Actually Necessary To Promote A Compelling Interest....	11
	b. The Ordinance Is Not The Least Restrictive Means To Achieve A Compelling Governmental Interest	12
	i. Sacramento Has Not Met Its Burden Of Establishing That The No-Solicitation Buffer Zones Meet The Requirements Of Strict Scrutiny	13
	ii. Sacramento Cannot Meet Its Burden Of Showing That The “Aggressive And Intrusive Solicitation” Provisions Meet The Requirements Of Strict Scrutiny	15
	5. The Ordinance Is Substantially Overbroad And Should Be Invalidated On Its Face	17
B.	PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A PRELIMINARY INJUNCTION	18
C.	THE BALANCE OF EQUITIES IS IN THE PLAINTIFFS’ FAVOR AND A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST	18
V.	CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>ACLU of Nevada v. City of Las Vegas</i> , 466 F.3d 784 (9th Cir. 2006).....	7
<i>Ashcroft v. Free Speech Coal.</i> , 535 U.S. 234 (2002).....	17
<i>Babbitt v. United Farm Workers Nat’l Union</i> , 442 U.S. 289 (1979).....	18
<i>Bible Club v. Placentia-Yorba Linda School Dist.</i> , 573 F. Supp. 2d 1291 (C.D. Cal. 2008).....	19
<i>Blitch v. City of Slidell</i> , 260 F. Supp. 3d 656 (E.D. La. 2017)	1, 12, 18
<i>Bowen v. Consol. Elec. Distributors, Inc. Employee Welfare Ben. Plan</i> , 461 F. Supp. 2d 1179 (C.D. Cal. 2006).....	19
<i>Brown v. Entm’t Merchants Ass’n</i> , 564 U.S. 786 (2011).....	11
<i>Browne v. City of Grand Junction</i> , 136 F. Supp. 3d (D. Colo. 2015)	13, 16, 17
<i>Champion v. Commonwealth</i> , 520 S.W.3d 331 (Ky. 2017).....	1
<i>Cutting v. City of Portland, Maine</i> , 802 F.3d 79 (1st Cir. 2015)	14
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	18
<i>Firearms Policy Coal. Second Amendment Defense Committee v.</i> <i>Harris</i> , 192 F. Supp. 3d 1120 (E.D. Cal. 2016).....	2, 6, 12, 18
<i>Foti v. City of Menlo Park</i> , 146 F.3d 629 (9th Cir.1998).....	17
<i>Homeless Helping Homeless v. City of Tampa</i> , 2016 WL 4162882 (M.D. Fla. 2016).....	14
<i>Jorgensen v. Cassidy</i> , 320 F.3d 906 (9th Cir. 2003).....	19

1	<i>Klein v. City of San Clemente</i> ,	
2	584 F.3d 1196 (9th Cir. 2009).....	6, 18
3	<i>Leiva-Perez v. Holder</i> ,	
4	640 F.3d 962 (9th Cir. 2011).....	6
5	<i>Loper v. New York City Police Dept.</i> ,	
6	999 F.2d 699 (2nd Cir. 1993).....	7
7	<i>McLaughlin v. City of Lowell</i> ,	
8	140 F. Supp. 3d 177 (D. Ma. 2015).....	11, 13, 15, 16
9	<i>McMullen v. Coakley</i> ,	
10	134 S. Ct. 2518 (2014).....	8, 12, 15
11	<i>Melendres v. Arpaio</i> ,	
12	695 F.3d 990 (9th Cir. 2012).....	18
13	<i>Norton v. City of Springfield</i> ,	
14	806 F.3d 411 (7th Cir. 2015).....	9
15	<i>Orantes-Hernandez v. Smith</i> ,	
16	541 F. Supp 351 (C.D. Cal. 1982).....	19
17	<i>R.A.V. v. City of St. Paul</i> ,	
18	505 U.S. 377 (1992).....	8
19	<i>Reed v. Town of Gilbert</i> ,	
20	135 S.Ct. 2218 (2015).....	<i>passim</i>
21	<i>Reynolds v. Middleton</i> ,	
22	779 F.3d 222 (4th Cir. 2015).....	7
23	<i>Robins v. Pruneyard Shopping Center</i> ,	
24	23 Cal. 3d 899 (1979).....	7
25	<i>Rodgers v. Bryant</i> ,	
26	2017 WL 6513162 (E.D. Ark. 2017).....	12, 16
27	<i>Scherr v. Volpe</i> ,	
28	466 F.2d 1027 (7th Cir. 1972).....	19
	<i>Sierra On-Line, Inc. v. Phoenix Software, Inc.</i> ,	
	739 F.2d 1415 (9th Cir. 1984).....	6
	<i>Steffel v. Thompson</i> ,	
	415 U.S. 452 (1974).....	18

1	<i>Thayer v. City of Worcester,</i>	
2	144 F. Supp. 3d 218 (D. Mass. 2015)	10, 13, 14, 16
3	<i>Thayer v. City of Worcester,</i>	
4	755 F.3d 60 (1st Cir. 2014)	9
5	<i>Thayer v. City of Worcester,</i>	
6	979 F. Supp. 2d 143 (D. Mass. 2013)	9
7	<i>Thayer v City of Worcester, Mass.,</i>	
8	135 S. Ct. 2887 (2015).....	9
9	<i>United States v. Alvarez,</i>	
10	567 U.S. 709 (2012).....	1, 8
11	<i>United States v. Grace,</i>	
12	461 U.S. 171 (1983).....	8
13	<i>United States v. Playboy Entm't Grp.,</i>	
14	529 U.S. 803 (2000).....	8
15	<i>Valle Del Sol, Inc. v. Whiting,</i>	
16	709 F.3d 808 (9th Cir. 2013)	18
17	<i>Vill. of Schaumburg v. Citizens for a Better Env't,</i>	
18	444 U.S. 620 (1980).....	7, 17
19	<i>Williams-Yulee v. The Florida Bar,</i>	
20	135 S. Ct. 1656 (2015).....	11
21	<i>Winter v. Natural Res. Def. Council, Inc.,</i>	
22	555 U.S. 7 (2008).....	6
23	Constitution and Statutes	
24	First Amendment.....	<i>passim</i>
25	Cal. Const. art. 1 § 2	7
26	Cal. Penal. Code § 241 (2018).....	17
27	Cal. Penal. Code § 243 (2018).....	17
28	Cal. Penal. Code § 422 (2018).....	17
	Cal. Penal. Code § 646.9 (2018).....	17
	Cal. Penal. Code § 647(c) (2018).....	17

1	Sacramento City Code § 8.134.010 (2017).....	11, 12, 13, 14
2	Sacramento City Code § 8.134.020 (2017).....	2, 3, 7, 15
3	Sacramento City Code § 8.134.030 (2017).....	<i>passim</i>
4	Sacramento City Code § 8.134.040 (2017).....	3

I. INTRODUCTION¹

The City of Sacramento has adopted a Solicitation Ordinance (“Ordinance”) that makes it a crime to request an immediate donation of money or anything of value on broad swaths of the City’s streets and sidewalks. The law also bans what it terms “aggressive” and “intrusive” solicitations in public spaces. The Ordinance thus singles out both panhandling and charitable solicitations and applies unique restrictions on only those forms of speech that request immediate assistance from others. The Ordinance imposes no such restrictions on persons on the sidewalks with different messages, such as seeking support for a candidate for elective office or seeking signatures on a petition.

The Ordinance fails under the fundamental First Amendment principle that laws that are content-based are “presumed invalid” and must meet the “exacting” strict scrutiny test to pass constitutional muster. *United States v. Alvarez*, 567 U.S. 709, 717, 724 (2012). In *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015), the Supreme Court clarified the definition of what makes a law content-based by holding that if a law on its face regulates speech based on its content, then it “is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 2228.

As applied to panhandling and solicitation ordinances, the response to *Reed* in the lower courts has been transformative. These courts have recognized that *Reed* is a “sea change in First Amendment law” (*Blitch v. City of Slidell*, 260 F. Supp. 3d 656, 666 (E.D. La. 2017)) and a “paradigm shift in the interpretation of public-speech regulation” (*Champion v. Commonwealth*, 520 S.W.3d 331, 336 (Ky. 2017)). In considering solicitation ordinances virtually identical to Sacramento’s, eight courts have ruled that these ordinances were content-based in light of *Reed*, and went on to find that these laws failed to meet the strict scrutiny standard, and accordingly were invalid on their face. (see *infra* pp. 9-10, 12-17).

¹ Pursuant to Local Rule 231(d)(3), Plaintiffs do not intend to present oral testimony at the hearing, and estimate that the hearing would take thirty minutes.

1 This post-*Reed* caselaw was presented to the City Council at multiple hearings
 2 on the Ordinance by advocates who opposed the Ordinance and argued its
 3 unconstitutionality. This exemplary citizen advocacy apparently was ignored.

4 Citing *Reed*, this Court in *Firearms Policy Coal. Second Amendment Defense*
 5 *Committee v. Harris*, 192 F. Supp. 3d 1120 (E.D. Cal. 2016) considered a content-
 6 based statute limiting certain forms of political speech, and held that the government
 7 “has failed to carry its burden of proving that [the challenged law] can survive strict
 8 scrutiny.” *Id.* at 1128. As a result, this Court issued a preliminary injunction against
 9 enforcement of the statute. For the same reason, this Court should issue a preliminary
 10 injunction against enforcement of the Ordinance.

11 **II. FACTUAL BACKGROUND**

12 On November 14, 2017, Sacramento enacted its anti-solicitation ordinance,
 13 which took effect on December 14, 2017, and added Chapter 8.134 to the Sacramento
 14 City Code. See generally First Amended Complaint (“FAC”) ¶¶ 5-10; Exhibit (“Ex.”) A.
 15 The Ordinance defines solicitation to include any type of request, including both
 16 panhandling and charitable solicitation, for “an immediate donation of money or other
 17 thing of value or for the direct and immediate sale of goods or services.” FAC ¶ 6;
 18 SACRAMENTO CITY CODE § 8.134.020 (2017) (all “§” references are to this Code unless
 19 otherwise indicated). Similarly, solicitation activity is broadly defined as “using the
 20 spoken, written, or printed word, or bodily gestures, signs, or other means.” *Id.* Thus,
 21 even passive and silent solicitors sitting next to a sign or a tin cup seeking spare change
 22 are covered by the Ordinance’s prohibitions. Similarly, a person passively soliciting
 23 funds for a school or charitable organization is covered by the law. The Ordinance does
 24 not apply to any communicative content other than request for an immediate donation or
 25 a sale. FAC, ¶ 6; Ex. A, § 8.134.030.

26 The Ordinance establishes extensive no-solicitation buffer zones on public
 27 sidewalks and other public places throughout the entire City. FAC, ¶ 7; Ex. A, §
 28

1 8.134.030. Solicitation is prohibited within 30 feet of all banks, ATMs or other financial
 2 institutions; within 30 feet of any driveway of a business establishment when soliciting
 3 from an operator or occupant in a motor vehicle; within 30 feet of any public
 4 transportation vehicle stop; from persons in any outdoor dining area; from an operator
 5 or occupant of a motor vehicle at a gasoline station or pump; and while on any median
 6 strip anywhere in the City. *Id.*

7 The Ordinance also prohibits “aggressive” or “intrusive” solicitations in *any* public
 8 place. FAC, ¶ 8-9; Ex. A § 8.134.030(A). The law defines “aggressive” and “intrusive” as
 9 including a broad range of conduct, from causing a “reasonable person to fear bodily
 10 harm” to “approaching a person, after the person has indicated they do not want to be
 11 solicited.” § 8.134.020. All of the conduct described as “aggressive or intrusive” is only
 12 prohibited if the “aggressor” or “intruder” is trying to communicate a message that they
 13 need immediate assistance

14 A violation of the Ordinance is an infraction, punishable by a fine. FAC, ¶ 10; Ex.
 15 A, § 8.134.040(A). A third violation within a 6-month period is a misdemeanor,
 16 punishable by a fine of between \$500 and \$1000, six months in jail, or both. FAC, ¶ 10;
 17 Ex. A, § 8.134.040(B).

18 Plaintiff James Lee “Faygo” Clark, a Sacramento resident, is currently
 19 unemployed, homeless, and poor. FAC, ¶ 11; Declaration of James Lee Clark (“Clark
 20 Decl.”) ¶¶ 2, 3. He relies mainly on solicitation from passersby to buy food and life
 21 necessities. FAC, ¶ 12; Clark Decl. ¶¶ 3, 4. He sits on the ground and asks for money
 22 by means of written signs, and sometimes asks people passing by for donations. FAC,
 23 ¶ 12; Clark Decl., ¶¶ 5, 9-11. The locations where he solicits include public sidewalks,
 24 areas near driveway entrances to a business establishment, and within 30 feet of a
 25 Sacramento Regional Transit bus stop. FAC, ¶¶ 12, 14-15; Clark Decl. ¶¶ 5, 8. It is
 26 important for him to be able to solicit in these locations because they allow him to reach
 27 his intended audience near a place where healthy food is purchased, provide a safe

28 ///

environment where people can see him and his signs, and expose him to foot traffic. FAC, ¶¶ 12, 16; Clark Decl. ¶¶ 5, 9. For his safety and the safety of others, he makes sure not to block foot and vehicle traffic. Clark Decl. ¶ 9.

The Ordinance criminalizes the necessary, life-sustaining activities of Mr. Clark and others like him—people experiencing poverty who must solicit funds from others in order to survive. FAC. ¶ 28; Declaration of Paula Lomazzi (“Lomazzi Decl.”), ¶¶ 5-6. Mr. Clark’s speech is chilled by the threat of arrest, fines and/or imprisonment. FAC, ¶ 17; Clark Decl. ¶ 16. The areas where Mr. Clark solicits are safe and effective. FAC, ¶¶ 16-17; Clark Decl. ¶ 17.

