



## Iowa

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**Delivered via email to City Council members at the following addresses:**

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**CC: Coralville City Attorney Office**

[kolson@coralville.org](mailto:kolson@coralville.org)

**RE: Coralville Municipal Code Solicitation From Persons in Motor Vehicles Prohibited Ordinance, § 41.14**

Dear Councilpersons:

I am writing on behalf of the ACLU of Iowa regarding Coralville’s Municipal Ordinance prohibiting Solicitation From Persons in Motor Vehicles (“the Ordinance”). CORALVILLE, IOWA MUN. CODE § 41.14 (2004), [https://codelibrary.amlegal.com/codes/coralville/latest/coralville\\_ia/0-0-0-1347](https://codelibrary.amlegal.com/codes/coralville/latest/coralville_ia/0-0-0-1347). Since the 2015 landmark decision *Reed v. Town of Gilbert*, courts around the country have repeatedly found that panhandling ordinances—many with features similar to the ones in Coralville (“the City”)—violate the First Amendment. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015); *Rodgers v. Bryant*, 942 F.3d 451, 453 (8th Cir. 2019); *see e.g., Norton v. City of Springfield, Ill.* 806 F.3d 411 (7th Cir. 2015); *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014), *vacated*, 576 U.S. 1048 (2015), *declaring ordinance unconstitutional on remand*, 144 F.Supp.3d 218 (Mass. Dist. Ct., 2015); *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1067-70 (10th Cir. 2020), *cert. denied* 141 S.Ct. 1738 (2021). By 2019, courts had struck down more than 70 anti-panhandling ordinances. *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, NAT’L LAW CTR. ON HOMELESSNESS AND POVERTY 80 (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> (hereinafter “*Housing Not Handcuffs*”). And this number continues to rise, with many cities ceasing enforcement or repealing their ordinances.

Cities across Iowa have already repealed similar unconstitutional panhandling/solicitation ordinances. For example, following notification letters from the ACLU of Iowa, the cities of Des Moines and Council Bluffs, repealed their ordinances in 2018; Grimes partially repealed its ordinance at that time. *Des Moines City Council repeals city’s panhandling ordinances*, Des

Moines Register (Oct. 8, 2018), <https://www.desmoinesregister.com/story/news/2018/10/08/des-moines-city-council-votes-repeal-panhandling-ordinance-poverty-aclu-iowa-grimes-council-bluffs/1568657002/>; *Bluffs council votes to repeal panhandling ordinance*, World Herald News Service, (Sept. 27, 2008), [https://omaha.com/eedition/sunrise/articles/bluffs-council-votes-to-repeal-panhandling-ordinance/article\\_702ed5b2-9660-55ce-a44e-e4cdeba05f8c.html](https://omaha.com/eedition/sunrise/articles/bluffs-council-votes-to-repeal-panhandling-ordinance/article_702ed5b2-9660-55ce-a44e-e4cdeba05f8c.html). More recently, the city of Grimes now has also fully repealed its similar panhandling/solicitation ordinance. (See Ex. 1).

Like the ordinances in these other Iowa cities, Coralville’s Ordinance is not only a facially content-based restriction on free speech protected by the First Amendment to the United States Constitution and the Iowa Constitution, but it is also harmful and ineffective public policy. Numerous examples of better alternatives now exist which the City could draw on. We are asking the City to promptly repeal the Ordinance and instead consider more constructive alternatives. Enforcement of the Ordinance risks potential litigation.

The First Amendment protects requests for charity in a public place. *See, e.g., United States v. Kokinda*, 497 U.S. 720, 725 (1990) (“Solicitation is a recognized form of speech protected by the First Amendment.”). The government’s authority to regulate such public speech is exceedingly restricted, “[c]onsistent with the traditionally open character of public streets and sidewalks.” *McCullen v. Coakley*, 576 U.S. 464, 476 (2014) (quotation omitted). As discussed below, the Ordinance is well outside the scope of permissible government regulation.

### **The Ordinance is an impermissible content-based restriction.**

The Ordinance is an impermissible content-based restriction, as it overtly distinguishes between types of speech based on “subject matter . . . function or purpose.” *Reed*, 576 U.S. at 156; *see e.g., Norton* 806 F.3d at 412-13 (“Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.”). In 2019, the Eighth Circuit affirmed the grant of a preliminary injunction to plaintiffs “challeng[ing] an Arkansas anti-loitering law that bans begging in a manner that is harassing, causing alarm, or impedes traffic.” *Rodgers v. Bryant*, 942 F.3d 451, 453 (8th Cir. 2019). The Eighth Circuit determined that the law was a content-based restriction because “it applie[d] only to those asking for charity or gifts,” and thus “its application depend[ed] on the ‘communicative content’ of the speech.” *Id.* at 456 (quoting *Reed*, 576 U.S. at 163).

The City’s Ordinance similarly regulates a particular form of speech—“solicit[ing] money or other items.” § 41.14. The Ordinance prohibits a person from soliciting a “person situated in a motor vehicle that is located on any public street, alley[,], or other public property.” *Id.* As a result, a court will very likely determine that the ordinance is a “content-based” restriction on speech that is presumptively unconstitutional. *See Reed*, 576 U.S. at 163.

