Seattle University School of Law

Seattle University School of Law Digital Commons

Homeless Rights Advocacy Project

Law School Archives

5-4-2018

Begging for Change: Begging Restrictions Throughout Washington

Sara Rankin

Seattle University School of Law

Jocelyn Tillisch

Drew Sena

Judith Olson

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/hrap>

Recommended Citation

Rankin, Sara; Tillisch, Jocelyn; Sena, Drew; and Olson, Judith, "Begging for Change: Begging Restrictions Throughout Washington" (2018). *Homeless Rights Advocacy Project*. 15.
<https://digitalcommons.law.seattleu.edu/hrap/15>

This Article is brought to you for free and open access by the Law School Archives at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Homeless Rights Advocacy Project by an authorized administrator of Seattle University School of Law Digital Commons.

BEGGING FOR CHANGE

Begging Restrictions
Throughout Washington

SEATTLEU
SCHOOL OF LAW

HOMELESS RIGHTS
ADVOCACY PROJECT

Begging for Change

Begging Restrictions Throughout Washington

Authors

Jocelyn Tillisch and Drew Sena

Editors

Sara K. Rankin and Justin Olson

May 2018

ACKNOWLEDGEMENTS

The Homeless Rights Advocacy Practicum is a section of the Homeless Rights Advocacy Project (HRAP) at Seattle University School of Law's Korematsu Center. Jocelyn Tillisch and Drew Sena, law students at Seattle University and members of HRAP, authored this policy brief under the supervision of Professor Sara Rankin of Seattle University School of Law. The authors are deeply grateful to the following individuals for their time and contributions to this brief:

- Fall 2017 HRAP Cohort Members: Tran Dinh, Ray Ivey, Katherine Means, Evanie Parr, Colleen Rowe, and Brittany Throne
- Ruby Aliment, Bergman Draper Oslund, PLLC
- Kirsten Anderson, Southern Legal Counsel, Inc.
- Anita Beaty, Metro Atlanta Task Force for the Homeless
- Aaron Burkhalter, Real Change
- Bob Erienbusch, Sacramento Regional Coalition to End Homelessness
- Jodilyn Gilleland, HRAP Researcher
- Ben Halpern-Meekin, Seattle University School of Law
- Annaliese Harsen, Deputy City Attorney of Olympia
- Madeline Harnois, Attorney
- Christopher Herring, University of California, Berkeley
- Lori Lamb, Seattle University School of Law
- Neal Lampi, Real Change
- Emily Lieb, Poverty Education Center
- Jason McGill, YouthCare
- Justin Olson, Bergman Draper Oslund, PLLC
- David Sandler, Seattle University School of Law
- Mark Solomon, Seattle Police Department
- Nancy Talner, ACLU
- LeighAnne Thompson, Seattle University School of Law
- Whitney Wootton, Seattle University School of Law

And finally, the authors want to thank Professor Sara Rankin for teaching us all how to be better advocates and guiding us through this process.

TABLE OF CONTENTS

Executive Summary.....	I
Introduction.....	1
Part I: Overview of the Law	5
A. Stigmatizing and Criminalizing Visible Poverty	6
B. Begging for Free Speech	11
C. Begging for Due Process	17
Part II: Few Safe Havens	21
A. The Criminalization of Begging in Washington	22
B. Enforcement of Begging Restrictions in Washington	29
Part III: Be Silent: Washington’s Restrictions on Begging	43
A. Restrictions on Who Can Beg: Permitting Requirements	44
B. Restrictions on When Individuals Can Beg: Time Restrictions	49
C. Restrictions on Where Individuals Can Beg: Place and Distance Restrictions	52
D. Restrictions on How Individuals Can Beg: Manner Restrictions	58
Part IV: Recommendations and Conclusion	67
A. Peaceful Begging Should Not Be Criminalized	67
B. Repeal Laws that Apply to Peaceful Begging	70
C. Repeal Aggressive Begging Laws	71
D. Recognize Peaceful Begging as a Protected Plea for Help	73
Bibliography	74
Appendix	88
Part I: This Community Cares Flier	88
Part II: Graphical Comparison of the Rise in Begging Ordinances and the Rise in Criminalization	89
Part III: Methodology	90
Part IV: Example Public Records Request Letter	93

EXECUTIVE SUMMARY

The act of panhandling, commonly known as begging, is a constitutionally protected form of speech.¹ But Washington's cities are increasingly enacting ordinances that criminalize begging.² The **consequences of criminalizing begging are severe** and include **violations of First Amendment and due process rights**. Indeed, these ordinances often outlaw peaceful and nonintrusive behavior protected by the First Amendment.³ Some advocates assert that since 2015, "100% of federal court cases have ruled bans/restrictions [on begging] are unconstitutional."⁴

Further, these laws do not contribute to a solution for homelessness; instead, they function to remove visible poverty and homelessness from sight. Due to the nature and penalties of these anti-begging ordinances, the debtor's prison grows,⁵ and the cycle of homelessness continues.⁶

Washington's Begging Restrictions

The Homeless Rights Advocacy Project (HRAP) researched the laws of sixty-four cities across Washington State and found 121 ordinances that prohibit or restrict begging. An overwhelming number of these ordinances punish begging as a misdemeanor, inflicting on already vulnerable people ongoing and escalating collateral consequences.⁷

¹ Katie Pilgram Neidig, *The Demise of Anti-Panhandling Laws in America*, 49 ST. MARY'S L.J. 543, 552 (2017).

² NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 11 (2017) [hereinafter NAT'L LAW CTR. 2017], <https://www.nlchp.org/documents/Housing-Not-Handcuffs> (surveying 187 cities and finding laws punishing life-sustaining conduct of homelessness people have increased).

³ Telephone Interview with Mark Silverstein, Legal Dir., Am. Civil Liberties Union of Colo. (Feb. 2016); *see also Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002) (emphasizing that protected speech "does not become unprotected merely because it resembles" unlawful speech).

⁴ *See, e.g., Challenges to Bans of Restrictions on Panhandling*, SACRAMENTO REG'L COAL. TO END HOMELESSNESS (Oct. 2017). The fact sheet from Sacramento Regional Coalition to End Homelessness cites to data collected by the National Law Center on Homelessness & Poverty found in *Housing Not Handcuffs: A Litigation Manual*.

⁵ Court imposed debts, such as fines imposed due to violations of the law, push "people deeper into poverty and prolong[] their involvement with the criminal justice system." AM. CIVIL LIBERTIES UNION OF WASH. & COLUMBIA LEGAL SERVS., MODERN-DAY DEBTORS' PRISON: THE WAYS COURT-IMPOSED DEBTS PUNISH PEOPLE FOR BEING POOR 3 (Feb. 2014), <https://www.aclu-wa.org/docs/modern-day-debtors-prisons-washington> (citing Katherine A. Beckett, Alexes M. Harris & Heather Evans, *The Assessment and Consequences of Legal Financial Obligations in Washington State*, WASH. STATE MINORITY & JUSTICE COMM'N (2008), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf).

⁶ *See* NAT'L LAW CTR. 2017, *supra* note 2; HOMELESS RTS. ADVOC. PROJECT, *The Criminalization of Homelessness: Additional Resources*, SEATTLE UNIV. SCHL. LAW, [hereinafter HRAP], <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/homeless-rights-advocacy-project/additional-resources> (last visited Nov. 25, 2017).

⁷ *E.g., Maya Rhodan, A Misdemeanor Conviction is Not a Big Deal, Right? Think Again*, TIME (Apr. 24, 2014), <http://time.com/76356/a-misdemeanor-conviction-is-not-a-big-deal-right-think-again/>.

Key findings include:

- The vast majority of Washington cities punish begging: 86% of surveyed cities have at least one law criminalizing begging in their municipal codes.
- 83% of these laws result in a misdemeanor if violated. Criminal convictions exacerbate homelessness.⁸
- Begging restrictions are proliferating: approximately 2/3 of all begging ordinances were enacted after 2001.
- Washington's second most popular laws are "aggressive" begging restrictions.
- In the 1990s, courts began invalidating prohibitions on peaceful begging as unconstitutional restrictions on free speech. Many cities tried to circumvent this outcome by incorporating non-aggressive conduct into their so-called "aggressive begging" laws.
- Only 2% of aggressive begging ordinances turn on the specific, objectively aggressive conduct of the person begging.
- For the vast majority— 98% of aggressive begging laws—a violation can occur based solely on a bystander's subjective perception.
- If a bystander feels fearful or even feels compelled to give, such feelings may be enough to make begging criminal regardless of whether the person begging has done anything objectively aggressive.
- 42% of all aggressive begging ordinances rely exclusively on a bystander's subjective perception.
- This reliance on whether a witness "subjectively" feels fear is highly problematic in light of well-established science proving people tend to feel fear simply when viewing a homeless person regardless of that person's conduct.⁹

Enforcement of Washington's Begging Restrictions

HRAP requested public records from eleven Washington cities¹⁰ to gain insight on citations for anti-begging laws within the last five years. Only two cities—Marysville and Lakewood—provided data suggesting they formally cited individuals for violating specific begging laws within that timeframe.¹¹ But the apparent lack of citation data from the remaining nine cities does not mean that these cities are not enforcing their anti-begging ordinances. To the contrary, Washington cities are likely using informal (and invisible or not

⁸ See HRAP, *supra* note 6; Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. 4, 33 (2016) [hereinafter Rankin 2016].

⁹ Lasana T. Harris & Susan T. Fiske, *Social Groups that Elicit Disgust are Differently Processed in mPFC*, 2 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 45, 45–51 (2007); Rankin 2016, *supra* note 8.

¹⁰ Those cities are: Arlington, Bonney Lake, Centralia, Des Moines, Lakewood, Lake Stevens, Issaquah, Marysville, Mount Vernon, Tacoma, and Puyallup. Requests for records were submitted pursuant to Washington's Public Records Act, RCW §42.56 et seq., on January 29, 2018 and January 30, 2018.

¹¹ See *infra* Part II, Section B(1).

tracked) “move-along” orders to extinguish the begging and push the visibly poor from public spaces.¹²

Key findings of the enforcement data include:

- Move-along orders may appear harmless, but they can still violate First Amendment and due process rights.¹³
- The fact that move-along orders do not generate a ticket or other trackable evidence does not mean the laws are not being enforced. To the contrary, these orders are pervasive enforcement tools that are not reported or tracked.¹⁴
- Move-along orders commonly chill free speech and are vulnerable to discriminatory use; however, those affected have no opportunity to challenge such orders and advocates cannot track them.
- Lakewood issued fifty-one citations under two anti-begging ordinances between 2013–2017.¹⁵
- Lakewood severely punished these violations: 100% of individuals found guilty received a 90-day jail sentence; 60% of individuals found guilty for begging in *restricted areas* also received a fine ranging from \$300–\$500.¹⁶
- Lakewood’s apparent lack of formal enforcement after 2016 suggests that the Washington Supreme Court decision in *City of Lakewood v. Willis*, which held provisions of Lakewood’s *Restricted Areas*¹⁷ ordinance unconstitutional,¹⁸ may have triggered a dramatic shift in Lakewood’s enforcement policies.