Plaintiff SRCEH is a nonprofit, charitable organization whose mission is to end and prevent homelessness in the Sacramento region. FAC. ¶ 18; Declaration of Bob Erlenbusch (“Erlenbusch Decl.”) ¶ 3. It furthers its mission by advocating on behalf of people who happen to be homeless by testifying on proposed legislation, responding to changes in local regulations, and working to assure that the civil rights of homeless people are not infringed. Erlenbusch Decl. ¶ 5. The Ordinance will frustrate SRCEH’s mission by criminalizing the behavior of peaceful solicitors based on the content of their message, deterring them from exercising their constitutional rights to request immediate assistance from members of the public, and interfering with their ability to acquire life necessities that they cannot otherwise afford. *Id.* ¶ 7. SRCEH has already been forced to divert resources to oppose this Ordinance. FAC. ¶ 21; Erlenbusch Decl. ¶ 8. Bob Erlenbusch, the executive director of SRCEH, has appeared a number of times before the City Council and Council committees to explain SCREH opposition to the Ordinance and has prepared and presented information about the recent cases that have struck down laws similar to the Ordinance. FAC, ¶ 27; Erlenbusch Decl. ¶¶ 6-9, 12-17. If the Ordinance is implemented, SCREH will have to educate and counsel persons affected by the Ordinance about their rights. FAC, ¶¶ 18, 27; Erlenbusch Decl. ¶ 7.

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1 Plaintiff Sacramento Homeless Organizing Committee ("SHOC") was founded
 2 in 1987 by advocates, service providers, and formerly homeless and low-income
 3 individuals. FAC, ¶ 22; Declaration of Paula Lomazzi ("Lomazzi Decl.") ¶ 3. SHOC and
 4 its members seek to address problems of homelessness through advocacy, direct non-
 5 violent actions, education, and by bridging the gap between the homeless community
 6 and others in our society. FAC, ¶ 22; Lomazzi Decl. ¶ 3.

7 As part of SHOC's core program, SHOC publishes the *Homeward Street*
 8 *Journal*, a bi-monthly publication that educates the public on poverty, homelessness,
 9 and other important social issues. FAC, ¶ 23; Lomazzi Decl. ¶ 4. SHOC publishes up to
 10 5,000 papers every two months, which it distributes by providing homeless or nearly
 11 homeless individuals up to 350 copies for ten cents each. Lomazzi Decl. ¶ 5. These
 12 individuals then solicit one dollar donations from members of the public in exchange for
 13 the publication. FAC, ¶ 23; Lomazzi Decl. ¶ 5. In 2017, 18,445 papers were sold
 14 throughout Sacramento by 71 individuals. Lomazzi Decl. ¶ 4. SHOC and its members
 15 directly benefit from the distribution of *Homeward* because dissemination of the
 16 newspaper simultaneously confers a financial benefit on its vendors and spreads
 17 awareness of important social issues, including homelessness and poverty. *Id.* ¶ 5.

18 As a result of the enactment of the Ordinance, SHOC's distributors are at risk of
 19 being ticketed, arrested, or harassed by the City. FAC, ¶ 24; Lomazzi Decl. ¶ 6. The
 20 Ordinance frustrates SHOC's goals because it suppresses SHOC vendors' ability to
 21 solicit for donations, and because it interferes with the wide dissemination of the journal
 22 to the public. FAC, ¶ 24; Lomazzi Decl. ¶ 7. The Ordinance will require SHOC to expend
 23 resources it otherwise would spend in other ways, because SHOC will now be required
 24 to educate its vendors regarding how to avoid citation and punishment under the
 25 Ordinance. FAC, ¶ 24; Lomazzi Decl. ¶ 7. SHOC has already expended resources in
 26 advocating in opposition to the Ordinance. FAC, ¶ 24; Lomazzi Decl. ¶ 8.

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1 Prior to enactment of the Ordinance, the Sacramento City Council was not
 2 presented with any statistics, testimony or other evidence that demonstrated a need for
 3 the Ordinance, or explained how persons requesting immediate donations were
 4 endangering public safety or creating traffic hazards. Erlenbusch Decl. ¶ 18; Lomazzi
 5 Decl. ¶ 9. Instead, the testimony in favor of the Ordinance consisted overwhelmingly of
 6 generalized comments about perceived safety concerns over the behavior of homeless
 7 persons and their presence near downtown businesses, FAC, ¶ 26, 29; Erlenbach Decl.
 8 ¶ 18.

9 III. LEGAL STANDARD

10 "A plaintiff seeking a preliminary injunction must establish that he is likely to
 11 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
 12 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
 13 the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)
 14 (citations omitted). Plaintiffs need not show that they will prevail at trial, but only that
 15 they are "likely" to prevail. *See id.*; *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir.
 16 2011). "Alternatively, under the so-called sliding scale approach, as long as the plaintiff
 17 demonstrates the requisite likelihood of irreparable harm and shows that an injunction is
 18 in the public interest, a preliminary injunction can still issue so long as serious questions
 19 going to the merits are raised and the balance of hardships tips sharply in the plaintiffs
 20 favor." *Firearms Policy Coal.*, 192 F. Supp 3d at 1124. A "serious question" is one on
 21 which the movant "has a fair chance of success on the merits." *Sierra On-Line, Inc. v.*
 22 *Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984). (internal quotation marks
 23 and citation omitted). The law favors preliminary injunctions when the plaintiff can
 24 demonstrate a threatened violation of their First Amendment rights. *See Klein v. City of*
 25 *San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009). Here, Plaintiffs have met the
 26 requirements for a preliminary injunction under either test.

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IV. ARGUMENT

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS BECAUSE THE ORDINANCE IS UNCONSTITUTIONAL ON ITS FACE

1. Panhandling Is Speech Protected By The First Amendment

Solicitation, including panhandling, is a form of speech, and therefore protected under the First Amendment and Article 1, Section 2 of the California Constitution.² As the Supreme Court has explained, “charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.” *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980). Indeed, the Ninth Circuit held that “[i]t is beyond dispute that solicitation is a form of expression entitled to the same constitutional protections as traditional speech.” *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006).

Panhandling is as protected as other types of solicitation. See *Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2nd Cir. 1993) (“We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed.”); *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) (“There is no question that panhandling and solicitation of charitable contributions are protected speech”) (citation omitted); see, *Loper*, 999 F.2d at 704.

2. Regulation Of Speech That Takes Place In A Traditional Public Forum Is Particularly Disfavored

The Ordinance’s restrictions apply to a wide range of solicitation that occurs in a “public place,” including “sidewalk[s]”, “street[s]” and “park[s]”. § 8.134.020. These are all traditional public fora which “occupy a ‘special position in terms of First Amendment

² The free speech guarantee of the California Constitution (Article 1, sec 2) provides greater protections in some instances than the First Amendment. See *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 910 (1979). All of the arguments about the Ordinance’s unconstitutionality under the First Amendment apply with at least equal force under the California Constitution. Therefore, references to the First Amendment throughout this Memorandum include the state constitutional provision as well.

protection' because of their historic role as sites for discussion and debate." *McCullen v. Coakely*, 134 S. Ct. 2518, 2529 (2014) (quoting *United States v. Grace*, 461 U.S. 171, 177, 180 (1983)). Traditional public fora play a uniquely valuable role in allowing speakers, particularly those of limited means, to communicate with new audiences:

It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. *Id.*

3. Since The Ordinance Regulates The Content Of Protected Speech In A Public Forum, It Is Presumptively Invalid And Subject To Strict Scrutiny

Any law that draws distinctions and restricts speech in a public forum based on the speech's message or subject matter is content-based, subject to strict scrutiny, and presumptively invalid because it raises the specter of official disfavor and discouragement of certain messages and speakers. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992). The government bears the burden of justifying the content-based distinctions of the law under the exacting standard of strict scrutiny—namely, that these presumptively invalid distinctions are "actually necessary" to promote a compelling governmental interest, and that they are the least restrictive alternative to promote that interest. See *United States v. Alvarez*, 567 U.S. 709, 725 (2012); *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813 (2000). "When the Government seeks to restrict speech based on its content, the usual presumption of constitutionality afforded congressional enactments is reversed. Content-based regulations are presumptively invalid, and the Government bears the burden to rebut that presumption." *Playboy Entm't Grp.*, 529 U.S. at 817 (internal citation omitted).

The Supreme Court's 2015 decision in *Reed* changed the way courts must define whether a speech restriction is content-based or content-neutral. In *Reed*, the Court considered a town's outdoor sign ordinance that applied different restrictions for "political

signs,” “ideological signs,” and “temporary directional signs.” *Reed*, 135 S. Ct. at 2224-25. The Court held that the ordinance was content-based on its face because its restrictions “depend entirely on the communicative content of the sign,” and it could only be enforced by reading the contents of the sign. *Id.* at 2227.

In *Reed*, the Court emphasized that when a law is content-based on its face, there is no need to consider the government’s justification or purpose to determine whether the law is subject to strict scrutiny. See *id.* at 2227-28. In other words, even if the government claimed reasons for enacting the law that had nothing to do with suppressing speech, those reasons could not transform a content-based law into a content-neutral law with its reduced intermediate scrutiny standard. *Id.*

Reed’s impact on the constitutionality of solicitation and panhandling ordinances has been transformative; the decision led several courts to overrule their prior caselaw upholding these ordinances. For example, in *Norton v. City of Springfield*, the Seventh Circuit originally held that distinguishing between immediate requests for donations and future requests for donations was content-neutral. 806 F.3d 411, 412 (7th Cir. 2015). However, on rehearing after the *Reed* decision, the Judge Easterbrook candidly recognized that “*Reed* understands content discrimination differently.” *Id.* By prohibiting only solicitation for an immediate donation, the city’s ordinance ran afoul of *Reed*’s holding that regulating speech “because of the topic discussed” was “content-based.” *Id.* The court held that the law was facially invalid and remanded for the district court to issue an injunction. *Id.* at 413.

The lower courts in *Thayer v. City of Worcester* similarly reversed their prior positions in light of *Reed*. The *Thayer* ordinance was very similar to Sacramento’s in its definitions of “aggressive panhandling” and in its creation of buffer zones and other places where solicitation was prohibited. The district court and then the First Circuit originally held that the ordinance was content-neutral. See 979 F. Supp. 2d 143 (D. Mass. 2013); 755 F.3d 60, 67-68 (1st Cir. 2014). But the Supreme Court vacated and remanded that decision in light of *Reed*. *Thayer v. City of Worcester, Mass.*, 135 S.

1 Ct. 2887 (2015). On remand, from the Supreme Court and then the First Circuit, the
 2 district court recognized that the ordinance's prohibitions of "aggressive solicitations"
 3 and solicitations within buffer zones were content-based because they singled out a
 4 request for the "immediate donation of money" 144 F. Supp. 3d 218, 233 (D. Mass.
 5 2015), and held that the law violated the First Amendment. In fact, in considering
 6 whether the aggressive solicitation law was content-based, the district court held that "a
 7 protracted discussion of this issue is not warranted as substantially all of the Courts
 8 which have addressed similar laws since *Reed* have found them to be content based
 9 and therefore, subject to strict scrutiny." *Id.*

10 In *Thayer*, the court described the heavy burden that cities must meet if they
 11 choose to adopt such content-based solicitation laws. "Post *Reed*, municipalities must
 12 go back to the drafting board ... In doing so, they must define with particularity the
 13 threat to public safety they seek to address, and then enact laws that precisely and
 14 narrowly restrict only that conduct which would constitute such a threat." *Id.* at 237.

15 All of the other post-*Reed* solicitation cases discussed below reach an identical
 16 conclusion: laws that impose special restrictions and penalties on persons who beg or
 17 request immediate donations of money are content-based laws that the government
 18 must justify under the strict scrutiny standard.

19 The Sacramento Ordinance is content-based for the same reason: whether the
 20 Ordinance's criminal prohibitions apply to a speaker depends on the content of the
 21 person's speech. A request for donations is treated differently than other types of
 22 messages, such as a solicitation for signatures for a ballot initiative or responses to a
 23 public opinion. To enforce the Ordinance, the government must read the message on
 24 the sign or listen to the verbal communication. This is the hallmark of a content-based
 25 law. It is therefore subject to strict scrutiny.

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4. The Ordinance Cannot Survive Strict Scrutiny

a. The City Cannot Meet Its Burden Of Establishing That The Ordinance Is Actually Necessary To Promote A Compelling Interest

Strict scrutiny “is a demanding standard. ‘It is rare that a regulation restricting speech because of its content will ever be permissible.’” *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 799 (2011) (citation omitted); see also *Williams-Yulee v. The Florida Bar*, 135 S. Ct. 1656, 1665-66 (2015) (“We have emphasized that ‘it is the rare case’ in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest”) (citation omitted).

Under strict scrutiny, the City has the burden of showing that the Ordinance is necessary to promote compelling governmental interests, a higher standard than the “legitimate governmental interests” required for content-neutral laws. *Entm’t Merchants*, 564 U.S. at 799 (“The State must specifically identify an ‘actual problem’ in need of solving (citation omitted), and the curtailment of free speech must be *actually necessary to the solution*.”) (emphasis added). During the months-long deliberations by the City Council of this Ordinance, the City was acting under the fundamentally flawed legal assumption that this was a content-neutral time, place, and manner regulation, and therefore only needed to be considered under the intermediate scrutiny standard of review. See Declaration of Abre’ Conner, Esq. (“Conner Decl.”), ¶¶ 1-4, Ex. A-C. The Council was never presented with, and never considered, any actual evidence that suggested that the interest to be served by the ordinance was compelling, or that the Ordinance was actually necessary to serve that interest.

