

# ACLU of Virginia

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530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8080

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**VIA Email and Regular Post**

**TO: Richmond City Council**

**DATE: November 7, 2007**

**RE: ACLU Opposition to Proposed Richmond Ordinance on Panhandling**

I am writing to ask the members of the Public Safety Committee and Richmond City Council to oppose proposed ordinance 2007-271, which requires a \$25 permit to panhandle from vehicle occupants while on a sidewalk or curb.

Per the enclosed legal memo, the ACLU believes that the proposed ordinance violates the First Amendment right to free speech and would not withstand a legal challenge. Should the ordinance pass, we are prepared to provide legal representation to panhandlers affected by it.

In addition to the free speech issues, I hope you will ask the following two questions before deciding your position on this ordinance:

- 1) What hard evidence has been presented to you demonstrating that sidewalk panhandlers of vehicle occupants in Richmond are a legitimate threat to traffic safety?
- 2) If indeed you believe that such panhandling is a threat to public safety, why are you allowing individuals to do it by paying a permit fee?

I thank you for your attention. If you would like to discuss this with me or ACLU of Virginia Legal Director Rebecca Glenberg, please call 644-8080. You may email me at [kwillis@acluva.org](mailto:kwillis@acluva.org) or Ms. Glenberg at [rglenberg@acluva.org](mailto:rglenberg@acluva.org).

Sincerely,

Kent Willis  
Executive Director

# ACLU of Virginia

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530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

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## MEMORANDUM

To: Kent Willis, Executive Director  
From: Rebecca Glenberg, Legal Director  
Date: November 7, 2007

**RE: Constitutionality of Proposed Richmond Ordinance on Solicitation**

### I. Issue

Does proposed Richmond ordinance 2007-271, which requires a permit to “panhandle” from vehicle occupants while on a sidewalk or curb, violate the First Amendment?

### II. Short Answer

Yes. The proposed ordinance is not adequately tailored to serve the City’s stated interests, and unconstitutionally intrudes on the right to speak anonymously.

### III. Discussion

#### A. Panhandling is Constitutionally Protected Speech.

The Supreme Court has held that the solicitation of money is protected speech under the First Amendment of the U.S. Constitution. See *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). This protection has been found to extend to begging. See *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *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.”); *Ledford v. State*, 652 So. 2d 1254, 1255 (Fla. Dist. Ct. App. 2d Dist. 1995) (“begging is entitled to some constitutional protection”); *C.C.B. v. State*, 458 So.2d 47, 48 (Fla.App. 1984) (recognizing the “first amendment right of *individuals* to beg or solicit alms for *themselves*.”); *Benefit v. City of Cambridge*, 679 N.E.2d 184 (Mass.1997) (“peaceful begging constitutes communicative activity protected by the First Amendment”).

#### B. The Proposed Ordinance is Not a Legitimate Time, Place and Manner Restriction.

Because solicitation is constitutionally protected speech, any regulation of it must, *at a minimum*, satisfy the requirements for time, place and manner requirements; that is they must be “content neutral, [be] narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” *Graham*, 225 F.3d at 905 (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983)).

The ordinance here is not narrowly tailored to serve the City's claimed interest in preventing "a disruptive effect on the efficient flow of traffic." First, it is not at all clear that a permit requirement addresses these interests at all. If a person standing by the side of the road soliciting contributions poses some kind of traffic hazard, there is no reason to believe that he would pose any less of a hazard while wearing a permit with his name and photo on it.

Second, the ordinance applies in a substantial number of situations in which no traffic problems are likely to arise. For example, the ordinance would require a permit to solicit occupants of vehicles who are lawfully parked by the side of the road, or who could easily pull over to the side of the road.

For similar reasons, the court in *Comite De Jornaleros De Redondo Beach v. City of Redondo Beach*, 475 F.Supp.2d 952 (C.D.Cal. 2006), struck down an ordinance that prohibited the solicitation of employment from the occupants of vehicles. The court observed that, for example, "the Ordinance would reach an individual standing well away from the flow of traffic and who merely holds up a sign inviting the occupants of vehicles to drive to a private location to confer." 475 F.Supp. at 965. The same is true of the Richmond ordinance.

### **C. The Ordinance Violates the Right to Anonymous Speech**

Moreover, requiring a permit for panhandling unconstitutionally burdens the well-established right to speak anonymously. "a[ speaker]'s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334 (1995). As noted above, the requirement that a panhandler disclose his name and submit to a photograph is utterly unrelated to the City's interests in traffic flow and safety. Accordingly, this intrusion on speakers' anonymity violates the First Amendment.

## **IV. Conclusion**

The proposed Richmond ordinance is unconstitutional because it lacks the tailoring required of a legitimate time, place and manner restriction and because it unconstitutionally burdens the right to anonymous speech.