Key Case Studies

This brief also reviews several case studies of specific Washington ordinances.¹⁹ The case studies reveal that **many of these laws may not withstand judicial scrutiny under the First Amendment.**²⁰

¹² *E.g.*, telephone Interview with Mark Solomon, Community Crime Prevention Specialist, Seattle Police Dep’t (Sept. 26, 2017); Damon Pesanti, *No Tickets Issued Under Centralia’s New Panhandling Ban*, CHRONICLE (July 10, 2014), http://www.chronline.com/news/no-tickets-issued-under-centralia-s-new-panhandling-ban/article_68f63e5a-085b-11e4-99fd-001a4bcf887a.html.

¹³ *See infra* Part II, Section (B)(2).

¹⁴ *See, e.g.*, Christopher Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Homelessness Perpetuates Poverty* (forthcoming 2018).

¹⁵ *Id.*

¹⁶ *Infra* Part II, Section (B)(2).

¹⁷ Lakewood MC § 9A.04.020A (2011).

¹⁸ *City of Lakewood v. Willis*, 375 P.3d 1056, 1064 (Wash. 2016).

¹⁹ *Infra* Part III.

²⁰ *Id.*

Key findings of the case studies include:

- Lakewood has two ordinances²¹ that are unlikely to withstand judicial scrutiny because they are overbroad content-based restrictions on speech. Both ordinances restrict substantial speech in traditional public fora—a space afforded the greatest First Amendment protections.²²
- Similarly, Des Moines has an ordinance prohibiting begging in public parks without first obtaining a permit.²³ The ordinance is overbroad.²⁴
- Issaquah prohibits begging on public property from sunset to sunrise.²⁵ This law is an overbroad restriction that prohibits substantial speech within a traditional public forum.²⁶ It is also vulnerable to a vagueness challenge based on the ambiguity of the meaning of “sunset” and “sunrise.”²⁷
- Tacoma has two overlapping ordinances, one prohibiting coercive solicitation²⁸ and another prohibiting pedestrian interference.²⁹ These laws effectively prohibit the same behavior, except that coercive solicitation occurs only when an individual blocks pedestrian traffic *while making a solicitation*.³⁰ The penalty for coercive solicitation is a gross misdemeanor, resulting in a higher fine and a higher possible jail sentence than pedestrian interference.³¹
- In other words, Tacoma punishes the same conduct more seriously if the offender is begging, even peacefully. Peaceful begging is protected free speech; it should not be punished as an aggravating factor.

Many Washington cities are unlikely to withstand a constitutional challenge to their anti-begging laws.³² Recent jurisprudence provides strong guidance for cities to consider in re-evaluating their anti-begging laws. This brief recommends cities:³³

- Repeal ordinances that restrict peaceful begging;
- Repeal aggressive begging ordinances and instead rely on existing ordinances to address truly aggressive behavior;
- Campaign for and invest in non-punitive solutions to address poverty; and
- Recognize begging as a plea for help protected by the United States Constitution.

²¹ Lakewood MC §§ 9A.04.020A (2011) & 9A.05.050 (2010).

²² *Infra* Part III, Section (B)(2).

²³ Des Moines MC § 19.08.030(7) (1988).

²⁴ *Infra* Part III, Section (A)(2).

²⁵ Issaquah MC § 9.45.040 (2008).

²⁶ *Infra* Part III, Section (B).

²⁷ *Id.*

²⁸ Tacoma MC § 8.13A.040 (2007).

²⁹ Tacoma MC § 8.13.030 (1991).

³⁰ Tacoma MC § 8.13A.040 (2007).

³¹ Tacoma MC § 8.13A.060 (2007).

³² *Id.*

³³ *Infra* Part IV.

Many cities that restrict begging are infringing on the constitutional rights of their most vulnerable residents and are contributing to the cycle of poverty and homelessness. But cities play a crucial role in protecting the constitutional rights of all of their residents, and they can be essential advocates in addressing the issues surrounding homelessness.

INTRODUCTION

*The greatest misunderstanding about so-called 'panhandling' is about what it actually is. It is one citizen asking another citizen for help. It's that basic.*³⁴

The freedom of speech is one of the most cherished constitutional rights throughout American history, but this right is routinely denied to visibly poor people with dire consequences.³⁵ Nationally, cities are increasingly criminalizing life-sustaining behavior, infringing on the constitutional rights of individuals experiencing homelessness.³⁶ Similarly, municipalities are increasingly drafting laws that criminalize begging, purporting to justify such laws as necessary public health and safety measures.³⁷

Research has also shown that local municipalities are widely embracing anti-begging laws across the country.³⁸ For example, as of 2017, laws prohibiting begging citywide have increased by 43% since 2006, and laws that prohibit begging in particular public spaces have increased by 7%.³⁹ The increasing popularity of these restrictions is troubling because they suffocate the First Amendment rights of vulnerable populations and strip away the constitutional right to due process. These begging restrictions further prohibit constitutionally protected behavior and have serious consequences that continue the cycle of homelessness.

³⁴ Teresa Wiltz, *Anti-Panhandling Laws Spread, Face Legal Challenges*, PEW CHARITABLE TRUSTS (Nov. 12, 2015) [hereinafter Wiltz 2015] (quoting Ken Paulson, President of FIRST AMEND. CTR), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/12/anti-panhandling-laws-spread-face-legal-challenges>.

³⁵ See generally NAT'L LAW CTR. 2017, *supra* note 2, at 9 (discussing "why laws criminally or civilly punishing homeless persons' life-sustaining activity are ineffective . . . and how they often violate homeless persons' constitutional and human rights").

³⁶ *Id.* at 11.

³⁷ Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT 5 (Sara Rankin ed. 2015) (emphasizing that municipalities are increasingly enacting ordinances that criminalize homelessness for the purported purpose of maintaining "health, safety, or general public order").

³⁸ NAT'L LAW CTR. 2017, *supra* note 2.

³⁹ *Id.*

Yet, there is no harm directly associated with begging alone.⁴⁰ Courts have recognized begging as a form of speech protected by the First Amendment,⁴¹ involving many speech interests including “the communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes.”⁴² But policymakers often perceive even peaceful begging as a problem because it is a visual reminder of homelessness or human desperation that makes people uncomfortable.⁴³ Whether done consciously or unconsciously, the criminalization of visible poverty is well documented.⁴⁴

Between 2017 and 2018, HRAP examined the municipal codes of sixty-four cities within Washington State to understand the scope and consequences of begging restrictions,⁴⁵ the most extensive survey of its kind in the nation. This brief finds that, despite begging being a constitutionally protected form of speech, Washington cities have employed many techniques to curb even peaceful requests for help while attempting to avoid First Amendment scrutiny. The study revealed 121 ordinances that can be organized into four distinct categories of restrictions: geographical, distance, time, and manner restrictions.

Particularly, cities have learned to manipulate geography by creating buffer zones around specific public spaces where begging is illegal or by implementing specific distance restrictions from areas like crosswalks, intersections, and entrances to buildings.⁴⁶ Cities also

⁴⁰ Telephone Interview with Nancy Talner, Staff Attorney, Am. Civil Liberties Union of Wash. (Oct. 3, 2017).

⁴¹ Neidig, *supra* note 1.

⁴² Megan Smith, Note, *The Constitutionality of Panhandling Ordinances: Making "Cents" out of Reed v. Town of Gilbert*, 35 J.L. & COM. 255, 257 (2017) (citing *Schaumburg v. Citizens for a Better Env't*, 44 U.S. 620, 629 (1980)).

⁴³ Talner, *supra* note 40.

⁴⁴ HRAP, *supra* note 6.

⁴⁵ The term “begging restrictions” is interchangeable throughout this brief with the term “anti-begging laws” or “anti-begging ordinances.”

⁴⁶ Rankin 2016, *supra* note 8 (writing that “city and state governments ‘have learned to manipulate geography in a manner that now seriously threatens basic First Amendment principles’” (quoting Timothy Zick, *Speech and Spatial Tactics*, 84 TEX. L. REV. 581, 584, 585 (2006))); *id.* at 33 n.168 (“Political dissent has become spatial tactics’ principal casualty.” (quoting Zick, *Speech and Spatial Tactics*, 84 TEX. L. REV. at 589–90))).

implement time restrictions on begging wherein speech is prohibited between specific hours of the day.⁴⁷ Finally, cities implement manner restrictions in the form of aggressive begging ordinances, which purport to prohibit threatening and aggressive behavior but often prohibit peaceful harmless speech.⁴⁸ To avoid heightened scrutiny, municipalities have broadly drafted these laws in an attempt to mitigate First Amendment jurisprudence, while still imposing burdensome limitations on protected speech.⁴⁹

It strains credibility to suggest that these laws target anyone apart from the visible poor or people experiencing homelessness. Just as importantly, these laws are unnecessary because they frequently overlap with existing laws applicable to the population at large.⁵⁰ For example, objectively aggressive behavior is already prohibited by criminal laws such as harassment and assault.⁵¹ Yet aggressive begging ordinances are the second most common form of begging restrictions throughout Washington.⁵² Moreover, the majority of aggressive begging laws hinge on subjective perceptions of the person being solicited for help—for example, a person might be guilty of aggressive begging if someone listening to them feels intimidated, regardless of the means and manner of the solicitation.⁵³

Perception-based begging restrictions are particularly problematic because studies show that many people are deeply afraid of visibly poor people.⁵⁵ Neurological tests show exposure to a person bearing some hallmark of homelessness can “[elicit] the worst kind of prejudice – disgust and contempt” in those who witness it.⁵⁶ These studies highlight the critical flaw in anti-begging laws rooted in the reaction of bystanders. Few people are put in a state of fear when approached by a volunteer with a clipboard seeking donations for a social initiative; yet, a similar interaction committed by a visibly poor person can cause dramatically negative reactions. While these laws are frequently adopted “in a

Aggressive begging ordinances often outlaw peaceful and nonintrusive behavior protected by the First Amendment.⁵⁴

⁴⁷ *E.g.*, Issaquah MC § 9.45.040 (2008); *see, e.g.*, Jessica So, Scott MacDonald, Justin Olson & Ryan Mansell, Seattle University Homeless Rights Advocacy Project, *LIVING AT THE INTERSECTION: LAWS & VEHICLE RESIDENCY* 5 (Sara Rankin ed. 2016) (asserting that laws restricting the parking of cars between 2:00 a.m. to 6:00 a.m. are used to push vehicle residents out of neighborhoods).