One of the interests put forward by the City in support of this Ordinance was an interest in the “economic vitality of the city.” Ordinance, § 8.134.010. While that is a worthy policy goal, the City’s interest in “grow[ing]” tourism and investment” (Erlenbusch Decl. ¶ 14) and promoting economic vitality are not compelling interests that justify the imposition of content-based laws on speech. See *McLaughlin v. City of Lowell*, 140 F. Supp. 3d at 177, 189 (D. Ma. 2015).

1 The stated purposes of the Ordinance reflect other governmental interests, such
 2 as preventing traffic accidents, preserving public safety, and protecting citizens from
 3 fear and intimidation. § 8.134.010. Mere expression of such concerns, however, is not
 4 sufficient to justify a content-based law. To satisfy strict scrutiny, the City must do more
 5 than just *identify* governmental interests; it must also present facts that establish that
 6 the problem exists *because of* the speech activity in question, and that it has a
 7 compelling interest in treating speech requesting an immediate donation differently than
 8 speech having a different message. *See McCullen*, 134 S. Ct. at 2539. A strong and
 9 particularized factual record is necessary for a city to meet its burden under strict
 10 scrutiny, and the absence of such a record has been a dispositive factor in the post-
 11 *Reed* solicitation cases. *See, e.g., Rodgers v. Bryant*, 2017 WL 6513162 at *4 (E.D.
 12 Ark. 2017) (the mere assertion of “public safety and motor vehicle safety” as compelling
 13 interests for an anti-begging law was not enough to establish that the restriction on
 14 begging was necessary to promote that interest; many forms of speech not subject to
 15 regulation were equally likely as begging to cause a traffic hazard); *Blitch v. Slidell*, 260
 16 F. Supp. 3d 656, 669 (E.D. La. 2017) (while public safety could be considered a
 17 compelling interest, city had failed to demonstrate that public safety was at risk because
 18 of panhandling). Notably in *Blitch*, the city, unlike Sacramento, had actually presented
 19 statistics concerning complaints, but the Court noted that “fifty-six incidents over two
 20 years . . . does not provide a strong justification for burdening speech.” *Id.* at 670.

21 **b. The Ordinance Is Not The Least Restrictive Means To Achieve A**
 22 **Compelling Governmental Interest**

23 Even if the City could prove that it was pursuing a “compelling state interest,” the
 24 Ordinance would still fail to meet strict scrutiny unless it was “the least restrictive means
 25 of achieving a compelling state interest.” *McCullen*, 134 S. Ct. at 2530; *see also*
 26 *Firearms Policy Coal.*, 192 F. Supp. 3d at 1126 (statute must be “necessary and
 27 ‘narrowly tailored to serve compelling state interests’”, citing *Reed*, 135 S.Ct. at 2226).

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i. ***Sacramento Has Not Met Its Burden Of Establishing That The No-Solicitation Buffer Zones Meet The Requirements Of Strict Scrutiny***

The Ordinance carves out no-solicitation zones that apply to the public sidewalks and streets throughout the entire city. § 8.134.030. Speech requesting an immediate donation or other assistance at certain locations and inside no-solicitation zones is criminalized, irrespective of how passive and peaceful the solicitor, while all other types of speech—soliciting petition signatures, soliciting votes, political and religious proselytizing—are free of the Ordinance’s restrictions and prohibitions. Labelling these zones “captive audience locations” (§ 8.134.010) cannot obscure the fact that the City is erecting *cordons sanitaires* to keep solicitors and panhandlers away from the public in public fora.

The City justifies these buffer zones by alluding to “the implicit threat to both person and property” and the need to avoid “unwarranted and unavoidable confrontations.” § 8.134.010. But strict scrutiny requires more than just conclusory justifications. And in the post-*Reed* cases, the courts have repeatedly struck down buffer zones and location restrictions that were in fact more narrowly tailored in terms of distance than Sacramento’s. See, e.g., *Browne v. City of Grand Junction*, 136 F. Supp. 3d at 1293-94 (D. Colo. 2015), (ordinance prohibiting panhandling within 20 feet of an ATM or a bus stop, and from customers in an outdoor dining area; court held that it did not see “how any request for money [in such locations] constitutes a threat to public safety....”); *McLaughlin*, 140 F. Supp. 3d at 183, 195, 196 (ordinance created a 20-foot buffer zone surrounding all ATMs, check cashing businesses, transit stops and outdoor seating areas; court found that the city had not chosen “the least restrictive means available to protect public safety” because the buffer zones prohibited “the passive and silent holding of a sign” and also applied to solicitors such as “firemen and Girl Scouts” who “are not widely viewed as threats to public safety.”); *Thayer v. City of Worcester*, 144 F. Supp. 3d at 226, 228 (restrictions included a 20 foot no-solicitation buffer zone surrounding ATMs, check cashing facilities, mass transit facilities and the outdoor sitting

1 areas of restaurants; the court noted that the buffer zones applied to persons selling T-
 2 shirts and cookies, as well as anyone holding a sign seeking assistance). The court in
 3 *Thayer* stated, “Without ‘another overt act of aggression,’ such passive solicitation does
 4 not pose a problem or implicate any safety interest.” *Id.* at 227. The court also observed
 5 that restricting solicitation at all median strips was “geographically over-inclusive” and
 6 thus not the least restrictive means to achieve a compelling government interest. *Id.* at
 7 237-38.³

8 In *Homeless Helping Homeless v. City of Tampa*, 2016 WL 4162882 (M.D. Fla.
 9 2016), the court invalidated an ordinance that banned solicitation within a 15-foot buffer
 10 zone surrounding any ATM or entrance to a financial institution, or at transit stops or
 11 sidewalk cafes. The court ruled that the ordinance was presumptively invalid in light of
 12 *Reed*, and noted that the city “admits that no compelling interest supports [the
 13 ordinance]” and “forbears the assertion that [the ordinance] is the least restrictive means
 14 of advancing any governmental interest.” *Id.* at *5.

15 The Ordinance also restricts solicitation from customers in outdoor dining areas.
 16 (§ 8.134.030(g)). As with the other location restrictions in the Ordinance, this provision
 17 would arguably prohibit a panhandler from sitting with a sign seeking assistance within
 18 sight of outdoor diners. There are likely hundreds of businesses with different types of
 19 outside dining areas, and the City has not and cannot justify that each of those settings
 20 poses a public safety risk that requires this blanket ban on peaceful, non-threatening
 21 speech. Perhaps the Council members thought of this provision as one to “improve the
 22 quality of life and economic vitality of the City.” § 8.134.010. Keeping panhandlers out of
 23 sight (and perhaps out of mind) of diners, however, is hardly a compelling government
 24 interest, and the City never even tried to elicit evidence to

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26 _____
 27 ³ The court in *Thayer* referred to *Cutting v. City of Portland, Maine*, 802 F.3d 79, 88-89 (1st Cir.
 28 2015), where the First Circuit ruled that a median strip solicitation ban failed the least restrictive
 means test because it banned activity at all medians “that ranged widely” regardless of their size
 and character—considerations such as pedestrian and vehicular traffic patterns were not given
 any weight.

1 establish that these speech prohibitions were necessary to protect public safety.
 2 *McMullen v. Coakley*, 134 S. Ct. 2518 (2014), is instructive. In that case, the Court ruled
 3 that 35-foot buffer zones around reproductive health facilities were content-neutral, and
 4 thus applied the intermediate scrutiny test. *Id.* at 2534. Yet even under this lower
 5 standard, the Court held that the law was not narrowly tailored to address the public
 6 safety risks. *Id.* at 2540. The Court relied on the existence of other laws that could
 7 address the problems without “burdening the kind of speech in which petitioners wish to
 8 engage.” *Id.* at 2537. Among those laws cited by the Court were laws prohibiting
 9 obstruction, harassment and “generic criminal statutes forbidding assault, breach of the
 10 peace, trespass, vandalism and the like.” *Id.* at 2538. What the Court said about
 11 Massachusetts applies equally to Sacramento: it “has not shown that it seriously
 12 undertook to address the problem with less intrusive tools readily available to it.” *Id.* at
 13 2539.

14 ***ii. Sacramento Cannot Meet Its Burden Of Showing That The***
 15 ***“Aggressive And Intrusive Solicitation” Provisions Meet The***
 16 ***Requirements Of Strict Scrutiny***

17 The Ordinance’s provisions prohibiting “aggressive” and “intrusive” conduct by
 18 solicitors (§ 8.134.020) are virtually identical to provisions that have already been struck
 19 down by the post-*Reed* courts. In *McLaughlin*, the aggressive panhandling provisions
 20 criminalized many of the same prohibited behaviors identified in the Sacramento
 21 Ordinance. These included solicitation “intended to or likely to cause a reasonable
 22 person to fear bodily harm”; “intentionally touching . . . without that person’s consent”;
 23 using “threatening language or gestures likely to provoke an immediate violent
 24 reaction”; and continuing to panhandle from a person after that person has “given a
 25 negative response to such soliciting.” 140 F. Supp. 3d at 182-83. The court ruled that
 26 these provisions did not meet the least restrictive alternative test because many of the
 27 behaviors criminalized by the solicitation law were already criminalized by content-
 28 neutral laws that burdened less speech. *Id.* at 193 (“The city has not demonstrated that
 public safety requires harsher punishments for panhandlers than others who commit

assault or battery or other crime”). Additionally, the court explained why restrictions on following or approaching a person who has indicated they do not want to be solicited are not the least restrictive means of regulating speakers with a message of need:

A panhandler who asks for change from a passerby might, after a rejection, seek to explain that the change is needed because she is unemployed or state that she will use it to buy food. These additional post-rejection messages do not necessarily threaten public safety; their explanations of the nature of poverty sit at the heart of what makes panhandling protected expressive conduct in the first place. Likewise, a panhandler might follow someone in order to convey a longer message. . . . If panhandling is truly valuable expressive speech, then panhandlers may have a right to more than one shot at getting their message across. . . . *[G]iving panhandlers only one chance to convey their message, without following or following-up, is more restrictive than necessary.*

Id. at 193-94 (emphasis added); see also *Browne*, 136 F. Supp. 3d at 1293 (“Grand Junction has not shown—and the court does not believe—that a repeated request for money or other thing of value necessarily threatens public safety. Thus, a ban on multiple requests is not necessary to serve a compelling governmental interest.”).

In *Thayer*, the court on remand re-examined a law banning solicitation in an “aggressive manner” that was almost identical to the definitions in the Sacramento Ordinance. See 144 F. Supp. 3d at 229. The court found these provisions were not the least restrictive means of regulating speech “[b]ecause, for example, existing laws are sufficient to address the targeted behavior, or because prohibited conduct, which constitutes protected expression, is not necessarily intimidating or menacing and therefore, does not constitute a threat to public safety.” *Id.* at 236 n.5. The *Thayer* court identified many content-neutral laws that could be applied to truly aggressive solicitations, including disorderly conduct, assault and battery, trespassing, and obstruction of sidewalks. *Id.* at 223. Similarly, the court in *Rodgers v. Bryant* held that police had “a whole arsenal of existing laws that addressed the actions of the aggressive panhandler,” and that the “decision not to deploy these statutes does not create a compelling need.” 2017 WL 6513162, at *5.

The conclusions of these courts apply with equal force to Sacramento’s attempt to create a new category of criminal laws targeting only those who are engaging in

solicitation speech. Sacramento already has available to it the same “arsenal” of existing laws that would punish much of the conduct in the Ordinance. See Cal. Penal Code § 646.9 (2018) (criminalizing stalking); Cal. Penal Code § 241 (2018) (criminalizing assault); Cal. Penal Code § 243 (2018) (criminalizing battery); Cal. Penal Code § 647(c) (2018) (criminalizing obstruction of street, sidewalk, or other place open to public); Cal. Penal Code § 422 (2018) (defining punishment for criminal threats). The *Browne* court’s criticism of the Grand Junction ordinance applies equally to Sacramento’s:

Thus, the problem in this case is that Grand Junction has taken a sledgehammer to a problem that can and should be solved with a scalpel. In attempting to combat what it sees as threatening behavior that endangers public safety, Grand Junction has passed an ordinance that sweeps into its purview non-threatening conduct that is constitutionally protected. 136 F. Supp. 3d at 1294.

5. The Ordinance Is Substantially Overbroad And Should Be Invalidated On Its Face

When a statute is substantially overbroad on its face, “a litigant . . . may challenge [the] statute by showing that it substantially abridges the First Amendment rights of other parties not before the court.” *Village of Schaumburg*, 444 U.S. at 634 (1980). This exception to the usual rules for bringing facial challenges represents a deliberate judicial decision to facilitate First Amendment facial challenges because “the Constitution gives significant protections from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002). And as the Ninth Circuit has made clear, “a successful challenge to the facial constitutionality of a law invalidates the law itself.” *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir.1998).

Sacramento’s Ordinance will have a chilling effect on the constitutional rights of all panhandlers and charitable solicitors in the City. Its provisions blanket the City with 30-foot buffer zones linked to ATMs, banks, transit stops and driveways. § 8.134.030. These locations—all traditional public fora—clearly include places where there is regular

1 foot traffic, and thus areas where panhandling and soliciting are most likely to be
 2 successful. See *Blitch*, 260 F. Supp. 3d at 672 (holding that a solicitation restriction was
 3 overbroad because the “streets and sidewalks are likely *the* prime location to panhandle
 4 as well as the location where the vast majority of the panhandling in [the city] occurs”)
 5 (emphasis in original).

