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By E-mail Only (mdever@sunflower.com)

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The Honorable Michael Dever, Mayor
City Hall
6 East 6th Street
Lawrence, KS 66044

Re: Unlawful Panhandling Amendments, Ordinance 8362

Dear Mayor Dever:

I am writing to register the ACLU of Kansas and Western Missouri's objection to the Unlawful Panhandling Amendments, Ordinance 8362, which the City Commission is scheduled to consider at its meeting this evening.

The ACLU's main concerns about the new ordinance are that it bans only oral solicitations for an immediate donation of money anywhere in the Designated Downtown Area and that it bans all panhandling at night, city-wide. These restrictions on begging present constitutional questions of first impression in Kansas. But there is no doubt that begging is protected under the First Amendment to the United States Constitution.

Our basic point is that the new ordinance is unnecessary and excessive. The existing aggressive begging ordinance is constitutional and gives the City and the Lawrence Police Department all the tools needed to deal effectively with problem beggars. By banning only oral solicitations for an immediate donation of money downtown, the new ordinance singles out speech on only one subject and prohibits only one type of solicitation. Specifically, it only bans down-on-their-luck people from asking for help orally by saying, for instance, "brother can you spare a dime." In these dire economic times, it is extremely harsh to target only that speech for prohibition.

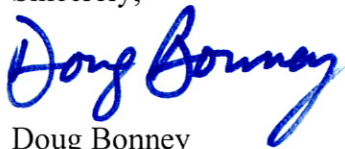
Even assuming *arguendo* that the new ordinance is a content neutral time, place, and manner restriction, such restrictions must be narrowly tailored to serve a significant governmental purpose while leaving open ample alternative channels of expression. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). It is fairly clear that the new ordinance was drafted so that street performers could remain in downtown Lawrence while permitting the immediate solicitation of donations only through the use of open guitar cases, small signs, and the like. Even if the provision is content neutral, which I would dispute, it is difficult to understand how a court could find that the prohibition against oral solicitations is reasonably related to any legitimate goal of the City. The City will have the burden to prove a rational relationship to a legitimate governmental objective. Given that everyone can still be downtown and that people are only prohibited from saying "give me money" orally, I can't understand how this ordinance serves any significant governmental purpose. This new ordinance will not reduce

the number of mendicants and street performers, and it will not protect the public's aural sensibilities since street performers can solicit donations with any type of music or noise and an open instrument case as long as they don't say "put some change in my guitar case." This new ordinance will merely "protect" the public from hearing spoken words asking for immediate donations of money. Solicitors could still stand on Lawrence's downtown sidewalks asking orally or through leaflets for *future* donations. For example, ACLU members could stand anywhere in downtown Lawrence asking for *future* donations by saying "please send a donation to the ACLU" and handing out envelopes for that purpose. Furthermore, citizens could stand anywhere in downtown Lawrence and could speak about anything else except immediate donations of money. It is hard to fathom how this ordinance will protect Lawrence's citizens from the asserted evils of panhandling.

To the extent that the new ordinance is modeled on the City of Kansas City, Missouri's 2007 anti-begging ordinance, which purportedly banned oral solicitation for an immediate donation of money in five districts including the Country Club Plaza, you should know that the ACLU objected to that ordinance and that, after negotiations with the City Attorney and the General Counsel for the Kansas City Police Department, the Police Department directed its officers not to enforce the new ordinance because of concerns about its constitutionality. That is still the *status quo* here in Kansas City.

In summary, the new ordinance accomplishes nothing new. It simply does the work of the old ordinance but in a Rube Goldberg fashion while also unconstitutionally infringing on the First Amendment rights of some citizens. The streets and sidewalks of downtown Lawrence are quintessential public fora. The new ordinance seems to want to protect people on those public streets from our earthier fellow citizens. But that is not a legitimate governmental goal. People venture out in the City must face certain realities (such as that everyone is not cut from the same cloth) and must assume certain responsibilities (such as saying no to beggars). The new ordinance is another in a spate of recent attempts to homogenize American city life. That is neither good public policy nor constitutional.

Sincerely,



Doug Bonney

cc: Robert Chestnut (by e-mail only)
Mike Amyx (by e-mail only)
Sue Hack (by e-mail only)
Boog Highberger (by e-mail only)
David Corliss (by e-mail only)
Scott Miller (by e-mail only)