⁴⁸ *Infra* Part III, Section D.

⁴⁹ Rankin 2016, *supra* note 8, at 34 (citing Joseph Mead, *The First Amendment Protection of Charitable Speech*, 76 OHIO ST. L.J. 57, 59 (2015)).

⁵⁰ *See infra* Part I, Section C.

⁵¹ *Id.*

⁵² *Infra* Part II (data on file with author).

⁵³ *Id.*

⁵⁴ Silverstein, *supra* note 3; *see also* *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002).

⁵⁵ Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 390 (2015) [hereinafter Rankin 2015] (citing Lasana T. Harris & Susan T. Fiske, *Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups*, 17 PSYCHOL. SCI. 10, 848 (2006)).

⁵⁶ *Id.*; *see also* Harris & Fiske, *supra* note 9 (noting that study participants react with “disgust” to images of homeless people).

purported effort to outlaw intimidating, threatening, and aggressive conduct," more often than not they threaten peaceful behavior for the sake of deeply rooted systemic discomfort directed at visible poverty.⁵⁷ Additionally, between vague aggressive begging restrictions and broad time and place restrictions, citizens often have no realistic way of knowing how to conform their behavior to the confines of the law. The end result is that protected speech—the right to simply ask for help—is savagely curtailed under the law.⁵⁸

This brief is organized into three parts. Part I overviews First Amendment and due process law often disregarded by these begging restrictions; Part II discusses the criminalization of begging in Washington, covering new data regarding anti-begging laws across the state; and Part III analyzes select begging restrictions in Washington to consider whether these laws would withstand judicial scrutiny. This brief concludes with recommendations for more compassionate, lawful, and effective approaches to begging.

-
- ➔ An Overview of the Law
 - ➔ The Criminalization of Begging in Washington
 - ➔ Case Studies: Washington's Restrictions on Begging
 - ➔ Recommendations

⁵⁷ Silverstein, *supra* note 3; see also *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002).

⁵⁸ Rankin 2016, *supra* note 8, at 33–35.

PART I: OVERVIEW OF THE LAW

A basic tenet of First Amendment law is that the government cannot restrict speech because it disagrees with who the speaker is or what the speaker is saying.⁶¹ However, the law permits "content-neutral" time, place, and manner restrictions.⁶² It is within this narrow content-neutral exception that cities attempt to draft their anti-begging ordinances.

Although anti-begging ordinances disproportionately violate the constitutional rights of people experiencing homelessness, the public rarely views these laws as discriminatory.⁶³ This blind spot exists, in part, because of the deeply-rooted human instinct to avoid evidence of poverty and human desperation.⁶⁴ Studies show that people react to visible evidence of poverty with uneasiness, disgust, and fear.⁶⁵ Due to the public's aversion to visible poverty, local governments work to purge visible poverty from public spaces—regardless of whether

⁵⁹ *Infra* Part I, Section B.

⁶⁰ Photograph by Steve Baker, FLICKR CREATIVE COMMONS (Apr. 27, 2016), <https://www.flickr.com/photos/littlebiglens/26682208695/in/photostream/>.

⁶¹ See *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).

⁶² *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

⁶³ See generally NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE, THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 21 (2014) [hereinafter NAT'L LAW CTR. 2014], https://www.nlchp.org/documents/No_Safe_Place.

⁶⁴ See generally MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE (1st ed. 2013) (discussing blind-spots as phenomenon of unconscious bias).

⁶⁵ Rankin 2015, *supra* note 55 (citing Lasana T. Harris & Susan T. Fiske, *Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups*, 17 PSYCHOL. SCI. 10, 848 (2006)).

discriminatory and unconstitutional effects are intended. When these restrictions prevent individuals from asking for help or obstruct their access to due process of the law they can trigger heightened judicial scrutiny.⁶⁶ These popular anti-begging ordinances target visibly poor individuals, and courts are increasingly striking down anti-begging ordinances as unconstitutional under the First Amendment.⁶⁷

A. Stigmatizing and Criminalizing Visible Poverty

*If history teaches us anything, it is that distinguishing between the worthy and unworthy poor never withstands the test of time.*⁶⁸

Laws that restrict peaceful begging are among many forms of criminalization influenced by unconscious biases against visible poverty.⁶⁹ Criminalization laws are often fueled by stereotypes that poor people are to blame for their circumstances.⁷⁰ Although an estimated 20% of people experiencing homelessness actually work,⁷¹ anti-begging laws encourage the stereotype that people experiencing homelessness are lazy and inferior to housed individuals.⁷² Anti-begging ordinances are further fueled by the notion that giving money to people experiencing homelessness “enables addicts and prevents them from

⁶⁶ *E.g.*, *Speet v. Schute*, 726 F.3d 867, 878 (6th Cir. 2013); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 551 (4th Cir. 2013); *Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *Loper v. New York City Police Dep’t.*, 999 F.2d 699, 704 (2d Cir. 1993); Wiltz 2015, *supra* note 34; *see also* Olson & MacDonald, *supra* note 37, at 17 (citing *United States v. Kokinda*, 497 U.S. 720, 725 (1990)) (stating that “[s]olicitation is a recognized form of speech protected by the First Amendment”).

⁶⁷ *See, e.g.*, *McLaughlin v. Lowell*, 140 F. Supp. 3d 177, 197 (D. Mass. 2015) (finding Lowell’s downtown begging and aggressive begging restrictions unconstitutional under the First Amendment); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233–34, 237–38 (D. Mass. 2015) (noting the failure of similar aggressive begging ordinances to survive strict scrutiny); *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173, (2016) (finding anti-panhandling law to be a form of content discrimination); *Browne v. City of Grand Junction*, 136 F. Supp. 1276, 1292 (D. Colo. Sept. 30, 2015) (holding that aggressive begging ordinance was not necessary to serve important interest of public safety); *City of Lakewood v. Willis*, 37 P.3d 1056 (Wash. 2016) (holding that two provisions of anti-begging ordinance imposed “content-based speech restrictions in a substantial number of traditional public forums”).

⁶⁸ PHILIPPE BOURGOIS & JEFF SCHONBERG, *RIGHTEOUS DOPEFIEND* 316 (2009).

⁶⁹ Rankin 2016, *supra* note 8, at 36 (“The increasing prevalence of anti-begging laws is a helpful example of how unconscious biases against poor people and deep-rooted associations between visible poverty and danger can become manifest in the law.”); *see also* HRAP, *supra* note 6.

⁷⁰ Olson & MacDonald, *supra* note 37, at 1.

⁷¹ THE U.S. CONF. OF MAYORS, *HUNGER & HOMELESSNESS SURV.: A STAT. REP. ON HUNGER & HOMELESSNESS IN AMERICA’S CITIES* (Dec. 2015), <http://chicagohelpinitiative.org/assets/uploads/files/1221-report-hhreport.pdf> (18% of homeless people are employed).

⁷² Olson & MacDonald, *supra* note 37, at 1.

getting help” or from getting a job.⁷³ The justice system often supports this view by upholding laws that “push visibly poor people out of public space merely because visible evidence of human desperation tends to undermine feelings of safety.”⁷⁴ Despite these notions, many people experiencing poverty are forced to beg because they have no reasonable alternative. A study of panhandling in Toronto, Canada, found that 48% of panhandlers did not enjoy panhandling because it was “degrading,” and 70% “would prefer a minimum-wage job,” but thought they could not handle one “because of mental illness, physical disability, or lack of skills.”⁷⁵

Included in the discussion of whether begging should be protected is how the stereotypes surrounding homelessness impact both the law and the level of tolerance and empathy from the community. This discussion is related to the stereotypes and unconscious biases discussed above, but it is often focused on individuals who give to panhandlers do not know how their money will be spent. One study in San Francisco found data that suggests that the funds donated to

panhandlers are most often used for “good” purposes.⁷⁷ For example, the study found that

⁷³ Wiltz 2015, *supra* note 34. *But see* NAT’L LAW CTR. 2017, *supra* note 2 at 32 (estimating that “44% of all homeless people are employed on a temporary or full-time basis”); U.S. CONF. OF MAYORS, HUNGER & HOMELESSNESS SURV., *supra* note 71. *See* Aaron Burkhalter, *Signs of the Times*, REAL CHANGE (Dec. 19, 2013), <http://realchangenews.org/2013/12/19/signs-times> (explaining how cities, like Aberdeen, discourage people from giving donations to panhandlers by erecting signs that display “Keep the change. Don’t support panhandling. The majority of your change goes to Drugs & Alcohol. Help more by giving to charity.”). *But see* JOEL BLAU, THE VISIBLE POOR: HOMELESSNESS IN THE UNITED STATES (1993) (quashing persistent “myths” that homeless people are “somehow responsible for their own poverty” by explaining that “[once] we acknowledge . . . drugs, alcoholism, or mental illness . . . are not sufficient explanations of homelessness, we can begin to explore the real causes”); Marie-Eve Sylvestre & Celine Bellot, *Challenging Discriminatory and Punitive Responses to Homelessness in Canada*, in *ADVANCING SOCIAL RIGHTS IN CANADA* 1, 7 (Martha Jackman & Bruce Porter eds., Irwin Law 2014), <http://ssrn.com/abstract=2484975> (explaining how “prejudice and stereotypes obscure the social, economic, and political causes of homelessness and thwart efforts to address these underlying factors by blaming those who are its victims, imputing personal characteristics of moral inferiority, laziness, dishonesty, and criminality which, in turn, provide an ‘explanation’ for the problem of homelessness”).

⁷⁴ Rankin 2016, *supra* note 8, at 25 (citing Beckett & Herbert, *supra* note 65, at 21 (quotation omitted)).

⁷⁵ Rohit Bose & Stephen W. Hwang, *Income and Spending Patterns Among Panhandlers*, 167(5) CMAJ 477-479 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC121964/>. Interestingly, 43% of participants relayed that they did enjoy panhandling because of the opportunity to “meet people,” while 9% were undecided. *Id.*

⁷⁶ Heather Knight, *The City’s Panhandlers Tell Their Own Stories*, SF GATE (Oct. 27, 2013), <http://www.sfgate.com/bayarea/article/The-city-s-panhandlers-tell-their-own-stories-4929388.php>.