6 **B. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A**
 7 **PRELIMINARY INJUNCTION**

8 “The loss of First Amendment freedoms, for even minimal periods of time,
 9 unquestionably constitutes irreparable injury” that supports a preliminary injunction.
 10 *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Valle Del Sol, Inc. v.*
 11 *Whiting*, 709 F.3d 808, 828 (9th Cir. 2013); see also, *Firearms Policy Coal.*, 192 F.
 12 Supp. 3d at 1128 (“The denial of First Amendment freedoms generally constitutes
 13 irreparable harm”). This legal rule is particularly appropriate here because
 14 panhandlers are soliciting for the everyday necessities of life such as food. “When
 15 contesting the constitutionality of a criminal statute, ‘it is not necessary that [the plaintiff]
 16 first expose himself to actual arrest or prosecution to be entitled to challenge [the]
 17 statute that he claims deters the exercise of his constitutional rights.’” *Babbitt v. United*
 18 *Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (quoting *Steffel v. Thompson*, 415
 19 U.S. 452, 459 (1974)).

20 **C. THE BALANCE OF EQUITIES IS IN THE PLAINTIFFS’ FAVOR AND A**
 21 **PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST**

22 Upholding the First Amendment is always in the public interest. See, e.g., *Klein*,
 23 584 F.3d at 1208 (holding that public interest favors upholding the First Amendment);
 24 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (noting that “it is always in the
 25 public interest to prevent the violation of a party’s constitutional rights”) (citation
 26 omitted). Thus, in *Valle del Sol*, the court found that an injunction against a solicitation
 27 ordinance was in the public interest because the law would infringe upon “the First
 28 Amendment rights of many persons who are not parties to [that] lawsuit.” 709 F.3d at

829. Here, absent a preliminary injunction, the Ordinance will have a chilling effect on the constitutional rights of panhandlers and solicitors to communicate with the public a message of need. For panhandlers and solicitors, the right to free speech is part and parcel with meeting basic human needs. It is therefore imperative for this Court to act quickly to lift invalid restrictions on this speech.⁴

V. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for preliminary injunction should be granted, and the Court should enjoin the City of Sacramento from enforcing Chapter 8.134 of the Sacramento City Code.

Dated: April 27, 2018

LEGAL SERVICES OF NORTHERN CALIFORNIA
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: /s/ Abre' Conner
ABRE' CONNER

Attorneys for Plaintiffs

⁴ The F.R.C.P. 65(c) bond requirement should be waived. First, requiring a bond would be inappropriate in a preliminary injunction enjoining governmental conduct that potentially impacts constitutional rights. *Bible Club v. Placentia-Yorba Linda School Dist.*, 573 F. Supp. 2d 1291, 1302 (C.D. Cal. 2008) ("Requiring a bond to issue before enjoining potentially unconstitutional conduct by a governmental entity simply seems inappropriate. . ."). Second, plaintiffs have a strong likelihood of success on the merits. See *Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972). Third, there is no realistic chance of harm from prohibiting Sacramento from enforcing an unconstitutional ordinance. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Lastly, plaintiffs are poor, or are non-profits that represent poor and homeless persons. *Bowen v. Consol. Elec. Distributors, Inc. Employee Welfare Ben. Plan*, 461 F. Supp. 2d 1179, 1188 (C.D. Cal. 2006); *Orantes-Hernandez v. Smith*, 541 F. Supp 351, 385, n. 42 (C.D. Cal. 1982).

Exhibit A

Ordinance No. 2017-0054

ORDINANCE NO. 2017-0054

Adopted by the Sacramento City Council

November 14, 2017

An Ordinance Deleting Article IV of Chapter 5.116 and Chapter 5.120 of the Sacramento City Code, Relating to Solicitation and Solicitation of Alms; and Adding Chapter 8.134 Relating to Aggressive and Intrusive Solicitation

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Article IV of Chapter 5.116 of the Sacramento City Code is deleted.

SECTION 2.

Chapter 5.120 of the Sacramento City Code is deleted.

SECTION 3.

Chapter 8.134 is added to the Sacramento City Code to read as follows:

Chapter 8.134 AGGRESSIVE OR INTRUSIVE SOLICITATION

8.134.010 Purpose and intent.

The purpose of this chapter is to protect the safety and welfare of the public and improve the quality of life and economic vitality of the city of Sacramento by imposing reasonable time, place, and manner restrictions on aggressive and intrusive solicitation while respecting the constitutional rights of free speech for all citizens.

Aggressive or intrusive solicitation typically includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. Aggressive or intrusive solicitation can contribute to the loss of access to, and enjoyment of, places open to the public, and can create an enhanced sense of fear, intimidation, and disorder.

Solicitation from people in places where they are a "captive audience" because it is difficult or impossible for them to exercise their own right to decline to listen to or avoid solicitation from others, presents a risk to the health, safety, and welfare

of the public. The presence of individuals who solicit money from persons at or near banks or automated teller machines can be intimidating or threatening. Such activity often carries with it an implicit threat to both person and property. Other "captive audience" locations include public transportation vehicles, their designated locations for stops, outdoor dining areas, and gasoline stations. Restricting solicitation in such places will provide a balance between the rights of solicitors and the rights of persons who wish to decline or avoid such solicitations and will help to diminish or avoid the threat of violence in such unwarranted and unavoidable confrontations.

Solicitation on roadway median strips and in the public roadway is unsafe and hazardous for solicitors, drivers, pedestrians, and the general public. Soliciting on roadway median strips and in the public roadway increases the risk of drivers becoming distracted from their primary duty to watch traffic, which may result in automobile accidents, congestion, blockage of streets, and delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems.

The practice of solicitation near driveways accessing shopping centers, retail establishments, and business establishments is unsafe and hazardous for solicitors, drivers, pedestrians, and the general public. The location of a solicitor near a driveway compromises a solicitor's safety, impedes visibility, and impairs a driver's ability to safely enter and exit. Drivers also become distracted from their duty to watch traffic which may result in automobile accidents, congestion, blockage of streets, and delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems.

8.134.20 Definitions.

The following definitions apply in this chapter:

"Aggressive" means any of the following types of conduct:

1. Conduct intended or likely to cause a reasonable person to fear bodily harm to oneself or to another, to fear damage to or loss of property, or otherwise to be intimidated into giving money or other thing of value;
2. Intentionally touching or causing physical contact with another person or an occupied vehicle without consent;
3. Closely following or approaching a person, after the person has indicated they do not want to be solicited or do not want to give money or any other thing of value; or
4. Making violent gestures toward a person.

“Automated teller machine” means any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.

“Automated teller machine facility” means an area comprised of one or more automated teller machines, and any adjacent space made available to banking customers.

“Bank” means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank with deposits which are insured by the Federal Deposit Insurance Corporation.

“Check cashing business” means any person duly licensed as a check seller, bill payer, or prorater pursuant to division 3 of the California Financial Code, commencing with section 12000.

“Credit union” means any federal credit union and any state-chartered credit union with accounts insured by the Administrator of the National Credit Union Administration.

“Donation” means a gift of money or other item of value.

“Financial institution” means any bank, savings and loan association, credit union, or check cashing business.

“Intrusive” means any of the following types of conduct:

1. Thrusting or forcing oneself close to another person without invitation, permission, or welcome;
2. Physically contacting another person;
3. Blocking a person’s path of travel; or
4. Behaving in a threatening manner towards another person.

“Median strip” means a paved or planted area of public right-of-way that divides a street or highway.

“Public place” means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, a street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground; or any doorway, entrance, hallway, lobby and other portion not constituting a room or apartment designed for actual residence, of any business establishment, apartment house, or hotel.

“Public transportation vehicle” means any vehicle designed, used, or maintained

for carrying 10 or more persons, including the driver; or a vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

“Savings and loan association” means any federal savings and loan association and any “insured institution” as defined in section 401 of the National Housing Act and any federal credit union as defined in section 1752 of the Federal Credit Union Act.

“Solicit” or “solicitation” means to ask, beg, request, or panhandle for an immediate donation of money or other thing of value or for the direct and immediate sale of goods or services. Solicitation can be accomplished by using the spoken, written, or printed word, or bodily gestures, signs, or other means.

8.134.030 Prohibited solicitation.

- A. No person shall solicit in an aggressive or intrusive manner in any public place.
- B. Financial institutions and automated teller machines.
 - 1. No person shall solicit within an automated teller machine facility without the express permission of the owner or other person lawfully in possession of the facility.
 - 2. No person shall solicit within 30 feet of any financial institution during its business hours.
 - 3. No person shall solicit within 30 feet of any automated teller machine during the time it is available for customers’ use. If the automated teller machine is located within an automated teller machine facility, the 30 feet shall be measured from the entrance or exit of the automated teller machine facility.

4. Subsections 1 and 3 do not apply to any unenclosed automated teller machine located within any building, structure, or space that has a primary purpose or function that is unrelated to banking activities, including but not limited to supermarkets, airports, and school buildings; provided that the automated teller machine is available for use only during the regular hours of operation of the building, structure, or space in which the machine is located.
- C. Median strips. No person shall solicit on a median strip or in any manner or location that is inconsistent with the provisions of the California Vehicle Code.
- D. Driveways accessing shopping centers, retail establishments, and business establishments. No person shall solicit from an operator or occupant traveling in a motor vehicle while the vehicle is located within 30 feet of a driveway providing vehicular access to a shopping center, retail establishment, or business establishment.
- E. Public transportation vehicles and stops. No person shall solicit in any public transportation vehicle or within 30 feet of any designated or posted public transportation vehicle stop.
- F. Gasoline stations and fuel pumps. No person shall solicit from an operator or occupant of a motor vehicle while the vehicle is stopped in a gasoline station or at a gasoline pump.
- G. Outdoor dining area. No person shall solicit from a person within the outdoor dining area of a restaurant, café, or similar establishment that serves food or drinks for immediate consumption.
- H. Subsections B through G do not apply to solicitations authorized or conducted by the property owner, business owner, or employees on the premises.

8.134.040 Violations.

- A. Any person who violates this chapter is guilty of an infraction.
- B. Any person who violates this chapter more than two times within a six-month period is guilty of a misdemeanor.
- C. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

- D. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.

SECTION 4.

The adoption of this ordinance is not intended to and does not affect any administrative, civil, criminal, or other actions or proceedings brought or to be brought to implement or enforce any provisions of the Sacramento City Code, as they existed prior to the effective date of this ordinance. The provisions of the Sacramento City Code as they exist prior to the effective date of this ordinance shall continue to be operative and effective with regard to any such actions or proceedings.

Adopted by the City of Sacramento City Council on November 14, 2017, by the following vote:

Ayes: Members Carr, Hansen, Harris, Jennings, Schenirer and Mayor Steinberg

Noes: None

Abstain: None

Absent: Member Ashby, Member Guerra and Member Warren

Attest:

e-Signed by Mindy Cuppy
on 2017-11-28 21:11:19 GMT

City Clerk

November 28, 2017

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

Passed for Publication: November 7, 2017

Published: November 10, 2017

Effective: December 14, 2017

LEGAL SERVICES OF NORTHERN CALIFORNIA

Laurance Lee, State Bar No. 301482
Elise Stokes, State Bar No. 288211
Sarah Ropelato, State Bar No. 254848
515 12th Street
Sacramento, CA 95814
Telephone: (916) 551-2150
Facsimile: (916) 551-2196
E-mail: llee@lsnc.net

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC

Abre' Conner, State Bar No. 306024
Alan Schlosser, State Bar No. 049957
William S. Freeman, State Bar No. 82002
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
E-mail: aconner@aclunc.org

Attorneys for Plaintiffs Sacramento Regional Coalition to End Homelessness, James Lee Clark, and Sacramento Homeless Organizing Committee

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SACRAMENTO REGIONAL COALITION
TO END HOMELESSNESS, JAMES LEE
CLARK, AND SACRAMENTO
HOMELESS ORGANIZING COMMITTEE

Plaintiffs,

v.

CITY OF SACRAMENTO,

Defendant.

Case No.: 2:18-CV-00878-MCE-AC

**Declaration of Bob Erlenbusch in
Support of Motion for Preliminary
Injunction**

Date: May 31, 2018

Time: 2:00 p.m.

Courtroom: 7

1 I, Bob Erlenbusch, declare as follows:

2 1. I am over the age of eighteen, and I am competent to make this declaration. I
3 provide this declaration based upon my personal knowledge. I would testify to the facts
4 in this declaration if called upon to do so.

5 2. I am the Executive Director of the Sacramento Regional Coalition to End
6 Homelessness ("SRCEH").

7 3. SRCEH was founded and incorporated in the State of California. We received
8 our nonprofit status in April 2014 and we have our principal office in Sacramento,
9 California. We are a nonprofit, charitable organization whose mission is to end and
10 prevent homelessness in the Sacramento region through policy analysis, community
11 education, civic engagement, collective organizing and advocacy.

12 4. SRCEH's board of directors is comprised of direct service providers to people
13 experiencing homelessness, interfaith community leaders, and healthcare, disability,
14 homeless youth, and housing advocates.

15 5. SRCEH furthers its mission by advocating on behalf of people who happen to
16 be homeless by testifying and commenting on proposed legislation, responding to
17 changes in local regulations, and working to assure that the civil rights of people who are
18 homeless are not infringed upon by local municipalities. One of SRCEH's guiding
19 principles is that people experiencing homelessness should not be criminalized, or
20 otherwise deprived of their rights, due to their lack of stable housing. To that end, one of
21 SRCEH's advocacy priorities is to oppose any efforts to criminalize homeless people
22 including anti-homeless laws such as anti-panhandling ordinances.

23 6. I became aware of and reviewed Sacramento City Ordinance No. 2017-0054
24 ("the Ordinance") in July 2017.