Courts use the most stringent standard—strict scrutiny—to review such restrictions. *Id.* (holding that content-based laws may only survive strict scrutiny if “the government proves that they are narrowly tailored to serve a compelling interest.”). This Ordinance cannot survive strict scrutiny because there is no evidence to demonstrate it is narrowly tailored to the interests it is purported to serve. Theoretical discussion is not enough: “the burden of proving narrow tailoring requires the [municipality] to prove that it actually *tries* other methods to address the problem.”

*Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015). The City may not “[take] a sledgehammer to a problem that can and should be solved with a scalpel.” *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1294 (D. Colo. 2015) (holding ordinance restricting time, place, and manner of panhandling was unconstitutional).

### **The Ordinance is a harmful and ineffective public policy.**

The Ordinance is also ineffective and harmful public policy. Harassing, ticketing, and/or arresting people who ask for help in a time of need is inhumane and counterproductive. Unlawful anti-panhandling ordinances such as Coralville’s Ordinance are costly to enforce and only exacerbate problems associated with homelessness and poverty. Rather than criminalizing the behavior in the Ordinance, Coralville can modify restrictions and infrastructure to optimize pedestrian and traffic safety while avoiding being as prejudicial to those in poverty or as limiting to protected speech. See *Urban Street Design Guide*, NAT’ ASS’N OF CITY TRANSP. OFFICIALS, <https://nacto.org/publication/urban-street-design-guide/street-design-elements/> (last visited April 1, 2022); *20 Proven Countermeasures that Offer Significant and Measurable Impacts to Improving Safety*, U.S. DEP’T OF TRANSP. FED. HIGHWAY ADMIN, <https://safety.fhwa.dot.gov/provencountermeasures/fhwasal8029/> (last modified Dec. 17, 2019).

Numerous communities have created alternatives that are more effective and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—better positioned in the long run. See generally, *Housing Not Handcuffs*.

For example, Philadelphia, PA greatly reduced the number of homeless persons asking for change in a downtown subway station by donating an abandoned section of the station to a service provider for use as a day shelter. See Melissa Romero, *Suburban Station to Open Permanent Service Hub for the Homeless*, CURBED PHILA. (Oct. 16, 2017), <https://philly.curbed.com/2017/10/16/16481552/suburban-station-hub-of-hope-homeless-services>; See also Nina Feldman, *Expanded Hub of Hope Homeless Center Opening Under Suburban Station*, WHYY (Jan. 30, 2018), <https://whyy.org/articles/expanded-hub-hope-homeless-center-opening-suburban-station/>. In opening the Center, Philadelphia Mayor Jim Kenney emphasized: “We are not going to arrest people for being homeless.” *Expanded Hub of Hope*. Programs like Project HOME’s Hub of Hope are how cities can actually solve the problem of homelessness, rather than merely attempting to suppress evidence of it.

The optimal outcome for all is a Coralville where homeless people are not forced to beg on the streets. But whether examined from a legal, policy, fiscal, or moral standpoint, criminalizing any aspect of panhandling is not the best way to achieve this goal. Enforcing outdated anti-begging ordinances—whether by means of citations, warnings, or “move-on” orders—unconstitutionally interferes with the speaker’s protected free speech rights. The City must place an immediate moratorium on enforcement of the Ordinance and then proceed with a rapid repeal. The City can then develop approaches that will lead to the best outcomes for all the residents of Coralville, housed and unhoused alike.

As you know, successful claims under the First Amendment to enjoin the Coralville Solicitation From Persons in Motor Vehicles Prohibited Ordinance will entitle the prevailing plaintiff to attorney’s fees and costs, as authorized by 42 U.S.C. § 1988.

We have learned that some municipalities may have allowed unconstitutional panhandling/solicitation ordinances to stay on the books with no intention of enforcing them. Even if that is the case, it is important to remove the unconstitutional ordinance from the municipal code in order to protect residents from constitutional violations, and to protect the city and its officers from liability.

Grimes provides a cautionary tale: after the ACLU learned that county officers were enforcing the City's remaining unconstitutional panhandling/solicitation ordinance despite the city's determination not to do so, we contacted legal counsel for the city, which, to its great credit, agreed to repeal the panhandling ordinance to avoid future violations. (See Ex. 1). Had the city not taken the step to repeal the ordinance, it risked officers again enforcing it without realizing it had been determined to be unconstitutional.

Coralville should not take this risk.

**Coralville should repeal the Ordinance.**

Based on the foregoing, we ask Coralville to take the following actions:

1. Stop enforcing the Coralville Municipal Code Solicitation From Persons in Motor Vehicles Prohibited Ordinance, § 41.14. This requires instructing any law enforcement officers charged with enforcing the municipal code that the Ordinance is no longer to be enforced in any way, including by issuance of citations or warnings, or by telling panhandlers to move along.
2. Immediately initiate steps necessary to repeal § 41.14.
3. If there are any pending prosecutions under § 41.14, dismiss those charges.

Thank you for your attention to this important matter. I ask that you inform me within 14 days of the date of this letter that you agree to undertake all three actions.

Please contact me with any questions about this matter by phone or email at [shefali.aurora@aclu-ia.org](mailto:shefali.aurora@aclu-ia.org).

Sincerely,

/s/ Shefali Aurora  
Shefali Aurora  
Staff Attorney

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