⁷⁷ *Id.*

94% of the money donated to panhandlers was used for food, and in contrast, only 44% of individuals used *some* of the money donated for drugs and/or alcohol.⁷⁸

Such stereotypes are often advanced by business owners who complain about visible poverty in the local business districts and lobby for criminalization of homelessness.⁷⁹ Businesses frequently argue that the presence of visibly poor people scares away customers, especially when begging occurs.⁸⁰ For many business owners “[t]he hope is simply that if homeless people can be made to disappear, nothing will stand in the way of realizing the dream of prosperity, social harmony, and perpetual economic growth.”⁸¹ However, both business owners and members of the public fail to realize that absent employment or family support, begging may be a person’s “best option for obtaining the money that they need to purchase food, public transportation fare, medication, or other necessities.”⁸²

These stereotypes become especially harmful when cities publicly advance and reinforce them. For example, Arlington and Marysville recently joined to create a flier that identifies panhandling as a problem and urges individuals to keep their “wallet closed” when approached by panhandlers because “you can’t know how it will be spent.”⁸³ The flier identifies panhandling as a problem that “adversely impacts our cities’ and neighborhoods’ images, local businesses, and perception of public safety.”⁸⁴

⁷⁸ *Id.*

⁷⁹ NAT’L LAW CTR. 2017, *supra* note 2, at 31, 32; Joe Palazzolo & Alejandro Lazo, *Denver’s Bus’s Take Active Role in Homeless Policies*, WALL ST. J. (Oct. 16, 2016), <http://www.wsj.com/articles/denvers-businesses-take-active-role-in-homeless-policies-1476639643> (explaining Denver’s business community successfully advocated for “homeless parking meter installations” which “encouraged people to feed parking meters that collected money for charity, rather than give to the homeless directly”).

⁸⁰ See Theresa Wiltz, *Do New Laws Help or Hurt the Homeless?* PEW CHARITABLE TRUSTS (Nov. 17, 2014) [hereinafter Wiltz 2014], <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/11/17/do-new-laws-help-or-hurt-the-homelessness>.

⁸¹ Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States*, RADICAL J. GEOGRAPHY 303, 307 (1997), <http://onlinelibrary.wiley.com/doi/10.1111/1467-8330.00048/epdf>.

⁸² NAT’L LAW CTR. 2017, *supra* note 2, at 25.

⁸³ City of Arlington & City of Marysville, *This Community Cares*, <http://www.arlingtonwa.gov/DocumentCenter/View/918> (retrieved Oct. 17, 2017).

⁸⁴ *Id.*

THIS COMMUNITY CARES

- Arlington and Marysville have many generous people who want to help others.
- Please consider keeping your wallet closed when approached by panhandlers.
- Panhandling is a community-wide problem that adversely impacts our cities' and neighborhoods' images, local businesses, and perception of public safety.
- When you give money to a stranger, you can't know how it will be spent.
- If we stop giving cash to panhandlers, their behavior won't be rewarded and is likely to decrease.

Because you care, we want you to know that Marysville and Arlington have several free resources for people who need hot meals, groceries and/or clothing.

Feel free to share this information with those who may be in need.

When you want to donate, please consider giving to a local charity instead of to panhandlers.

Harmful stereotypes in action: flier distributed by Arlington and Marysville.⁸⁵

A common theme propelled by proponents of anti-begging ordinances is that they overestimate how feasible it is for individuals experiencing homelessness to find and maintain employment. Immutable characteristics and uncontrollable circumstances, including mental illness, addiction, single parenthood, lack of hygiene facilities, lack of sleep,⁸⁶ and evidence of a criminal record for engaging in life-sustaining activities can make it difficult, if not impossible, to obtain an adequate job.⁸⁷ Potential employers often hesitate when they see that an applicant has no permanent mailing address or reliable ability to maintain his or her hygiene.⁸⁸

⁸⁵ *Id.* The flier has been cropped for purposes of implementation into this brief. The entire flier is found in the appendix of this brief. *Infra* Appendix, Part I.

⁸⁶ NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOMES NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 43 (2009) [hereinafter NAT'L LAW CTR. 2009], http://timefolds.com/nch/wp-content/uploads/2013/11/CrimzReport_2009.pdf (explaining how prohibitions on overnight sleeping force people experiencing homelessness to "stay up at night and sleep during the day, making it even more difficult for them to find employment"); see NAT'L LAW CTR. 2017, *supra* note 2, at 24.

⁸⁷ See Nancy A. Millich, *Compassion Fatigue and the First Amendment: Are the Homeless Constitutional Castaways?*, 27 U.C. DAVIS L. REV. 255, 261–66 (1994) (internal citations omitted); NAT'L LAW CTR. 2017, *supra* note 2, at 13, 24, 30, 36, 38; LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 24 SEATTLE U. L. REV. 373, 374 (2000) (explaining how "[m]entally ill offenders are often inextricably trapped in a 'revolving door' of petty crime, incarceration, release, homelessness, and re-imprisonment").

⁸⁸ See *Kincaid v. City of Fresno*, No. 106CV-1445, 2006 WL 3542732, at *40 (E.D. Cal. Dec. 8, 2006). Irreparable harm results from these city-sanctioned practices, including "harm to homeless people's security and dignity." *Id.* For example, people experiencing homelessness "lose medicine and health supplies; tents and bedding that shelter them from the elements; clothing and hygiene supplies; identification documents and other personal papers; the tools by which they try to make a meager income; and items of immeasurable sentimental value." *Id.* Without important identification documents, medication, clothing, and hygiene supplies, people experiencing homelessness are further hindered from finding and maintaining adequate employment.

Putting aside individual responses to begging, cities should resist criminalization. Criminalizing begging can exacerbate homelessness and make it more difficult for people to escape. Once saddled with a criminal record, people experiencing homelessness are further hindered from accessing employment, housing, and public benefits.⁸⁹ Instead of exacerbating this cycle, municipalities should address the underlying problems of people experiencing homelessness, such as inadequate mental health and housing benefits.⁹⁰ The cyclical nature of criminalizing homelessness is costly for taxpayers because people experiencing homelessness are consistently cycled through the criminal justice system when non-punitive alternatives, such as affordable housing, are pragmatically and economically more effective solutions.⁹¹

⁸⁹ Drew Sena, Note, *A Constitutional Critique on the Criminalization of Panhandling in Washington State*, 41 SEATTLE U. L. REV. 287, 289 (2017).

⁹⁰ NAT'L LAW CTR. 2014, *supra* note 63, at 45.

⁹¹ *Id.* at 34 (stating that "costs resulting from criminalization measures are present at multiple stages of the criminal justice process," and people experiencing homelessness are often unable to pay, which results in increased jail time, suspension of their driver's license, and poor credit); Josh Howard & David Tran, Seattle University Homeless Rights Advocacy Project, *AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE & SPOKANE* (Sara K. Rankin ed. 2015), <http://ssrn.com/abstract=2602530>. See generally Ariel Schreiber & Becca Butler-Dines, *Too High a Price What Criminalizing Homelessness Costs Colorado: Denver City Spotlight*, <http://www.law.du.edu/documents/homeless-advocacy-policy-project/2-16-16-Final-Report.pdf> (accessed on Feb. 3, 2018).

Regardless of studies that challenge stereotypes surrounding homelessness, the debate over whether to give to panhandlers is a futile conversation. All individuals value essential freedoms of autonomy and independence. “People have the right to be free agents . . . and

“[Pope Francis] said that giving something to someone in need is ‘always right’ . . . But what if someone uses the money for, say, a glass of wine?”

“His answer: If ‘a glass of wine is the only happiness he has in life, that’s O.K. Instead, ask yourself, what do you do on the sly? What happiness do you seek in secret?’”

“Another way to look at it, he said, is to recognize how you are the ‘luckier’ one, with a home, a spouse and children, and then ask why your responsibility to help should be pushed onto someone else.”⁹²

limitations on their choice must be justified in terms of protecting their rights or the rights of others.”⁹³ The “dilemma” of whether to give money to someone asking for help because that person might use the money as they choose should give us pause. The real dilemma should not center on passing judgment or how to limit the freedom and choices of others; instead, it should focus on how each of us will respond to another human being’s request for help.

And regardless of how anyone feels about homelessness “public intolerance or animosity cannot be the basis for abridgment of . . . constitutional freedoms.”⁹⁴ Cities may not enact laws that contain “an obvious invitation to discriminatory enforcement against those whose association together is ‘annoying’ because their ideas, their lifestyle, or their physical appearance is resented by the majority of their fellow citizens.”⁹⁵

B. Begging for Free Speech

*If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.*⁹⁶

Laws that prohibit or limit an individual’s First Amendment right to ask for help are subject to significant constitutional challenges. It is central to the First Amendment that in

⁹² The Editorial Board, Opinion, *The Pope on Panhandling: Give Without Worry*, N.Y. TIMES (Mar. 3, 2017), https://www.nytimes.com/2017/03/03/opinion/the-pope-on-panhandling-give-without-worry.html?_r=0.

⁹³ BARRY JAY SELTSE & DONALD EARL MILLER, HOMELESS FAMILIES: THE STRUGGLE FOR DIGNITY 107 (1993).

⁹⁴ *Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971).

⁹⁵ *Id.* at 616; see also *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (demanding a greater degree of specificity when “a statute’s literal scope . . . is capable of reaching expression sheltered by the First Amendment”).

⁹⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

public fora,⁹⁷ people “might be ‘confronted with an uncomfortable message’ that they cannot avoid.”⁹⁸ Indeed, the First Amendment seeks to protect speech that others find disagreeable, uncomfortable, or even offensive.⁹⁹ And yet, because others find even peaceful requests for help to be distasteful or uncomfortable, cities all over the country effectively block visibly poor people from exercising their First Amendment rights.