25 7. When I learned about the Ordinance, I became concerned about the impact it
26 would have on those experiencing homelessness. The Ordinance will frustrate SRCEH's
27 mission by criminalizing the behavior of peaceful solicitors based on the content of their
28

1 message, deterring them from exercising their constitutional rights to request immediate
2 assistance from members of the public, and interfering with their ability to acquire life
3 necessities that they cannot otherwise afford.

4 8. Because of the Ordinance, SRCEH has been forced to spend its limited
5 resources to speak out against the Ordinance. I have appeared a number of times
6 before the City Council and City committees to explain SRCEH's opposition to the
7 Ordinance. I have prepared and presented information about the recent cases that have
8 struck down laws like the Ordinance. I warned the City that anti-solicitation ordinances
9 have been struck down as unconstitutional throughout the nation. Unless Defendant
10 repeals the Ordinance, SRCEH must continue to use its limited resources to monitor
11 enforcement of the Ordinance and work to mitigate the harm to those who are homeless
12 and may be impacted by the Ordinance.

13 9. On July 25, 2017, I testified on behalf of SRCEH before the Law and Legislation
14 Committee of the Sacramento City Council. I informed the Committee that ordinances
15 such as Sacramento's Ordinance have been ruled unconstitutional in multiple federal
16 courts around the country since 2015. I further told the councilmembers that this
17 unnecessary ordinance criminalizes homelessness. I listened to the entirety of the public
18 testimony on this issue to understand the concerns and comments of community
19 members. I was one of three people who commented on the Ordinance, all of whom
20 testified in opposition.

21 10. On August 7, 2017, I sent a letter opposing the Ordinance to Mayor Steinberg
22 and the Sacramento City Council. Citing to *Reed v. Town of Gilbert*, 135 S. Ct. 2218
23 (2015) and *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015), I informed the
24 City that the Supreme Court and a number of federal courts have found "aggressive
25 panhandling" ordinances to be unconstitutional and that that the Ordinance is "a lawsuit
26 waiting to happen." Additionally, I reminded the City that begging may be a homeless
27 person's best option for obtaining the money that they need to purchase food, public
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1 transportation fare, medication, or other necessities, and that the Ordinance does
2 nothing to address the root or systemic causes of begging on the streets.

3 11. Attached as "Exhibit A" is a true and correct copy of the August 7, 2017 letter I
4 sent to the Mayor and City Council opposing the Ordinance.

5 12. On August 14, 2017, I sent Mayor Steinberg and the City Council a second
6 letter stating SRCEH's opposition to the Ordinance. Again, I advised the City Council of
7 the holding in *Reed v. Town of Gilbert* and how a number of federal courts have
8 invalidated panhandling laws as unconstitutional. Additionally, I informed the City that
9 the Ordinance is unnecessary, redundant, and further criminalizes people experiencing
10 homelessness.

11 13. Attached as "Exhibit B" is a true and correct copy of the August 14, 2017 letter
12 opposing the Ordinance.

13 14. On September 19, 2017, I again testified on behalf of SRCEH before the Law
14 and Legislation Committee opposing the Ordinance. Again, I told the councilmembers
15 that the Supreme Court and other federal courts have stated that anti-solicitation
16 ordinances like Sacramento's Ordinance have been found unconstitutional. I advised the
17 councilmembers that voting for the Ordinance would open the city to legal challenge.
18 Captain Eklund of the Sacramento Police Department provided a presentation explaining
19 the Ordinance. He stated that the 30 feet prohibitive zones were the least restrictive
20 prohibition because it met in the middle between community concerns and prohibiting
21 speech. He did not provide further information explaining why this is the least restrictive
22 alternative to achieve the City's goals. Additionally, Councilmember Guerra stated that
23 this Ordinance is needed to create an environment that can grow tourism and
24 investments, which would provide Sacramento with additional tax dollars to fund City
25 services. I was present for the entirety of the public testimony on this issue.

26 15. After the Law and Legislation Committee approved the Ordinance and
27 forwarded it to the City Council, on November 14, 2017, I appeared before the City
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1 Council for public comment. Prior to my comments, I circulated a one-page pamphlet to
2 the City Council that listed seven federal cases and one state court case throughout the
3 nation that struck down aggressive solicitation ordinances as unconstitutional. I further
4 reminded the City Council that much of the testimony in support of the Ordinance was
5 focused on odd or disruptive behavior—sometimes driven by mental illness—that had no
6 relationship to asking for money. I was present for the entirety of the public testimony on
7 this issue.

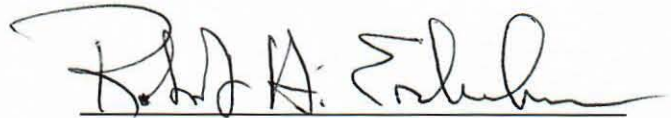
8 16. Attached as “Exhibit C” is a true and correct copy of the one-page pamphlet I
9 circulated at the November 14, 2017 City Council meeting.

10 17. At this November 14, 2017 meeting, many commenters testified in opposition to
11 the Ordinance. One commenter testified that the Ordinance did not meet the strict
12 scrutiny required for a content-based restriction on free speech and implored the City to
13 speak with their staff attorneys. Another commenter advised the City Council that the
14 Ordinance is unconstitutional on its face and that the record is completely devoid of any
15 credible, objective evidence that there is a rise in aggressive panhandling or that there is
16 a need for this Ordinance. Other individuals in opposition to the aggressive solicitation
17 ordinance expressed concerns that the Ordinance was designed to target the City’s
18 sizeable homeless population, that the Ordinance would be unequally and
19 discriminatorily enforced against people who are homeless and the poor, and that the
20 Ordinance’s thirty-foot barriers from specific locations are arbitrary.

21 18. At the meetings I attended throughout the months-long deliberation on the
22 Ordinance at the Law and Legislation Committee and City Council hearings, the City did
23 not provide any public data or police records explaining why restricting the rights of
24 panhandlers is needed. In fact, many of the comments in support of the Ordinance
25 discussed, in only the most general terms, perceived safety concerns over the behavior
26 of homeless people and the effects of homelessness on businesses in Sacramento, not
27 specifically the activities of panhandlers.

1 19. This Ordinance is dehumanizing, demeaning, and is predicated on biases about
2 someone who is homeless. This Ordinance restricts a person who is homeless from
3 communicating with others because of the content of their speech. It does not address
4 the root causes as to why people are asking for donations in the first place.

5 I declare under penalty of perjury under the laws of the United States and the
6 State of California that the foregoing is true and correct. Executed on April 25, 2018 in
7 Sacramento, California.

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12 Bob Erlenbusch
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Exhibit A

August 7, 2017 Letter Sent to Mayor and City Council



August 7, 2017

TO: Mayor Steinberg and Sacramento City Council

FROM: Bob Erlenbusch, Executive Director

RE: Opposition to Sacramento City Code Amendments related to “aggressive and intrusive” solicitation

The Sacramento Regional Coalition to End Homelessness [SRCEH] is strongly opposed to the proposed amendment to the Sacramento City Code to delete sections related to Prohibited Solicitation and Solicitation of Alms and replacing them with Chapter 8.134 [Aggressive and Intrusive Panhandling.]

We are opposed to this change for the following three reasons:

1. US Supreme Court and a number of federal courts have ruled aggressive panhandling ordinances are unconstitutional: A lawsuit waiting to happen: In June 2015, the U.S. Supreme Court decided the case of *Reed v. Town of Gilbert*, holding that laws regulating speech based upon the topic, even where there is no discrimination between viewpoints on that topic, are unconstitutional unless they can survive strict scrutiny – the most exacting standard of judicial review.

In the wake of that decision, a number of federal courts have invalidated panhandling laws that imposed more regulations on begging than on other forms of speech. The first federal court decision interpreting *Reed* in the panhandling context was *Norton v. City of Springfield*, a case brought by local counsel with support from the Law Center and Latham & Watkins LLP. In *Norton*, the 7th Circuit found that a law restricting vocal appeals of immediate donations of cash, but not requests for signatures on a petition, for example, was an unconstitutional, content-based regulation of protected speech. As a result of that decision, cities even outside of Springfield, Illinois have ceased enforcing their panhandling laws. The City Attorney in Madison, WI, for example, issued a moratorium on all panhandling arrests while the constitutionality of Madison’s panhandling law is evaluated.

2. Criminalization of people experiencing homelessness: Loaves and Fishes has documented the list of 176 offenses charged to homeless people from 2000 – 2016 [see attached]. One of the most common is the violation of the California Penal Code for public begging and solicitation of alms. Additionally, Sacramento County several years ago amended their code to include solicitation at median strips, traffic intersection and ATM’s. There is absolutely no need for the City of Sacramento to add to the criminalization of people experiencing homelessness. There are more than enough city codes that do not allow the aggressive and unsolicited solicitation that the City seeks to ban.

3. Fails to address the root causes of “panhandling:” In the absence of employment opportunities or other sources of income, begging may be a homeless person’s best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other necessities. Despite this, many communities have restricted or banned begging or panhandling.

The change in the City Code does nothing to address the root or systemic causes of begging on the streets.

SRCEH recommendation: Create a City Homeless Employment Program: Rather than continuing to criminalize homeless people and giving the appearance of addressing community concerns, but failing to address the lack of income or employment opportunities, SRCEH recommends to create a city sponsored *Homeless Employment Program*. Here is a link to SRCEH’s and Sacramento Steps Forward 2016 *Homeless Employment Report: Findings and Recommendations*: [\[https://docs.wixstatic.com/ugd/ee52bb_164469543d0a4419bc775ea7c50dd5aa.pdf\]](https://docs.wixstatic.com/ugd/ee52bb_164469543d0a4419bc775ea7c50dd5aa.pdf).

We feel it is imperative that the City continues to be as proactive on employment and income issues for homeless people as it has been on shelter and housing issues.

Exhibit B

August 14, 2017 Letter Opposing the Ordinance



August 14, 2017

TO: Mayor Steinberg and Sacramento City Council

FROM: Bob Erlenbusch, Executive Director

RE: Opposition to Sacramento City Code Amendments related to “aggressive and intrusive” solicitation

The Sacramento Regional Coalition to End Homelessness [SRCEH] is strongly opposed to the proposed amendment to the Sacramento City Code to delete sections related to Prohibited Solicitation and Solicitation of Alms and replacing them with Chapter 8.134 [Aggressive and Intrusive Panhandling.]

We are opposed to this change for the following three reasons:

1. Multiple federal courts have ruled aggressive panhandling ordinances are unconstitutional:

In June 2015, the U.S. Supreme Court decided the case of *Reed v. Town of Gilbert*, holding that laws regulating speech based upon the topic, even where there is no discrimination between viewpoints on that topic, are unconstitutional unless they can survive strict scrutiny – the most exacting standard of judicial review.

In the wake of that decision, a number of federal courts have invalidated panhandling laws that imposed more regulations on begging than on other forms of speech. In fact, according to the Law Center on Homelessness and Poverty, panhandling bans have been uniformly found unconstitutional in every legal challenge decided since *Reed*. The first federal court decision interpreting *Reed* in the panhandling context was *Norton v. City of Springfield*, a case brought by local counsel with support from the Law Center and Latham & Watkins, LLP. In *Norton*, the 7th Circuit found that a law restricting vocal appeals of immediate donations of cash, but not requests for signatures on a petition, for example, was an unconstitutional, content-based regulation of protected speech. As a result of that decision, cities even outside of Springfield, Illinois have ceased enforcing their panhandling laws.

The City should not wade into this thorny legal thicket.

2. The amendment is unnecessary, redundant, and further criminalizes people experiencing homelessness:

Loaves and Fishes created a list of 176 types of offenses charged to homeless people from 2000 – 2016 [see *attached*]. One of the most common is the violation of the California Penal Code for public begging and solicitation of alms. Additionally, Sacramento County several years ago amended their code to include prohibiting solicitation at median strips, traffic intersections, and ATM's. There is absolutely no need for the City of Sacramento to further add to the criminalization of people experiencing homelessness. There are more than enough city codes that do not allow the aggressive and unsolicited solicitation that the City seeks to ban.

3. The proposal fails to address the root causes of panhandling:

In the absence of employment opportunities or other sources of income, begging may be a homeless person's best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other basic necessities.

SRCEH Alternative Recommendation: Create a City Homeless Employment Program

Rather than continuing to criminalize homeless people and giving the appearance of addressing community concerns, but failing to address the lack of income or employment opportunities, SRCEH recommends to create a city sponsored *Homeless Employment Program to connect our homeless residents to employment*. Here is a link to SRCEH's and Sacramento Steps Forward 2016 *Homeless Employment Report: Findings and Recommendations*: https://docs.wixstatic.com/ugd/ee52bb_164469543d0a4419bc775ea7c50dd5aa.pdf. It is imperative that the City continues to be as proactive on employment and income issues for homeless people as it has been on shelter and housing issues.

