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Kevin J. Geiger  
Town of Telluride Attorney  
113 W. Columbia Avenue, PO Box 397  
Telluride, CO 81435  
**By electronic mail:** [kgeiger@telluride-co.gov](mailto:kgeiger@telluride-co.gov)

Dear Mr. Geiger:

I learned last week that the Town of Telluride is in the process of adopting a new ordinance to regulate panhandling in public places in Telluride. I understand that the proposed ordinance passed on first reading on March 10 and that it may be adopted on second reading after a public hearing on March 31. I ask that you include this letter in the record of that public hearing.

I have reviewed the text of the proposed ordinance, and I write to urge you and the Town Council to reject it. The ordinance unjustifiably forbids and criminalizes speech that is protected by the First Amendment.

The ACLU of Colorado has devoted considerable resources in recent years to reviewing, and sometimes challenging, municipal ordinances that appear to be directed at poor persons and homeless persons. In 2013, Colorado Springs repealed an ordinance establishing a “Downtown No Solicitation Zone” after the ACLU of Colorado obtained a preliminary injunction. In 2014, the ACLU of Colorado challenged a new Grand Junction ordinance that regulated panhandling. Grand Junction promptly repealed or modified most (but not all) of the challenged provisions, and litigation remains pending. Later in 2014, in response to a letter from the ACLU of Colorado, officials in Durango agreed to suspend enforcement of an ordinance that prohibited “loitering . . . for the purpose of begging.” Earlier this year, we filed a class action lawsuit challenging Fort Collins’s enforcement of its panhandling ordinance. After legal briefing on the ACLU’s motion for a preliminary injunction, Fort Collins promptly repealed all of the challenged provisions.

I understand that Telluride is attempting to address complaints about “aggressive” panhandling. The ACLU does not object to a narrowly and carefully tailored ordinance that targets threatening, coercive or menacing behavior that actually interferes with the rights of others. But this proposed ordinance goes too far by extending its prohibitions to peaceful, polite, and nonthreatening solicitations that cause no harm and that are squarely protected by the Constitution.

Section 10-10-30, titled “Prohibited Panhandling Activities,” contains eleven subsections that prohibit “panhandling” in a variety of public places and situations. The ACLU objects to all but four of these eleven subsections.

The proposed ordinance includes a very broad definition of “panhandling”:

*Panhandle or Panhandling* shall include using the spoken, singing, written, or printed word, or any bodily gestures, signs or other means of communicating with the purpose of obtaining a gift of money or any other thing of value.

Section 10-10-20 (e). This definition applies to persons who solicit passively by displaying a sign that invites donations. It even applies to street musicians who invite donations symbolically with an open guitar case.

A person who sits quietly with a sign is not threatening, coercive, or menacing. A street musician does not cause persons to fear for their safety. A person who respectfully and politely asks for monetary assistance is not trampling on the rights of others. Offering a passer-by a leaflet or a pamphlet that contains a solicitation is an exercise of First Amendment rights, not an activity that can be made criminal. Yet the ordinance unjustifiably transforms all these activities into crimes if they occur in the evening (even on a well-lighted, busy downtown street), or if they take place near banks, bus stops, parking facilities, or outdoor restaurants.

At least one provision poses an additional problem of vagueness, especially when applied to persons who solicit by passively displaying a sign. Section 10-10-30 (11) prohibits soliciting anyone under the age of 16. If someone is quietly holding a sign inviting donations, is the ordinance violated whenever a 15-year-old walks by? Whenever a vehicle with an underage passenger drives by? Does a panhandler avoid a violation only by concealing the sign?

The ACLU has no objection to subsections 2, 3, 5, or 6. The conduct described in those subsections is not protected by the First Amendment. For example, subsection 10-10-30 (2) prohibits panhandling in a manner “that is aggressive, intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety.” That provision, along with subsections 3, 5, and 6, is surely sufficient to address Telluride’s legitimate interest in addressing threatening and menacing solicitations.

I urge you to amend the proposed ordinance and decline to adopt the provisions that apply to expression that is protected by the First Amendment. In doing so, Telluride will preserve its claim to be a “civil liberties safe zone.”

Sincerely,



Mark Silverstein  
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