Anti-begging laws create hurdles that people experiencing homelessness are unlikely to overcome. Time and place restrictions on begging create invisible, irregular, and expanding patchworks of permissible and impermissible zones where begging may not occur—such as laws restricting begging after dark¹⁰⁰ or begging near crosswalks and intersections.¹⁰¹

The U.S. Supreme Court recently made it tougher for cities to restrict begging. The First Amendment prohibits the restriction of speech based on “its message, its ideas, its subject matter, or its content.”¹⁰³ In *Reed v. Town of Gilbert*, the Supreme Court clarified that courts must determine whether a law is content-based “on its face” or content-neutral *before* determining whether the purported “purpose and justifications for the law are content-based.”¹⁰⁴ This test means that courts must evaluate the plain language of a law to determine whether it targets a particular

message or purpose *before* considering any purported justifications for the law. As a result, a court can determine that a law is unconstitutional based on the language of the law alone. If the law regulates speech based on the speaker’s message or the purpose for which the speaker is communicating, the law is content based; content-neutral justifications or rationales will not change this fact.¹⁰⁵

Reed is also significant because it clarified which speech restrictions are content-based. Since *Reed*, content-based restrictions include not only laws that regulate a speaker’s specific message, but also laws that regulate speech based on its “function or purpose.”¹⁰⁶ Put another way, a law is content-based if an officer must evaluate *what* the speaker is communicating to determine whether her speech is restricted.¹⁰⁷ In contrast, a law is content-neutral if it regulates an individual’s ability to speak in public without referencing the specific message the individual is communicating.¹⁰⁸

Courts should now presume that explicit anti-begging laws are content-based.¹¹⁰ The very nature of anti-begging laws prohibit an individual from conveying their message of needing help. Whatever the manner a person asks for help, the act of panhandling itself is a form of expressive communication,¹¹¹ and content-based anti-begging laws endanger the “right to engage fellow

Courts should presume that explicit anti-begging laws are content-based and subject to strict scrutiny.¹⁰⁹

human beings with the hope of receiving aid and compassion.”¹¹² These laws impermissibly filter speech based on the message communicated because they require authorities to “examine the content of the message that is conveyed to determine whether a violation has occurred.”¹¹³ Put differently, these laws do not prohibit all speech in certain places or at certain times; they prohibit certain *contents* of speech.

Classifications of laws as either content-neutral or content-based have already led to markedly different outcomes in begging cases.¹¹⁴ If a law is content-based it is subject to strict

⁹⁷ “Public foras are places that have been “held out for general use by the public for speech-related purposes.” *What is a Public Forum?*, FIRST AMEND. CTR. (Nov. 1, 2017), <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>. Traditional public forums consist of sidewalks, street corners, and public parks. *Id.*

⁹⁸ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (2015) (quoting *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014)).

⁹⁹ Rankin 2016, *supra* note 8.

¹⁰⁰ See, e.g., Auburn MC § 9.18.050(E) (2002); Centralia MC § 10.37.040 (2014); Issaquah MC § 9.45.040 (2008); Lakewood MC § 9A.05.050 (2010); Marysville MC § 6.37.045 (2014); Monroe MC § 9.35.040 (2008); Sunnyside MC § 9.86.050(E) (1978).

¹⁰¹ See, e.g., Auburn MC § 9.08.010(B)(6)(b) (2002) (unlawful to beg “at an intersection controlled by lighted traffic signals, where that activity is between or *involves a person or persons located in a sidewalk* or along a public roadway and a person or persons in or on a vehicle traveling on a public roadway”) (emphasis added); Sunnyside MC § 9.86.050(B) (1978) (“unlawful to beg “within 10 feet of any marked pedestrian crosswalk, within 10 feet of any entrance or exit of any building then in use by the general public, or from the area of any sidewalk within 10 feet of its intersection with an alley or publicly used driveway”).

¹⁰² *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

¹⁰³ *Reed*, 135 S. Ct. at 2226 (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

¹⁰⁴ *Id.* at 2228 (noting that the appellate court skipped this “crucial first step”) (clarifying that “strict scrutiny applies either when a law is content-based on its face or when the purpose and justification for the law are content-based,” and mandating that courts “evaluate each question” before concluding the law is content-neutral).

¹⁰⁵ See *id.* at 2227.

¹⁰⁶ *Id.* (clarifying that content-based laws include those that regulate the actual content of the message as well as laws that are “more subtle, defining regulated speech by its function or purpose”).

¹⁰⁷ See *id.* at 2226-27; *Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 658 (1994) (explaining that “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference”).

¹⁰⁸ *Reed*, 135 S. Ct. at 2223.

¹⁰⁹ See *City of Lakewood v. Willis*, 186 P.3d 1056, 1063 (Wash. 2016) (finding a Lakewood begging ordinance to be content-based under *Reed* and joining “the overwhelming majority of courts that have addressed similar anti-begging laws after *Reed*”).

¹¹⁰ See *id.* The assertion that anti-begging laws are presumed to be content-based applies only to laws that specifically target begging, not laws that broadly target all types of speech.

¹¹¹ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 184 (2015).

¹¹² *Id.* (citing *Benefit v. City of Cambridge*, 424 Mass. 918, 679 (1997)).

¹¹³ *Id.* (citing *McCullen v. Coakley*, 134 S. Ct. 2518, 2531 (2014)).

¹¹⁴ Compare *Thayer v. City of Worcester*, 755 F.3d 60, 71 (1st Cir. 2014) (upholding two anti-begging ordinances as content-neutral and serving legitimate government interests), *vacated*, 135 S. Ct. 2887, with *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233, 238 (D. Mass. 2015) (in light of *Reed*, finding same ordinances as content-based and unable to withstand strict scrutiny).

scrutiny—the highest and most exacting level of judicial scrutiny a court can apply—“regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the idea contained’ in the regulated speech.”¹¹⁵ Strict scrutiny requires the government to prove that the law serves a compelling interest and is narrowly designed to achieve that interest.¹¹⁶

On the other hand, if a law is content-neutral, it is subject to intermediate scrutiny—meaning the law is more likely to survive judicial review. Normally, to withstand intermediate scrutiny, the State must prove that the law furthers an important government interest by means that are “substantially related” to that interest.¹¹⁷ However, the Washington State Constitution includes more stringent free speech protections that require content-neutral restrictions to serve a *compelling* government interest.¹¹⁸ Essentially, in Washington those content-neutral laws must be aimed at achieving a compelling government interest, which is the same standard applied to content-based laws under strict scrutiny.

Strict Scrutiny	Intermediate Scrutiny ¹¹⁹
Applies to content-based laws.	Applies to content-neutral laws.
State must prove the law is narrowly tailored to achieve a compelling interest.	State must prove the law is substantially related to a compelling government interest. ¹²⁰

¹¹⁵ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015); see also Telephone interview with Sarah Wunsch, Deputy Legal Dir., Am. Civil Liberties Union of Mass. (Feb. 26, 2016) (emphasizing that the government’s motive is irrelevant to the content-neutrality analysis).

¹¹⁶ *Reed*, 135 S. Ct. at 2218 (2015).

¹¹⁷ LEGAL INFORMATION INSTITUTE, WEX, INTERMEDIATE SCRUTINY, https://www.law.cornell.edu/wex/intermediate_scrutiny (last visited Nov. 25, 2017).

¹¹⁸ *Ino, Inc. v. City of Bellevue*, 937 P.2d 154, 163(1997) (citing *Bering v. SHARE*, 721 P.2d 918 (1986)).

¹¹⁹ LEGAL INFORMATION INSTITUTE, *supra* note 117.

¹²⁰ The Washington Supreme Court has raised the standard for content-neutral laws based on the State constitution. *Collier v. City of Tacoma*, 854 P.2d 1046, 1051 (Wash. 1993) (holding “[w]e diverge from the Supreme Court on the state interest element of the time, place, and manner test, ‘as we believe restrictions on speech can be imposed consistent with [the State constitution] only upon a showing a compelling state interest.’” (quoting *Bering v. SHARE*, 721 P.2d 918, 931 (Wash. 1986))).

Cities can no longer simply invoke phrases such as “public safety” or “public health” as justifications for begging restrictions unless the cities can prove a clear link between the begging restriction and the specific way the restriction serves the purported interest.¹²¹ In other words, the city bears the burden of demonstrating that its justifications for regulating begging are not mere pretext for suppressing requests for help.¹²² To meet this burden, the city must show that the harms it seeks to mitigate are real and that “the regulation will in fact alleviate these harms in a material way.”¹²³

These justifications must be genuine and supported by a strong basis of “meaningful evidence-based data” rather than “shoddy data”¹²⁴ that is “hypothesized or invented post hoc in response to litigation.”¹²⁵ Thus, *Reed* is a promising tool to fight unreasonable begging restrictions.¹²⁶

Cities must justify their anti-begging ordinances with “meaningful evidence-based data.”¹²⁷

Consider one example of laws that commonly control who can speak and where they can speak: laws that require permits for begging.¹²⁸ Requiring a permit to engage in protected speech is “a dramatic departure from our national heritage and constitutional tradition.”¹²⁹ Because these laws require the speaker to obtain a permit before speaking, courts may classify the laws as creating a prior restraint on speech.¹³⁰ A prior restraint exists when speech is “conditioned on the prior approval of public officials.”¹³¹ Prior restraints are problematic because they carry the risk of the government officials censoring speech based on a whim; thus, permit requirements often risk suppressing speech based on the content or the identity of the speaker.¹³² Any system of prior restraint carries “a heavy presumption against its constitutional validity.”¹³³

¹²¹ See *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (“A narrowly tailored law will have a “close fit between ends and means”); *McLaughlin*, 140 F. Supp. 3d at 190 (noting that protecting public safety and preventing coercion may constitute compelling governmental interests insofar as “the legislature has a strong basis in evidence to support that justification” (quoting *Shaw v. Hunt*, 517 U.S. 899, 908 (1996))).

¹²² *Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 624 (1994); see also *McLaughlin v. City of Lowell*, 140 F. Supp. 3d at 188 n.7.

¹²³ *Turner Broad. Sys.*, 512 U.S. at 624.

¹²⁴ *McLaughlin*, 140 F. Supp. 3d at 187 (quoting *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002)).

¹²⁵ *Id.* at 190 (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

¹²⁶ See Rankin 2016, *supra* note 8, at 37–38.

¹²⁷ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 187 (D. Mass. 2015) (quoting *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002)).

¹²⁸ *E.g.*, Lakewood MC § 9A.05.030 (2010). See Part III for a detailed discussion of these permitting requirements.

¹²⁹ *Watchtower Bible and Tract Soc’y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 166 (2002).

¹³⁰ See *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

¹³¹ *State v. Dean*, 866 N.E.2d 1134, 1143 (1st Cir. 2007).

¹³² *Id.*

¹³³ *Carroll v. Pres. & Comm’rs of Princess Anne*, 393 U.S. 175, 181 (1968) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)).