Exhibit C

Pamphlet Circulated at November 14, 2017 City Council Meeting



Challenges to Bans of Restrictions on Panhandling

Since 2015 100% of federal court cases have ruled bans/restrictions are unconstitutional

Source: National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: A Litigation Manual*

Federal Court Cases				
Court	Case	Claim	Year	Outcome
First Circuit	Thayer v. City of Worcester	Plaintiffs sought a preliminary injunction against two City of Worcester ordinances restricting panhandling – prohibiting aggressive panhandling and walking on traffic medians for purposes of soliciting donations, were content based restriction on speech and unconstitutionally vague	2015	In light of US Supreme Court <i>Reed v. Town of Gilbert</i> , First Circuit remanded the case and trial court found the ordinance banning aggressive panhandling was “content based” and therefore subject to strict scrutiny – ruled both ordinances failed to pass “constitutional muster.”
	Cutting v. City of Portland	Plaintiffs sought an injunction preventing enforcement of an ordinance restricting people from standing or sitting on any traffic median – violated their rights under 1 st and 14 th amendments	2015	Court granted permanent injunctive relief in plaintiffs favor- 1 st Circuit affirmed
Fourth Circuit	Clatterbuck v. City of Charlottesville	Homeless plaintiff brought a challenge against local ordinance prohibiting panhandling in the area of downtown mall	2013	Court of Appeals for the 4 th Circuit reversed and remanded and on remand the district court found the City of Charlottesville failed to carry its burden of showing the content-neutrality of the ordinance.
Sixth Circuit	Speet v. Schuette	Homeless plaintiffs, repeatedly ticketed & arrested under Michigan anti-begging statute brought a challenge as a violation of their 1 st & 14 th amendment rights	2013	District Court for Western District of MI found the law unconstitutional and 6 th Circuit unanimously agreed
Seventh Circuit	Norton v. City of Springfield	Homeless plaintiffs who panhandled sought an injunction barring the City of Springfield from enforcing an ordinance prohibiting vocal appeals, but not written appeals	2015	7 th Circuit applied <i>Reed</i> to Springfield's ordinance and ruled an injunction consistent with <i>Reed</i>
Tenth Circuit	Browne v. City of Grand Junction	Panhandlers in City of Grand Junction brought a 1 st amendment challenge to ordinance prohibiting begging	2015	Court, relying on <i>Reed</i> , held the ordinance was a content-based restriction and did not withstand a strict scrutiny analysis
Eleventh Circuit	Homeless Helping Homeless, Inc. v. City of Tampa	Homeless Helping Homeless, a charity offering emergency shelter, brought a suit against City of Tampa, FL, challenging city ordinance banning solicitations of “donations or payment” in parts of downtown Tampa	2016	Court permanently enjoined the City of Tampa and ruled unconstitutionally infringes on right of free speech protected by 1 st amendment & FL constitution
State Court Cases				
Arizona	State v. Boehler	Plaintiffs appealed their convictions under a section of Phoenix City Code that made it unlawful to vocally panhandle after dark	2016	Court reversed plaintiffs convictions stating that even if law could be construed content-neutral, it was unconstitutionally overbroad

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Laurance Lee, State Bar No. 301482
Elise Stokes, State Bar No. 288211
Sarah Ropelato, State Bar No. 254848
515 12th Street
Sacramento, CA 95814
Telephone: (916) 551-2150
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Attorneys for Plaintiffs Sacramento Regional Coalition to End Homelessness, James Lee Clark, and Sacramento Homeless Organizing Committee

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SACRAMENTO REGIONAL COALITION
TO END HOMELESSNESS, JAMES LEE
CLARK, AND SACRAMENTO
HOMELESS ORGANIZING COMMITTEE

Plaintiffs,

v.

CITY OF SACRAMENTO,

Defendant.

Case No.: 2:18-CV-00878-MCE-AC

**Declaration of James Lee Clark in
Support of Motion for Preliminary
Injunction**

Date: May 31, 2018
Time: 2:00 p.m.
Courtroom: 7

1 I, James Lee Clark, declare as follows:

2 1. I am over the age of eighteen, and I am competent to make this declaration. I
3 provide this declaration based upon my personal knowledge. I would testify to the facts
4 in this declaration if called upon to do so.

5 2. I have lived in Sacramento region since I was 7 years old. I attended Elk Grove
6 Elementary, Joseph Kerr Jr. Middle School, and Florin High School. I currently live in the
7 City of Sacramento. I am commonly known by the nickname "Faygo".

8 3. I am currently unemployed and poor. I have been homeless for at least the past
9 fifteen years and rely on panhandling to buy food and life necessities. I do odd jobs
10 when they become available so that I do not need to solicit for donations.

11 4. My main source of income comes from asking for money on public sidewalks
12 and near driveways near and around the business establishments on 21st Street in the
13 evenings and on public sidewalks or driveways near or at the Sacramento Natural Foods
14 Co-op during the day. Both locations are located in the City of Sacramento.

15 5. At the 21st Street location, I primarily sit on the ground with my dog and lay out
16 two signs, with a cup in between them, to ask for money. I often use two signs that state
17 "The homeless are people, too. What would you do if it happened to you?" and "How
18 many of you are a paycheck away?" There is a lot of foot traffic near and around where I
19 solicit.

20 6. Attached as "Exhibit A" is a true and correct copy of my sign that asks "The
21 homeless are people, too. What would you do if it happened to you?"

22 7. Attached as "Exhibit B" is a true and correct copy of my sign that asks "How
23 many of you are a paycheck away?"

24 8. Near the Sacramento Natural Foods Co-op, I solicit at one of three locations
25 with my signs and to collect donations. All three locations are on a public sidewalk near a
26 driveway where cars enter and exit the parking lot designated for the Sacramento
27 Natural Foods Co-op. One of these locations, on 29th Street at the Natural Foods Co-op,

1 is also located within thirty feet of a Sacramento Regional Transit bus stop. I have been
2 soliciting for donations at this location for roughly three years.

3 9. It is important for me to be on one of these public sidewalks near a driveway so
4 that people can see my signs and safely provide me donations. It is also important that I
5 stand near a safe spot where people are slowing down and can safely give me
6 donations. For my safety and for the safety of those around me, I make sure to not block
7 foot and vehicle traffic. My signs are directed to passersby and Natural Foods Co-Op
8 customers, including occupants of motor vehicles that are within 30 feet of a driveway
9 accessing the Natural Foods Co-Op. At these locations, I often use two different signs
10 that ask for "Non-GMO food please" and "Dog Food" in addition to the other signs I
11 described for the 21st Street location. I use these signs at the Natural Foods Co-op in
12 the hopes people can provide me with healthy food. I do not try to attract attention to
13 myself other than holding my sign. I do not often verbally ask for donations while
14 soliciting on sidewalks or near the driveways of the Natural Foods Co-op. If people
15 choose to speak to me, I respond. My signs are enough to signify my need for
16 donations. People who buy groceries at the Natural Foods Co-op are my intended
17 audience as it is difficult for me to obtain healthy food while being homeless.

18 10. Attached as "Exhibit C" is a true and correct copy of the sign I use to ask for
19 food at this location.

20 11. Attached as "Exhibit D" is a true and correct copy of the sign I use to ask for dog
21 food at this location.

22 12. I have opposed Sacramento City Ordinance No. 2017-0054 (the "Ordinance")-
23 ever since it was introduced because the Ordinance will intensify fear in, and make
24 survival harder for, the community that live outside. This issue is so critical to my
25 livelihood that I opposed the Ordinance at two City Council meetings: on September 19,
26 2017 and November 14, 2017. I reminded the City Council that these type of ordinances
27 violate the First Amendment, that the City is taking away one of few legal and safe
28

1 means for homeless individuals to obtain money for necessities, and that the act of
2 asking for help should never be criminalized.

3 13. I also do not see a difference between holding a sign asking for donations,
4 holding a cup asking for donations, or holding a sign used for protest. I believe all these
5 types of speech are important and should be protected.

6 14. If the City of Sacramento's ordinance limiting solicitation is enforced, many of
7 the spaces where I will be able to solicit will be severely restricted and I will no longer be
8 able to ask for the donations that sustain me with food and life necessities without risking
9 fines, criminal convictions, and potentially jail time.

10 15. To sustain myself, I will be forced to either continue to solicit in areas where I
11 will risk fines and punishments or move to an area where I will not be able to
12 successfully ask for the food and money I need to survive. While I am fearful of potential
13 jail time and fines that will irreparably harm me and my dog, I cannot voluntarily move to
14 a new place to solicit because my locations are both safe and effective. It is hard enough
15 to solicit where there are many people coming and going, such as near the Natural
16 Foods Co-op. I cannot imagine soliciting for food and needed necessities in a desolate
17 place away from transit stops or businesses.

18 16. I do not know of many places that have much foot traffic where the Ordinance
19 may not have an impact. Additionally, it took me several years to find good locations to
20 ask for money for every day necessities for myself and my dog. I mainly fear this new
21 Ordinance because I need to solicit funds for resources each day to survive.

22
23 I declare under penalty of perjury under the laws of the United States and the
24 State of California that the foregoing is true and correct. Executed on April 26th, 2018 in
25 Sacramento, California.

26 

27 James Lee Clark
28

Exhibit A

Sign: "The homeless are people, too. What would you do if it happened to you?"

The homeless are people too



What would you do
if it happend to you?



Exhibit B

Sign: "How many of you are a paycheck away?"



**How many of
you**



**are a paycheck
away?**



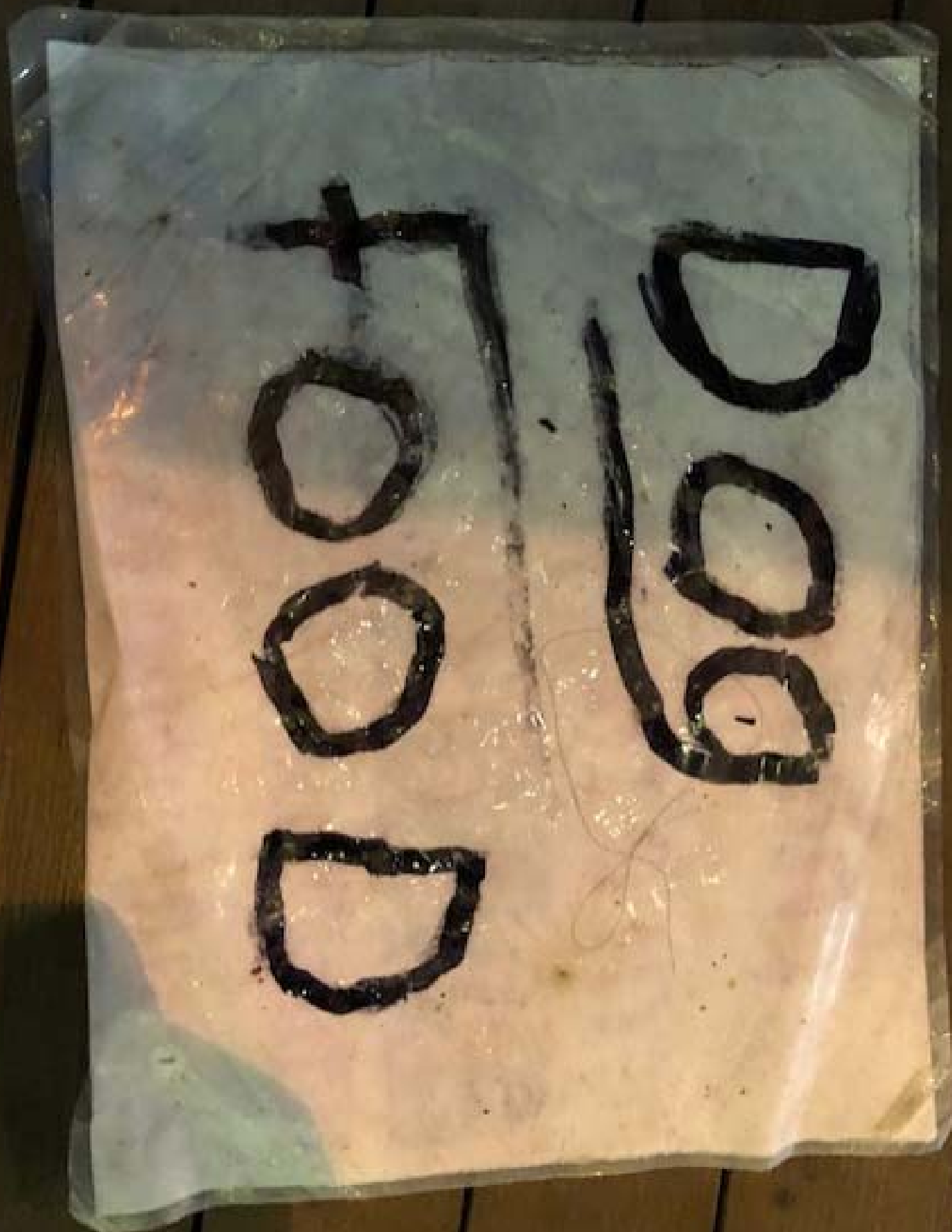
Exhibit C

Sign Used to Ask for Food

NON-GMO
FOOD
PLEASE!!

Exhibit D

Sign Used to Ask for Dog Food



LEGAL SERVICES OF NORTHERN CALIFORNIA

Laurance Lee, State Bar No. 301482
Elise Stokes, State Bar No. 288211
Sarah Ropelato, State Bar No. 254848
515 12th Street
Sacramento, CA 95814
Telephone: (916) 551-2150
Facsimile: (916) 551-2196
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Attorneys for Plaintiffs Sacramento Regional Coalition to End Homelessness, James Lee Clark, and Sacramento Homeless Organizing Committee

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SACRAMENTO REGIONAL COALITION
TO END HOMELESSNESS, JAMES LEE
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HOMELESS ORGANIZING COMMITTEE

Plaintiffs,

v.

CITY OF SACRAMENTO,

Defendant.

Case No.: 2:18-CV-00878-MCE-AC

**Declaration of Paula Lomazzi in
Support of Motion for Preliminary
Injunction**

Date: May 31, 2018

Time: 2:00 p.m.

Courtroom: 7

1 I, Paula Lomazzi, declare as follows:

2 1. I am over the age of eighteen, and I am competent to make this declaration. I
3 provide this declaration based upon my personal knowledge. I would testify to the facts
4 in this declaration if called upon to do so.

5 2. I am the Executive Director of the Sacramento Homeless Organizing Committee
6 ("SHOC").