Even content-neutral permitting laws must meet certain criteria to overcome this presumption.¹³⁴ If a permitting law regulates when, where, or how individuals may speak in public, the law must: (1) not give overly broad discretion to government officials; (2) not regulate the content of one's speech; and (3) leave alternative means of communication open to those whose speech is affected.¹³⁵ Municipalities can regulate some speech activities through permits,¹³⁶ but permitting laws must be narrowly tailored.¹³⁷

A narrowly tailored law does not “burden substantially more speech than is necessary” to achieve the compelling government interest motivating the law.¹³⁹ The city bears this burden by showing it is using the least restrictive means to further its interest.¹⁴⁰ Cities fail to meet this burden when reasonable alternatives exist to address the issue at hand. For example, in *Blitch v. City of Slidwell*, the city passed a content-based ordinance that required panhandlers to register with the police and to wear identification before asking others for a monetary donation.¹⁴¹

The city argued that the law was necessary to enforce its current aggressive begging laws.¹⁴² The plaintiffs, three individuals that panhandled in Slidell, filed a suit alleging that the ordinance violated the First Amendment.¹⁴³ The district court held that the ordinance was an unconstitutional violation of the First Amendment because it was a prior restraint on protected speech not narrowly tailored to meet the city's public safety interests.¹⁴⁴ The court found there were less restrictive, alternative means the city could pursue in achieving its enforcement interest.¹⁴⁵ Rather than unnecessarily burdening protected speech, the city could allocate police resources to enforce already existing

“[I]t is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse, a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”¹³⁸

¹³⁴ See *Nationalist Movement*, 505 U.S. at 129–30 (“Public fora have achieved a special status in law; the government must bear an extraordinarily heavy burden to regulate speech in such locales.”)

¹³⁵ *Id.* at 130–31.

¹³⁶ See, e.g., *Cox v. State of New Hampshire*, 312 U.S. 569, 574, 576 (1941) (parade permitting scheme upheld as regulating time, place, and manner rather than speech).

¹³⁷ *Nationalist Movement*, 505 U.S. at 130.

¹³⁸ *Berger v. City of Seattle*, 569 F.3d 1029, 1041 (9th Cir. 2009) (quoting *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002)).

¹³⁹ *Id.* (citing to *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)).

¹⁴⁰ *Blitch v. City of Slidell*, 260 F. Supp. 3d 656 (E.D. Louisiana, 2017).

¹⁴¹ *Id.* at 659.

¹⁴² *Id.*

¹⁴³ *Id.* at 660.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

ordinances against aggressive panhandling or install cameras at frequently used locations to identify aggressive panhandlers.¹⁴⁶

C. *Begging for Due Process*

*The touchstone of due process is protection of the individual against arbitrary action of government.*¹⁴⁷

Besides free speech concerns, anti-begging laws may violate the Due Process Clause of the Fourteenth Amendment.¹⁴⁸ The Constitution requires that no individual “be deprived of life, liberty, or property without due process of the law.”¹⁴⁹ Essentially, due process prohibits cities from “arbitrarily or unfairly depriving individuals of their basic constitutional rights.”¹⁵⁰ Due process issues arise when anti-begging laws allow for discriminatory enforcement, when overlapping laws have differing penalties, and when violations of aggressive begging laws are determined only by the subjective perception of the witness and not on some objectively aggressive conduct.

First, specificity of the law is important for protecting individuals experiencing homelessness because vague laws allow for discriminatory enforcement against marginalized and disfavored groups.¹⁵¹ When a law regulates expression protected by the First Amendment, courts require legislatures to set specific and clear guidelines for law enforcement officials to prevent arbitrary and discriminatory enforcement.¹⁵² To survive

Due Process Concerns arise with:

- ➡ Vague laws
- ➡ Overlapping ordinances
- ➡ Subjective standards

¹⁴⁶ *Id.*

¹⁴⁷ *Wolf v. McDonnell*, 418 U.S. 539, 588 (1974).

¹⁴⁸ *Roulette v. City of Seattle*, 850 F. Supp. 1442, 1453–54 (W.D. Wash. 1994), *aff’d*, 78 F.3d 1425 (9th Cir. 1996), *opinion amended and superseded on denial of reh’g*, 97 F.3d 300 (9th Cir. 1996), *as amended on denial of reh’g and reh’g en banc* (Sept. 17, 1996), and *aff’d*, 97 F.3d 300 (9th Cir. 1996), *as amended on denial of reh’g and reh’g en banc* (Sept. 17, 1996) (invalidating a section of aggressive begging ordinance which prescribed circumstances to be considered in determining a beggar’s intent as unconstitutionally overbroad and vague).

¹⁴⁹ U.S. CONST. amend XIV, § I.

¹⁵⁰ *Due Process of Law*, FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/due+process+of+law> (last visited Nov. 29, 2017).

¹⁵¹ *Coates v. City of Cincinnati*, 402 U.S. 611, 616 (1971); *see also* Javier Ortiz & Matthew Dick, Seattle University Homeless Rights Advocacy Project, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN & HISTORICAL CRIMINALIZATION LAWS* 17 (Sara Rankin ed. 2015) (describing America’s disturbing heritage of using vague laws as an “effective tool for the removal of unwanted people from public space because of the broad discretion the officers were granted by the wording of the statute”).

¹⁵² *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (requiring a greater degree of specificity when “a statute’s literal scope . . . is capable of reaching expression sheltered by the First Amendment”).

judicial scrutiny under the Fourteenth Amendment, an ordinance must provide a person of ordinary intelligence notice of what conduct is prohibited, and the criminalized behavior must not be susceptible of arbitrary and discriminatory enforcement.¹⁵³ Thus, an ordinance violates the Fourteenth Amendment if it fails to clearly define the prohibited conduct in a manner that would allow for relatively uniform, rather than arbitrary, enforcement.¹⁵⁴

Anti-begging ordinances are susceptible to due process concerns. The laws target a particular form of speech; they deal with solicitation and panhandling specifically, as opposed to all speech generally. Perhaps an aggressive begging ordinance that targets all form of speech is, in fact, a law against harassment.

Not surprisingly, courts have increasingly scrutinized anti-begging ordinances with great care in recent years, routinely striking those laws written with vague restrictions devoid of objective criteria.¹⁵⁵ Without such judicial oversight, laws may allow for unfettered discretion and virtually unrestrained powers to arrest, which is offensive to constitutional freedoms.¹⁵⁶

Discriminatory enforcement of marginalized groups is also evident in how individuals experiencing homelessness and the act of begging are often portrayed in the media. For example, a woman who panhandled to raise money for school supplies received praise from her community,¹⁵⁷ while a man who panhandled for his basic needs was regarded with contempt and was perceived by others as a wrongdoer.¹⁵⁸ These two contrasting stories illustrate the problem with discriminatory enforcement. Who is more likely to be cited for their behavior? The teacher panhandling for school supplies or the individual panhandling for his most basic of needs?

¹⁵³ *Webster*, 802 P.2d at 1338.

¹⁵⁴ *Id.*

¹⁵⁵ Rankin 2016, *supra* note 8, at 54 (explaining how “common reactions to visible poverty—discomfort, unease, disgust, and anxiety—fuel the urge to exile” people experiencing homelessness from public space).

¹⁵⁶ *City of Houston v. Hill*, 482 U.S. 451, 465–67 (1987) (“Although we appreciate the difficulties of drafting precise laws, we have repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them.”); *see also Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 129 (1992) (holding invalid laws delegating “overly broad discretion to the decision maker”).

¹⁵⁷ *See, e.g.,* Katie Kindelan, *Oklahoma Teacher Panhandles to Raise Money for School Supplies*, ABC NEWS (July 25, 2017), <http://abcnews.go.com/Lifestyle/oklahoma-teacher-panhandles-raise-money-school-supplies/story?id=48815271>; Noe Hernandez, *Panhandling Mom Raises \$10K for Daughter's College, Ends Tuition Quest to Return to Work*, USA TODAY (Aug. 28, 2017), <https://www.usatoday.com/story/news/nation-now/2017/08/28/mom-begs-college-tuition/609384001/>.

¹⁵⁸ *See* Mark Johnson, *American Fork Places Barriers to Block Panhandlers*, DAILY HERALD (May 8, 2013), http://www.heraldextra.com/news/local/north/american-fork/american-fork-places-barriers-to-block-panhandlers/article_8348fdb4-3092-5e98-aaa3-f8006ca34f99.html; *see also* Steve DeVane, *Council Members Suggest Fines for Giving to Panhandlers*, FAYETTEVILLE OBSERVER (Oct. 31, 2017), <http://www.fayobserver.com/news/20171031/council-members-suggest-fines-for-giving-to-panhandlers>.

Photo Credit: ABCnews.go ¹⁵⁹

Photo Credit: kansas.com ¹⁶⁰

Second, aggressive begging laws are often one of many overlapping ordinances with differing penalties that cause both due process and equal protection concerns.¹⁶¹ Overlapping ordinances criminalize the same behavior under two or more separate ordinances. When those ordinances carry different penalties, discriminatory enforcement against particular classes of individuals is inevitable.¹⁶² For example, aggressive begging ordinances may “hold homeless individuals to a higher standard than existing assault or harassment laws, which often prohibit the same conduct but are facially neutral.”¹⁶³ Cities cannot deem one criminal activity worse simply because it is conducted combined with constitutionally protected—albeit disfavored—speech.¹⁶⁴ When aggressive begging ordinances and existing assault or harassment laws have different penalties, they may violate the right to due process; differing penalties for identical conduct may “authorize and even encourage arbitrary and discriminatory enforcement.”¹⁶⁵

¹⁵⁹ Kindelan, *supra* note 157.

¹⁶⁰ Dion Lefler, *New Wichita Law: You Could go to Jail for Giving Money to a Roadside Panhandler*, WICHITA EAGLE (Dec. 12, 2018), <http://www.kansas.com/news/politics-government/article189336969.html> (writing that “panhandlers and drivers who give them money could face stiff fines or even jail time under an ordinance approved by the Wichita City Council”).

¹⁶¹ Olson & MacDonald, *supra* note 37, at 7 (stating that at least “66% of [Washington] cities draft criminalization ordinances in a way that either overlap with other ordinances or contain compound provisions that criminalize multiple, and often unrelated, behaviors”). See *infra* Part III, Section (D) for an example of overlapping ordinances in Washington.

¹⁶² *Id.*

¹⁶³ *Id.* at 4, 17–28 (comparison of Seattle’s Pedestrian Interference ordinance and its Harassment ordinance reveals that aggressive begging “is nothing more than harassment in the context of a poor person asking for money”).

¹⁶⁴ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 193 (2015).

¹⁶⁵ See *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999); *Centro De La Comunidad Hispana De Locust Valley v. Town of Oyster Bay*, 128 F. Supp. 3d 597, 618–19 (E.D.N.Y. 2015) (finding no “comfort that the Town’s safety officers will use their discretion, or be ‘trained’ on how to determine whether a person is soliciting employment or attempting to stop a vehicle to solicit employment” because “[s]uch discretion may surely invite discriminatory enforcement”); Olson & MacDonald, *supra* note 37, at 7.

Third, due process concerns arise with aggressive begging laws specifically because of how those laws shift the focus of culpability.¹⁶⁶ Often, such laws are written so culpability is based on the perception of the bystander rather than on the specific, objective conduct of the individual asking for help. As a result, an individual can violate aggressive begging laws without engaging in objectively aggressive behavior.¹⁶⁷ For example, a person being asked to give money might feel “compelled or fearful” yet cannot point to any objective conduct that the speaker should have avoided. When culpability is based on the bystander’s perception, the focus shifts from the conduct of the beggar to the bystander’s feelings, which are filtered through the bystander’s own lens of prejudice and inherent bias.¹⁶⁸ Thus, a person experiencing homelessness may have no way to inform his or her conduct to fit the law—simply asking for help may be a crime.

As a policy matter, these aggressive begging laws are not appropriate because they cater to implicit and unconscious biases regarding visible poverty. When little or no guidance is provided about the objective conduct prohibited, law enforcement is left to rely on subjective perceptions: “whether that perception is judged as a ‘reasonable person’ feeling fearful or compelled or some perceived manifestation of an ‘intent to intimidate.’”¹⁷⁰ In such circumstances, individuals exercising their constitutional right to ask for help in public have no way of knowing “how to conform themselves to the law” because there is no objective basis to determine when peaceful requests for money might be perceived as threatening or intimidating.¹⁷¹

An individual can violate aggressive begging laws without engaging in objectively aggressive behavior.¹⁶⁹

¹⁶⁶ See *infra* Part III, pp. 63–65 for a more in-depth discussion on how due process concerns arise when culpability is found in the subjective perception of the “victim.”

¹⁶⁷ See, e.g., Lacey MC § 5.21.040(G) (1998) (imposing criminal penalties for begging “in a group of two or more persons”); Lacey MC § 5.21.040(H) (1998) (imposing criminal penalties for begging “within fifty feet of any other panhandler”).

¹⁶⁸ Telephone Interview with Aaron Burkhalter, Editor at Real Change (Oct. 6, 2017).

¹⁶⁹ See, e.g., Lacey MC § 5.21.040(G) (1998) (imposing criminal penalties for begging “in a group of two or more persons”); Lacey MC § 5.21.040(H) (1998) (imposing criminal penalties for begging “within fifty feet of any other panhandler”).

¹⁷⁰ See Memorandum from Justin Olson to Professor Sara Rankin, Director of the Homeless Rights Advocacy Project at Seattle University School of Law, *Washington’s Panhandling Ordinances: Graphical Representations 2* (2017) [hereinafter Olson Memorandum] (reporting that 42% of the surveyed aggressive begging laws trigger liability based on perception alone, 54%, contain *both* a conduct component as well as a perception component, 2% contain only conduct components, and 2% contain neither conduct nor perception based components). Notably, 98% of aggressive begging ordinances contain a perception-based component. *Id.*

¹⁷¹ Wunsch, *supra* note 115.

A law must provide a person notice of what conduct is prohibited, and the prohibited conduct must not be susceptible to arbitrary and discriminatory enforcement.¹⁷²

A common example reveals how impractical and morally repugnant laws with a subjective component can be. Under most of these laws, it is enough to trigger criminal liability if a bystander feels fearful or compelled to donate. Yet in cities throughout Washington, both volunteers and paid organizations will place representatives at street corners asking for donations to one cause or another. Environmental

activists, political fundraisers, and champions of charitable causes may not make passersby feel fearful, but they make bystanders feel *compelled* to give. Were these laws faithfully applied, the examples above would be liable under the aggressive begging ordinances. Yet it is not the clean-cut, college-aged activists at risk under these laws; it is the visibly poor who ask for help, not out activism but out of necessity.

Recap of Applicable Law

- A legal presumption exists that anti-begging laws are content-based laws.¹⁷³
- Permitting laws targeting solicitation specifically are content-based because they “target specific speech based on its communicative intent.”¹⁷⁴
- Content-based laws are subject to strict scrutiny.¹⁷⁵
- Cities must show that the permitting law is the least restrictive means of achieving a compelling interest.¹⁷⁶
- The law must be narrowly tailored to achieve that interest.¹⁷⁷
- A content-neutral law must leave open ample alternative channels of communication.¹⁷⁸
- The city must supply meaningful evidence-based data to establish its compelling interest.¹⁷⁹

¹⁷² *City of Seattle v. Webster*, 802 P.2d 1333, 1338 (Wash. 1990).

¹⁷³ See *City of Lakewood v. Willis*, 186 P.3d 1056, 1063–64 (2016).

¹⁷⁴ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2222 (2015) (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 395).

¹⁷⁵ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 187 (2015).

¹⁷⁶ *Id.* (citing *McCullen v. Coakley*, 134 S. Ct. 2518, 2530 (2014)).

¹⁷⁷ *Perry Educ. Ass’n v. Perry Local Educ’s Ass’n*, 460 U.S. 37, 45 (1983).

¹⁷⁸ *Id.*

¹⁷⁹ *McLaughlin*, 140 F. Supp. 3d at 187.

PART II: FEW SAFE HAVENS

A. *The Criminalization of Begging in Washington*

Throughout Washington State, an overwhelming majority of cities have adopted ordinances that curtail and criminalize the exercise of free speech in the form of begging. A survey of sixty-four cities throughout Washington State found 121 anti-begging ordinances,¹⁸⁰ indicating that cities continue to rely upon the criminal law as a response to disfavored speech from marginalized groups. This section summarizes key findings drawn from the data collected on those begging restrictions.

The majority of cities surveyed (86%) had at least one ordinance restricting begging in some form.¹⁸¹ No clear pattern or common thread links the few cities that have no anti-begging ordinances. The criminalization of begging is neither limited to one region over another nor to large cities over small cities. There are few safe havens throughout Washington and no way to predict whether a particular city will allow individuals to ask for help in public. The graph below depicts the number of cities with anti-begging ordinances in their municipal codes:¹⁸²

¹⁸⁰ The complete survey data, current as of April 2018, is on file with the Homeless Rights Advocacy Project (HRAP) at Seattle University School of Law [hereinafter Ordinance Chart].

¹⁸¹ The survey revealed that 55 of the 64 cities surveyed had at least one anti-begging restriction within their municipal codes.

¹⁸² See Ordinance Chart, *supra* note 180.

These ordinances restrict begging through many mechanisms.¹⁸³ The data shows that ordinances with zone or geographic restrictions are the most common method of criminalization.¹⁸⁴ The following graph depicts anti-begging ordinances in Washington State sorted into four categories of common restrictions: geographic restrictions, distance restrictions, time restrictions, and aggressive panhandling restrictions.¹⁸⁵

Beyond simply victimizing protected conduct, anti-begging ordinances also impose severe penalties for engaging in constitutionally protected speech. Proponents of homeless criminalization laws commonly argue that the penalties are mere infractions carrying civil (monetary) penalties—not criminal. These proponents claim no one ever faces the prospect of

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Note that some cities have ordinances containing all four types of restrictions within one ordinance. For example, a city may have an ordinance that prohibits begging within public parks, and also on sidewalks between the hours of 6:00 p.m. and 6:00 a.m. This ordinance would be included in both the zone/geographic restriction category and the time restriction category.

jail time for camping in public spaces, sitting on sidewalks, or—in the case of this present study—asking for help.¹⁸⁶ But to the contrary, HRAP researchers discovered the opposite to be true: the majority of anti-begging ordinances provide for *misdemeanor* penalties.

The chart below demonstrates the dramatic discrepancy between civil penalties and criminal penalties for anti-begging ordinances:

Penalties for begging are severe: 83% of the surveyed begging ordinances are misdemeanors, which means violators may incur a substantial fine and possible incarceration.¹⁸⁷ Moreover, the above chart does not account for ordinances with penalties that transform infractions into misdemeanors.¹⁸⁸ Of the remaining 15% listed as infractions, half allow for a civil infraction to evolve into a misdemeanor—typically due to repeated violations.¹⁸⁹ Under these “progressive penalty” provisions, repeat violations of the same conduct, such as asking for help again after receiving a negative response, may transform some of those relatively few civil infractions into misdemeanors. Interestingly, some misdemeanor ordinances themselves also contained progressive penalty provisions, providing for enhanced fines and jail time because of multiple citations.¹⁹⁰

¹⁸⁶ See Olson & MacDonald, *supra* note 37.

¹⁸⁷ See Ordinance Chart, *supra* note 180.

¹⁸⁸ See, e.g., Centralia MC § 10.37.060(A)–(C) (2014) (increasing penalties for multiple offenses: “*Class 1 civil infraction* with the maximum assessment not to exceed . . . two hundred fifty dollars” for first offense; “*misdemeanor* . . . subject to a fine not to exceed one thousand dollars . . . and/or imprisonment not to exceed ninety days” for second offense; and “*gross misdemeanor*” punishable by a fine “not to exceed five thousand dollars . . . and/or imprisonment not to exceed three hundred and sixty-five days” for third offense (emphasis added)).

¹⁸⁹ See Olson Memorandum, *supra* note 170, at 5.

¹⁹⁰ See, e.g., Port Angeles MC § 12.04.130 (2016) (first offense punishable “by a fine of up to \$500 and imprisonment for up to thirty days, or both,” second offense punishable “by a fine of up to \$1,000 and imprisonment for up to ninety days, or both,” and third and subsequent offenses punishable “by a fine of up to \$5,000 and imprisonment for up to one year, or both”); see also Arlington MC § 9.56.080(1)–(3) (2014).

As depicted above, misdemeanor ordinances drastically outnumber infraction ordinances for every category of restrictions HRAP researchers identified. Specifically, 77% of violations of geographic restrictions result in a misdemeanor, while only 20% result in an infraction; 90% of violations of distance restrictions result in a misdemeanor, while only 3% result in an infraction; 75% of violations of time restrictions result in a misdemeanor, while 25% result in an infraction; and 94% of violations of manner restrictions result in a misdemeanor, while only 6% result in an infraction. This data is striking when considering that the most common ordinances are geographic restrictions, which operate to criminalize peaceful begging. This effectively means that cities are not only criminalizing constitutionally protected behavior, but they are severely punishing the exercise of the First Amendment right to ask for help.