7 3. SHOC was founded in 1987 by advocates, service providers and formerly
8 homeless and low-income individuals in response to an anti-camping ordinance. SHOC
9 and its members seek to address problems of homelessness through advocacy, direct
10 non-violent actions, education, and by bridging the gap between the homeless
11 community and others in our society. SHOC maintains a general membership policy that
12 welcomes all who are interested in participating in its activities. SHOC's mission is to
13 amplify the voice of the homeless and low-income community to accomplish economic
14 and social justice.

15 4. As part of SHOC's core program, SHOC publishes the *Homeward Street*
16 *Journal*, a bi-monthly publication that aims to educate the public on issues of poverty,
17 homelessness, and other important social issues. *Homeward* has attracted the
18 participation of many homeless people who became new members and leaders of the
19 SHOC organization. SHOC publishes up to 5,000 papers every two months. In 2017,
20 18,445 papers were sold by 71 participants throughout Sacramento. SHOC currently has
21 an average of 20 active people distributing the publication each month.

22 5. SHOC distributes *Homeward Street Journal* through providing homeless or
23 nearly homeless people up to 350 copies of the publications weekly for ten cents each.
24 Individuals will then solicit for one-dollar donations from members of the public in
25 exchange for the publication. *Homeward Street Journal* provides an income source to
26 homeless and nearly homeless distributors, helping them meet their immediate survival
27 needs. SHOC and its members directly benefit from the distribution of *Homeward*

1 because dissemination of the newspaper simultaneously confers a financial benefit on
2 its vendors and spreads awareness of important social issues, including homelessness
3 and poverty, contained within Homeward.

4 6. Distributors widely solicit for donations in the City of Sacramento. Indeed, any of
5 SHOC's distributors are at risk of being ticketed, arrested, or harassed by the City of
6 Sacramento ("City") because Ordinance No. 2017-0054 ("the Ordinance") arbitrarily
7 prohibits solicitation in many areas throughout the City.

8 7. Enactment and enforcement of the Ordinance frustrates SHOC's goals and will
9 require SHOC to expend resources it otherwise would spend in other ways. The
10 Ordinance frustrates SHOC's goals because it suppresses SHOC vendors' ability to
11 solicit for donations, using Homeward to attract contributions in a number of locations
12 throughout the County of Sacramento. It also interferes with the wide dissemination of
13 the journal to the public. The Ordinance will require SHOC to expend resources it
14 otherwise would spend in other ways, because SHOC will now be required to warn and
15 educate its vendors regarding application of the Ordinance, to prevent citation and
16 subsequent punishment under the Ordinance.

17 8. SHOC has already expended resources in advocating in opposition to the
18 Ordinance. I testified multiple times before City officials in opposition to the Ordinance.
19 On August 22, 2017 and September 19, 2017, I testified before the Law and Legislature
20 committee and explained that this is a free speech issue. I further advised them that their
21 Ordinance contains arbitrary restrictions on solicitation. On September 19, 2017, I
22 reminded the City again that this is a free speech issue and that banning solicitation
23 within 30 feet from certain locations is arbitrary and unnecessary. The Ordinance's effect
24 would be to restrict the voice of homeless people, not to ensure safety.

25 9. The City did not provide any statistics or data that explained why they needed
26 the restrictions in the Ordinance at the August 22, 2017, September 19 2017, or
27

1 November 14, 2017 public hearings. I was present for the discussion on this agenda
2 item at these meetings.

3 I declare under penalty of perjury under the laws of the United States and the
4 State of California that the foregoing is true and correct. Executed on April 25, 2018 in
5 Sacramento, California.

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A handwritten signature in black ink, appearing to read 'Paula Lomazzi', is written over a horizontal line.

Paula Lomazzi

LEGAL SERVICES OF NORTHERN CALIFORNIA
Laurance Lee, State Bar No. 301482
Elise Stokes, State Bar No. 288211
Sarah Ropelato, State Bar No. 254848
515 12th Street
Sacramento, CA 95814
Telephone: (916) 551-2150
Facsimile: (916) 551-2196
E-mail: llee@lsnc.net

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.
Abre' Conner, State Bar No. 306024
Alan Schlosser, State Bar No. 049957
William S. Freeman, State Bar No. 82002
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
E-mail: aconner@aclunc.org

Attorneys for Plaintiffs Sacramento Regional Coalition to End Homelessness, James Lee Clark, and Sacramento Homeless Organizing Committee

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SACRAMENTO REGIONAL COALITION
TO END HOMELESSNESS, JAMES LEE
CLARK, AND SACRAMENTO
HOMELESS ORGANIZING COMMITTEE,

Plaintiffs,

v.

CITY OF SACRAMENTO,
Defendant.

Case No.: 2:18-CV-00878-MCE-AC

**Declaration of Abre' Conner in Support
of Motion for Preliminary Injunction**

Date: May 31, 2018
Time: 2:00 p.m.
Courtroom: 7

I, Abre' Conner, declare:

1. I am an attorney duly licensed to practice law in California and a member of the bar of this Court. I am a Staff Attorney with the American Civil Liberties Union Foundation of Northern California, and am one of the attorneys acting as counsel for Plaintiffs in this case. The following facts are based on my personal knowledge.
2. Attached as Exhibit A is a true and correct copy of Consent Item 4, pages 1-6, in the City of Sacramento Law and Legislation Committee Report, File ID: 2017-00975, 6 (July 25, 2017), which was accessed at http://sacramento.granicus.com/MediaPlayer.php?view_id=25&clip_id=4018 on April 25, 2018.
3. Attached as Exhibit B is a true and correct copy of Discussion Item 2, pages 1-4, in the City of Sacramento Law and Legislation Committee, Report ID: 2017-01227, 3 (Sept. 19, 2017), which was accessed at http://sacramento.granicus.com/MediaPlayer.php?view_id=25&clip_id=4044&meta_id=502389 on April 25, 2018.
4. Attached as Exhibit C is a true and correct copy of Discussion Item 15, pages 1-4, in the City of Sacramento City Council, Report ID: 2017-1474, 3 (Nov. 14, 2017), which was accessed at http://sacramento.granicus.com/MediaPlayer.php?view_id=22&clip_id=4091 on April 25, 2018.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on April 26, 2018 in San Francisco, California.



Abre' Conner

Exhibit A

July 25, 2017 Committee Report



Law and Legislation Committee Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-00975

July 25, 2017

Consent Item 04

Title: Ordinance Adding Chapter 8.134 and Chapter 12.100 to the Sacramento City Code, Relating to Aggressive or Intrusive Solicitation and Targeted Residential Picketing; Amending Various Sections of Chapter 8.68, Chapter 12.72, Section 12.74.030, and Chapter 15.52 Relating to Noise Regulations, Parks, Park Buildings, and Recreational Facilities, the City Hall Facilities, and Vacant Buildings

Location: Citywide

Recommendation: Pass a Motion approving and forwarding the ordinance adding and amending various sections and chapters of the City Code to the City Council with a recommendation that it be adopted.

Contact: Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department.

Presenter: None

Attachments:

1-Description/Analysis

2-Redlined Copy

Description/Analysis

Issue Detail: The Sacramento City Code contains several chapters and sections designed to ensure a safe, peaceful environment for residents, businesses, customers, and visitors. Over the years, some of these chapters and sections have become outdated or impractical to enforce. In other instances, the City Code lacks provisions that apply to specific conduct that is intrusive or disturbs the peace. Updating the following list of existing sections and chapters along with adding two new chapters to the City Code will enhance the City's commitment to fulfill the communities' expectations for a safe, vibrant, and peaceful environment while also providing a more contemporary, comprehensive approach to handling quality of life issues within the community.

- 1) Aggressive and Intrusive Solicitation. Deleting sections 5.116.190 through 5.116.230 of the Sacramento City Code (Prohibited Solicitation); deleting Chapter 5.120 (Solicitation of Alms); and adding Chapter 8.134 (Aggressive and Intrusive Solicitation).

Government entities may place reasonable time, place and manner restrictions on individuals soliciting for money or other items of value, provided any restrictions are narrowly tailored to serve a significant government interest and still permit other, reasonable means of engaging in expressive conduct. Permissible restrictions involve regulating aggressive or intrusive solicitation or prohibiting solicitations at certain locations.

The Sacramento Police Department has received complaints from residents, visitors, and businesses about aggressive or intrusive solicitation. Solicitors may seek out those people who are a "captive audience" because it is difficult or impossible for those people to exercise their own right to decline to listen to or avoid solicitation from others. Soliciting at locations such as gas stations, the entrances to banks or financial institutions, or at or near automated teller machines, where citizens are known to have money readily available, can result in an intimidating, threatening, or dangerous situation. These situations present a risk to the health, safety, and welfare of the public since individuals do not always feel they can decline a solicitation or easily walk away.

Solicitations on median strips and at traffic intersections are unsafe and hazardous for solicitors, drivers, and pedestrians. Persons soliciting from occupants of vehicles cause a variety of concerns for public safety, including accidents from distracted drivers, stopping of vehicles in roadways, and calls for service to the Police Department that can cause service disruptions for other citizens when law enforcement is tasked with responding to these types of calls.

Chapter 5.120 (Solicitation of Alms) of the Sacramento City Code contains several outdated terms and needs to be modernized. Sacramento City Code sections 5.116.190 through 5.116.230, is narrow in scope and only applies to solicitation from a median strip. Several jurisdictions, including the County of Sacramento, have updated their municipal codes to not only better define aggressive or intrusive solicitation, but to also identify specific locations where these types of solicitation cause a concern to the public's safety.

The goal of these changes is to protect citizens from intrusive conduct, personal intimidation, and traffic safety issues while simultaneously acknowledging a solicitor's right to engage in expressive conduct.

- 2) Regulation of Specific Noises. Amend sections 8.68.200 and 8.68.280 of the Sacramento City Code, relating to noise regulations.

People have a right to enjoy peace and tranquility as well as a certain right to privacy within their homes. Existing noise regulations already address portable gasoline-powered blowers, power tools, and power fans in residential neighborhoods. To further these objectives, the proposed amendments limit certain, specific noises that would be considered loud and offensive or would be inconsistent with intended residential uses for properties that are located within a residentially zoned location.

The proposed amendments would prohibit devices that amplify the human voice in areas zoned for residential uses, absent a special event permit. Furthermore, the proposed amendments would provide that an oral warning to cease and desist the activity, instead of a written warning, would be sufficient prior to citing a person for violating section 8.68.200.

- 3) Parks, Park Buildings, and Recreational Facilities. Amend sections 12.72.020 and 12.72.210 of the Sacramento City Code relating to the use of parks, park buildings, and recreational facilities.

Section 12.72.210 of the Sacramento City Code applies to certain activities within a park, park building, or recreational facility and the accompanying ability of City personnel to direct individuals who are being disruptive to leave. A common example is when individuals obtain a special event permit to reserve tables or a community center for a birthday party or similar event and an uninvited person refuses to leave the location where the event is being held. The existing ordinance states that the city manager, a peace officer or a park ranger may cause to be removed any and all persons whose presence in the park, building, or portion thereof is disruptive to the

normal and safe use and enjoyment of the park or building. However, this section fails to include an enforcement mechanism so that if a person refuses to leave the location after being directed to do so, a city official has no means under the existing ordinance to enforce an ongoing violation.

The proposed amendment to section 12.72.210 would make it a misdemeanor if a disruptive and uncooperative individual refuses to leave the park, park building, or recreational facility.

Safety and enjoyment of the park system by all in our community is a top priority within the city. Currently, a police officer who encounters a violator in a park, such as a person drinking alcohol or an adult remaining in a children's playground area in the absence of accompanying a minor, cannot remove the violator. The inability of public safety personnel to direct the subject to immediately leave the park can create an environment where the offense is likely to continue or erode the public's confidence in the city's ability to ensure its parks are clean and safe for the community.

The proposed amendment to section 12.72.020 will allow officers who have taken enforcement action for a violation of park use regulations to direct the individual to leave the location for a 24-hour period. If that individual refuses to leave the park, park building, or recreational facility, the violation is a misdemeanor.

4) City Hall Facilities. Amend section 12.74.030 of the Sacramento City Code.

The City Hall Plaza (Plaza) is located between the Old and New City Hall buildings and is open to members of the community while conducting city business, attending public meetings, or engaging in expressive conduct. Use of the Plaza includes the ability for groups to obtain a free permit to hold events in the space. The current ordinance allows the public to be in the Plaza, without a permit from 7:00 am until 11:00 pm, which is up to six hours after normal business hours, except for nights when a public meeting is being held.

The proposed ordinance would modify the hours of use for the Plaza to be more consistent with the use of the buildings. The proposal would modify the hours of use to from 7:00 am to 7:00 pm.

5) Targeted Residential Picketing. Add Chapter 12.100 to the Sacramento City Code.

Picketing, as a means to express ideas, is a form of protected speech under the First Amendment. When that speech occurs in a public place, the government may impose reasonable time, place and manner restrictions so long as the restrictions are content neutral, narrowly tailored to serve a significant government interest, and

leave picketers with alternative avenues of communicating their ideas and beliefs. Targeted picketing of residents within their homes has been an issue in many communities. Common examples include: picketers targeting doctors who perform abortions; picketers protesting officers or board members of a business; or picketers targeting the private residences of elected officials. Several jurisdictions, including San Diego and San Jose, have adopted ordinances prohibiting targeted residential picketing. Occupants of residential dwellings can become a “captive audience” as those individuals usually cannot move to avoid the unwelcome picketing being directed at them. Picketing in residential neighbors can also entail large crowds, amplified noise, and bring a heightened state of emotional distress to the community.

The proposed ordinance would prohibit stationary targeted picketing within 300 feet of a residential structure. The ordinance would seek to balance the following factors: (1) furthering the significant government interest of protecting the well-being, tranquility, and privacy of occupants within their home; (2) narrowly tailoring the restrictions so the ordinance is limited in its application; and (3) still allowing alternative avenues for protestors to communicate their ideas and beliefs within a residential neighbor.

- 6) Vacant Buildings and Structures. Chapter 15.52 of the Sacramento City Code requires property owners of vacant buildings to barricade alcoves with a 4-foot depth or more with plywood.

The Police Department, Code Enforcement, and Business Improvement Districts receive complaints from the community about problems with unsecured alcoves, such as the accumulation of trash and debris or people using the alcoves. In addition to the public safety and fire hazard concerns associated with unsecured alcoves, they often become strewn with trash, debris, and human waste that creates environmental hazards requiring the repeated expenditure of costs and resources to mitigate.

Modifying the existing ordinance to require any vacant alcove larger than 3 feet in depth be boarded would assist in reducing the number of locations generating concerns from the community. In addition, modifying the current ordinance to also allow for the use of wrought iron fencing as a barricade, in addition to plywood, would give property owners the option of selecting the material that is most appropriate for the use and look of their property.

Policy Considerations: The City Council has a long-standing commitment of supporting policies that protect its residents from quality of life issues that threaten the health, morals, safety, comfort, convenience, or welfare of the community.

Economic Impacts: None

Environmental Considerations: None

Sustainability: Not applicable

Commission/Committee Action: None

Rationale for Recommendation: Local municipalities can regulate certain types of activities taking place upon streets, sidewalks, or other traditional public forums provided there is a significant government interest, the regulations are narrowly tailored, and alternative methods for individuals to express their beliefs and ideas remain available. To ensure the commitment to protecting the City's residents, visitors, and businesses, the proposed changes to the Sacramento City Code will bring the ordinances up to date to reflect current municipal practices concerning quality of life issues while simultaneously recognizing individuals' ability to express their ideas and beliefs upon streets, sidewalks, and other public places.

Financial Considerations: There is no financial impact associated with implementing the proposed amendment.

Local Business Enterprise (LBE): Not applicable

Exhibit B

September 19, 2017 Committee Report



Law and Legislation Committee Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-01227

September 19, 2017

Discussion Item 02

Title: Ordinance Deleting Article IV of Chapter 5.116 and Chapter 5.120 of the Sacramento City Code, Relating to Solicitation and Solicitation of Alms; and Adding Chapter 8.134 Relating to Aggressive and Intrusive Solicitation

Location: Citywide

Recommendation: 1) Review an Ordinance deleting various sections of Chapter 5.116 and Chapter 5.120 of the Sacramento City Code, relating to Solicitation and Solicitation of Alms; and adding Chapter 8.134 relating to Aggressive and Intrusive Solicitation; and 2) pass a Motion forwarding the Ordinance to City Council for approval.

Contact: Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department

Presenter: Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department

Attachments:

1-Description/Analysis

2-Ordinance [Redlined Copy]

3-Ordinance [Clean Copy]

Description/Analysis

Issue Detail: On September 11, 2017 pursuant to the direction of the Law and Legislation Committee staff met with community groups and members to discuss modifications made to the proposed Aggressive or Intrusive Solicitation ordinance. The following points of consideration were discussed:

1. In section 8.134.010, the purpose and intent the language of the second paragraph was perceived as unclear and ambiguous by attending community members.
2. Regrading distances, staff advised that distances were reduced to the smallest distance that we could recommend- 30 feet from sensitive activities/uses. The community felt the distance could be reduced further. The group agreed to disagree about whether or not 30 feet was the appropriate number.
3. Section 8.134.040 relating to violations yielded much discussion. Central to the discussion was the issue of how many violations within 6 months should make a person eligible for a misdemeanor. The community felt that 2 within 6 months was too few or that the time period was too short. Staff felt strongly that this was a solid recommendation and would afford the police officers the tools necessary to address our concern. As with Item 2 the group agreed to disagree and would present the two perspectives to the committee during public comment for discussion.
4. The provision protecting restaurant patrons in a seating area was added and highlighted but no major issues were raised regarding this edit.

The appropriate adjustments have been made and revised ordinance returns for consideration. One item that had been previously discussed by the committee but was inadvertently left out of our revised ordinance is that of queuing. Law and Legislation committee members had indicated an interest in adding a protection to people queuing in a line from aggressive solicitation. The inadvertent exclusion meant that we were unable to be transparent about the proposed language designed to address this issue. Rather than add a section without affording an opportunity to dialogue with the community members it was determined that we would be best served highlighting this error and develop findings before ordinance proposed ordinance is sent forward to council. Staff would share its findings in advance with the community members and solicit feedback on language.

Policy Considerations: The City Council has a long-standing commitment of supporting policies that protect its residents from quality of life issues that threaten the health, safety, or welfare of the community.

Economic Impacts: None

Environmental Considerations: None

Sustainability: N/A

Commission/Committee Action: This ordinance was previously reviewed and considered by the Law and Legislative Committee on July 25, 2017. The committee passed a motion with a recommendation the ordinance be adopted by City Council. On August 22, 2017, City Council passed a motion that the ordinance should be returned to the Law and Legislative Committee for additional review.

Rationale for Recommendation: Local municipalities can regulate certain types of activities taking place upon streets, sidewalks, or other traditional public forums provided there is a significant government interest, the regulations are narrowly tailored, and alternative methods for individuals to express their beliefs and ideas remain available. To ensure the commitment to protecting the City's residents, visitors, and businesses, the proposed changes to the Sacramento City Code will bring the ordinance up to date to reflect current municipal practices concerning quality of life issues while simultaneously recognizing individuals' ability to express their ideas and beliefs upon streets, sidewalks, and other public places.

Financial Considerations: There is no financial impact associated with implementing the proposed amendment.

Local Business Enterprise (LBE): N/A

Background: The Sacramento City Code contains several chapters and sections designed to ensure a safe, peaceful environment for residents, businesses, customers, and visitors. Over the years, some of these chapters and sections have become outdated or impractical to enforce. In other instances, the City Code lacks provisions that apply to specific conduct that is intrusive or disturbs the peace. Adding a new chapter to the City Code relating to aggressive and intrusive solicitation will enhance the City's commitment to fulfill the communities' expectations for a safe, vibrant, and peaceful environment while simultaneously acknowledging a solicitor's right to engage in expressive conduct.

Government entities may place reasonable time, place and manner restrictions on individuals soliciting for money or other items of value, provided any restrictions are narrowly tailored to serve a significant government interest and still permit other, reasonable means of engaging in expressive conduct. Permissible restrictions involve regulating aggressive or intrusive solicitation or prohibiting solicitations at certain locations.

The Sacramento Police Department has received complaints from residents, visitors, and businesses about aggressive or intrusive solicitation. Solicitors may seek out those people

who are a “captive audience” because it is difficult or impossible for those people to exercise their own right to decline to listen to or avoid solicitation from others. Soliciting at locations such as gas stations, the entrances to banks or financial institutions, or at or near automated teller machines, where citizens are known to have money readily available, can result in an intimidating, threatening, or dangerous situation. These situations present a risk to the health, safety, and welfare of the public since individuals do not always feel they can decline a solicitation or easily walk away.

Solicitations on median strips and at traffic intersections are unsafe and hazardous for solicitors, drivers, and pedestrians. Persons soliciting from occupants of vehicles cause a variety of concerns for public safety, including accidents from distracted drivers, stopping of vehicles in roadways, and calls for service to the Police Department that can cause service disruptions for other citizens when law enforcement is tasked with responding to these types of calls.

Chapter 5.120 (Solicitation of Alms) of the Sacramento City Code contains several outdated terms and needs to be modernized. Sacramento City Code sections 5.116.190 through 5.116.230, is narrow in scope and only applies to solicitation from a median strip. Several jurisdictions, including the County of Sacramento, have updated their municipal codes to not only better define aggressive or intrusive solicitation, but to also identify specific locations where these types of solicitation cause a concern to the public’s safety.

The goal of these changes is to protect citizens from intrusive conduct, personal intimidation, and traffic safety issues while simultaneously acknowledging a solicitor’s right to engage in expressive conduct.

Exhibit C

November 14, 2017 Report



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-1474

November 14, 2017

Discussion Item 15

Title: Ordinance Deleting Article IV of Chapter 5.116 and Chapter 5.120 of the Sacramento City Code, Relating to Solicitation and Solicitation of Alms; and Adding Chapter 8.134 Relating to Aggressive and Intrusive Solicitation (Passed for Publication 11/07/2017; Published 11/10/2017)

Location: Citywide

Recommendation: Pass an Ordinance deleting various sections of Chapter 5.116 and Chapter 5.120 of the Sacramento City Code, relating to Solicitation and Solicitation of Alms; and adding Chapter 8.134 relating to Aggressive and Intrusive Solicitation.

Contact: Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department

Presenter: Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

Description/Analysis

Issue Detail: On September 11, 2017 pursuant to the direction of the Law and Legislation Committee, staff met with community groups and members to discuss modifications made to the proposed Aggressive and Intrusive Solicitation Ordinance. The following points of consideration were discussed:

1. In section 8.134.010, the purpose and intent the language of the second paragraph was perceived as unclear and ambiguous by attending community members.
2. Regrading distances, staff advised that distances were reduced to the smallest distance that we could recommend- 30 feet from sensitive activities/uses. The community felt the distance could be reduced further. The group agreed to disagree about whether or not 30 feet was the appropriate number.
3. Section 8.134.040 relating to violations yielded much discussion. Central to the discussion was the issue of how many violations within six months should make a person eligible for a misdemeanor. The community felt that two within six months was too few or that the time period was too short. Staff felt strongly that this was a solid recommendation and would afford the police officers the tools necessary to address our concern. As with Item 2 the group agreed to disagree but staff is recommending including two violations within a six-month period.
4. The provision protecting restaurant patrons in a seating area was added and highlighted but no major issues were raised regarding this edit.

The appropriate adjustments have been made and revised ordinance returns for consideration. One item that had been previously discussed by the committee but was inadvertently left out of our revised ordinance is that of queuing. At the September 19th Law and Legislation Committee meeting, the Law and Legislation committee members had indicated a continued interest in adding a protection to people queuing in a line from aggressive solicitation. Staff does not recommend such language as the current language regarding aggressive behavior provides sufficient protection to those who are in que to enter an entertainment venue.

Policy Considerations: The City Council has a long-standing commitment of supporting policies that protect its residents from quality of life issues that threaten the health, safety, or welfare of the community.

Economic Impacts: None

Environmental Considerations: None

Sustainability: N/A

Commission/Committee Action: This ordinance was previously reviewed and considered by the Law and Legislative Committee on July 25, 2017. The committee passed a motion with a recommendation the ordinance be adopted by City Council. On August 22, 2017, City Council passed a motion that the ordinance should be returned to the Law and Legislative Committee for additional review. The ordinance was again reviewed by the Law and Legislation Committee on September 19, 2017 and a motion was passed recommending the ordinance be adopted by City Council.

Rationale for Recommendation: Local municipalities can regulate certain types of activities taking place upon streets, sidewalks, or other traditional public forums provided there is a significant government interest, the regulations are narrowly tailored, and alternative methods for individuals to express their beliefs and ideas remain available. To ensure the commitment to protecting the City's residents, visitors, and businesses, the proposed changes to the Sacramento City Code will bring the ordinance up to date to reflect current municipal practices concerning quality of life issues while simultaneously recognizing individuals' ability to express their ideas and beliefs upon streets, sidewalks, and other public places.

Financial Considerations: There is no financial impact associated with implementing the proposed amendment.

Local Business Enterprise (LBE): N/A

Background: The Sacramento City Code contains several chapters and sections designed to ensure a safe, peaceful environment for residents, businesses, customers, and visitors. Over the years, some of these chapters and sections have become outdated or impractical to enforce. In other instances, the City Code lacks provisions that apply to specific conduct that is intrusive or disturbs the peace. Adding a new chapter to the City Code relating to aggressive and intrusive solicitation will enhance the City's commitment to fulfill the communities' expectations for a safe, vibrant, and peaceful environment while simultaneously acknowledging a solicitor's right to engage in expressive conduct.

Government entities may place reasonable time, place and manner restrictions on individuals soliciting for money or other items of value, provided any restrictions are narrowly tailored to serve a significant government interest and still permit other, reasonable means of engaging in expressive conduct. Permissible restrictions involve regulating aggressive or intrusive solicitation or prohibiting solicitations at certain locations.

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their own right to decline to listen to or avoid solicitation from others. Soliciting at locations such as gas stations, the entrances to banks or financial institutions, or at or near automated teller machines, where citizens are known to have money readily available, can result in an intimidating, threatening, or dangerous situation. These situations present a risk to the health, safety, and welfare of the public since individuals do not always feel they can decline a solicitation or easily walk away.

Solicitations on median strips and at traffic intersections are unsafe and hazardous for solicitors, drivers, and pedestrians. Persons soliciting from occupants of vehicles cause a variety of concerns for public safety, including accidents from distracted drivers, stopping of vehicles in roadways, and calls for service to the Police Department that can cause service disruptions for other citizens when law enforcement is tasked with responding to these types of calls.

Chapter 5.120 (Solicitation of Alms) of the Sacramento City Code contains several outdated terms and needs to be modernized. Sacramento City Code sections 5.116.190 through 5.116.230, is narrow in scope and only applies to solicitation from a median strip. Several jurisdictions, including the County of Sacramento, have updated their municipal codes to not only better define aggressive or intrusive solicitation, but to also identify specific locations where these types of solicitation cause a concern to the public's safety.

The goal of these changes is to protect citizens from intrusive conduct, personal intimidation, and traffic safety issues while simultaneously acknowledging a solicitor's right to engage in expressive conduct.