The data also reveals that begging laws have become increasingly popular throughout Washington over the last 40 to 50 years. This rise in popularity corresponds with an increase in homelessness in many cities.¹⁹¹ The increase also coincides with the general trend of criminalizing visible poverty through other means.¹⁹² The chart below depicts a timeline of new anti-begging laws being passed for five-year periods starting around 1960:

Begging restrictions were fairly minimal throughout the State until 1976–1980, at which time there was a sharp increase in the passage of new laws.¹⁹³ This increase in anti-begging laws occurred at the same time as the nation suffered a decline in affordable housing and a

¹⁹¹ See Olson & MacDonald, *supra* note 37. See *infra* Appendix, Part II, for a side by side comparison of the rise in begging restrictions based on data collected for this research and the general trend of criminalization policies that was reported in Olson & MacDonald, *supra* note 37.

¹⁹² *Id.*

¹⁹³ See Ordinance Chart, *supra* note 180.

reduction in spending for the Department of Housing and Urban Development (HUD).¹⁹⁴ This increase also coincides with the deinstitutionalization of mental health treatment that made it difficult for individuals with severe mental illness to find care and shelter.¹⁹⁵ These trends suggest that as poverty becomes more visible in public space—due to factors including divestments in affordable housing and mental health treatment—society responds to visible poverty by criminalizing poverty rather than restoring investments in non-punitive options.¹⁹⁶

Since 1996, Washington cities have been enacting anti-begging ordinances in greater numbers. By the 2006–2010 period, Washington cities passed more than triple the number of begging restrictions than they had during the 1991–1995 period, often enacting new ordinances in addition to preexisting ones. Specifically, in 1991–1995 period, Washington cities passed nine new ordinances, while in the 2006–2010 period, Washington cities passed twenty-nine new ordinances.

The drastic escalation during the 2006–2010 period coincides with the 2008 financial crisis. Approximately two-thirds of all begging ordinances were enacted after 2001.¹⁹⁷

¹⁹⁴ A WRAP Primer on Transforming Rental Assistance, WESTERN REG'L ADVOCACY PROJECT, <http://wraphome.org/wraparchives/downloads/A%20WRAP%20Primer%20on%20TRA.pdf> (last visited Nov. 25, 2017).

¹⁹⁵ DANIEL YOHANNA, DEINSTITUTIONALIZATION OF PEOPLE WITH MENTAL ILLNESS: CAUSES AND CONSEQUENCES, AM. MED. ASS'N J. ETHICS (Oct. 2013), <http://journalofethics.ama-assn.org/2013/10/mhst1-1310.html>; The deinstitutionalization of mental health treatment was a policy decision and movement to remove individuals with severe mental illness out of large state institutions and then those institutions were subsequently closed. This deinstitutionalization was made without ensuring that the individuals received the care and rehabilitation necessary in order to live successfully within the community. E. FULLER TORREY, OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS Ch. 1-3 (1997).

¹⁹⁶ See Olson & MacDonald, *supra* note 37; Rankin 2016, *supra* note 8.

¹⁹⁷ Ordinance Chart, *supra* note 180. 66% of all ordinances were enacted in Washington since 2001. *Id.*

A likely reason for the increase in begging restrictions is the recent upsurge of aggressive begging laws.¹⁹⁸ During the 1990s, courts began to strike down outright prohibitions on peaceful begging as unconstitutional restrictions on free speech.¹⁹⁹

In response, many cities tried to circumvent such constitutional restrictions by incorporating non-aggressive conduct into their aggressive begging laws: for example, begging with a partner, even if sitting down and saying nothing but only holding a sign, could constitute aggressive begging.²⁰⁰ The graph below depicts the rise in aggressive begging laws in Washington State:

This graph shows a major increase in aggressive begging laws beginning in 2005, when four new laws were enacted in 2005 alone, leading to 2014, when six new laws were enacted.²⁰¹ In fact, 52% of all existing aggressive begging laws surveyed were enacted after 2005.²⁰² This

¹⁹⁸ Sena, *supra* note 89, at 293.

¹⁹⁹ See, e.g., *Loper v. New York City Police Dep't*, 999 F.2d 699, 705 (2d Cir. 1993); *Benefit v. City of Cambridge*, 679 N.E.2d 184, 190 (1997).

²⁰⁰ Wunsch, *supra* note 115.

²⁰¹ Ordinance Chart, *supra* note 180.

²⁰² *Id.*

trend suggests that cities are attempting to circumvent judicial scrutiny by enacting aggressive begging laws under the veil of targeting aggressive behavior rather than protected speech.

The graph below shows that the potential to criminalize even peaceful requests for donations is rampant throughout Washington: the vast majority of aggressive begging laws include a subjective, perception-based component as part or all of the basis for determining when begging is unlawful. Over half of all such ordinances contain *both* a conduct component and a perception component, providing even more ways to find guilt under the law. Notably, only 2% of all aggressive begging ordinances are defined only by the specific, objective conduct of the person asking for a donation.

As explained in Part I, Section B, the rise of aggressive begging restrictions raises substantial constitutional and policy concerns. Homeless criminalization ordinances are ineffective. They do not reduce homelessness or curtail offenders from engaging in necessary, life-sustaining behavior;²⁰³ they cost more than many non-punitive alternatives;²⁰⁴ they indirectly discriminate against distinct marginalized groups;²⁰⁵ and they harken back to past eras when the law was used to banish undesirable groups from public space.²⁰⁶ But the data

²⁰³ See NAT'L LAW CTR. 2017, *supra* note 2 at 36.

²⁰⁴ See Howard & Tran, *supra* note 91 and accompanying text.

²⁰⁵ See Kaya Lurie & Breanne Schuster, Seattle University Homeless Rights Advocacy Project, DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS AND OTHER MARGINALIZED GROUPS 2–5 (Sara Rankin ed. 2015) (revealing how “racial minorities are disproportionately represented in the homeless population”).

²⁰⁶ See Ortiz & Dick, *supra* note 151 and accompanying text.

reveals that Washington municipalities have continued to implement punitive measures to remove evidence of visible poverty from their cities.

B. Enforcement of Begging Restrictions in Washington

Obtaining data on the enforcement of begging restrictions in Washington’s cities proved difficult. Although HRAP requested public records from eleven Washington cities,²⁰⁷ only two cities—Marysville and Lakewood—had formally cited individuals for violating specific begging laws in the past five years.²⁰⁸ Nine of the eleven cities stated that no individuals were cited under any of the ordinances between January 1, 2013, and January 1, 2018.²⁰⁹

2013-2017 Citations for Violating Begging Restrictions: Cities with Zero Citations ²¹⁰		
City	Ordinance(s)	Citations
Arlington	9.56.50 Coercive Solicitation	0
Bonney Lake	9.11.050 Aggressive Solicitation	0
Centralia	10.37.030 Coercive Solicitation	0
Des Moines	19.08.030(7) Regulations & Prohibited Activities: Public Parks	0
Lake Stevens	9.08.030 Aggressive Begging	0
Issaquah	9.45.030 Coercive Solicitation	0
	9.45.040 Time of Solicitation	
Mount Vernon	9.21.060 Aggressive Begging	0
Tacoma	8.13A.040 Solicitation by Coercion	0
Puyallup	9A.08.040 Solicitation by Coercion	0

At first glance, the lack of reported citations might seem like a reason for free speech advocates to celebrate. However, any enforcement data (or lack thereof) must be understood

²⁰⁷ Those cities are: Arlington, Bonney Lake, Centralia, Des Moines, Lakewood, Lake Stevens, Issaquah, Marysville, Mount Vernon, Tacoma, and Puyallup. Requests for records were submitted pursuant to Washington’s Public Records Act, RCW §42.56 et seq., on January 29, 2018 and January 30, 2018.

²⁰⁸ The process of requesting public records from the city of Lakewood was especially challenging. Specifically, the city of Lakewood maintains paper files of its criminal records. Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Feb. 21, 2018 14:40 PST) (on file with author). Because Lakewood’s records are paper files, the city stated that it would take over a year to search for the responsive records requested on the enforcement of Lakewood’s anti-begging ordinances. Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Feb. 2, 2018 13:17 PST) (on file with author). HRAP reduced the scope of the request for data on two separate occasions before receiving a timely response. The difficulty in obtaining data regarding the enforcement of a city’s ordinances illustrates the importance of effective and efficient administrative procedures and policies.

²⁰⁹ Those cities include: Arlington, Bonney Lake, Centralia, Des Moines, Lake Stevens, Issaquah, Mount Vernon, Tacoma, and Puyallup.

²¹⁰ Public records request data on file with author.

in the context of informal enforcement methods, such as “move-along” orders and referrals to “Designated Mental Health Professionals” for involuntary commitment.²¹¹ As explained below, such orders are increasingly popular means of displacing visibly poor people from public view: they achieve the same prized outcome of displacement without leaving evidence of enforcement.

1. The Problem of Move-Along Orders

Move along orders effectively extinguish and chill the dissemination of speech just as formal arrests and citations do.

Police officers routinely order people experiencing homelessness to move from public space as a method of enforcing laws that criminalize homelessness.²¹² Move-along orders are given when officers approach individuals telling them, in sum or substance, “You have to move,” and “You can’t be here.”²¹³ When individuals refuse to comply with a move-along order, police officers threaten to issue an arrest.²¹⁴ Such an arrest might be combined with a civil penalty, removal to a psychiatric hospital, or the destruction of the individual’s property.²¹⁵ These move-along orders are just one of many pervasive penalties associated with the overarching criminalization of homelessness in Washington.²¹⁶ They effectively extinguish and chill the dissemination of speech just as formal arrests and citations do. However, individuals cannot challenge the orders without risking arrest or issuance of civil citations. Due to the very nature of these move-along orders, they are vulnerable to discriminatory use by police enforcement because the issuance of move-along orders is not tracked by law enforcement within Washington.²¹⁷

Move-along orders are prevalent across the country. For example, in New York, officials have long been proponents of the “broken windows” theory, wherein the appearance of disorder (or, in the minds of some city officials, the appearance of poverty) invites criminal

²¹¹ See WASH. REV. CODE ANN. § 71.05.

²¹² Allard K. Lowenstein International Human Rights Clinic, “*Forced into Breaking the Law*”: *The Criminalization of Homelessness in Connecticut*, YALE L. SCH. (Nov. 2016), https://law.yale.edu/system/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf.

²¹³ Complaint at 1, *Picture the Homeless, Inc. v. New York City Police Department*, No. M-I-J-16-1034067 (filed with City of New York Comm’n Human Rights May 31, 2016) [hereinafter *Picture the Homeless* Complaint], <http://picturethehomeless.org/wp-content/uploads/2016/05/Revised-Verified-Complaint-to-NYC-Comm’n-on-Human-Rights-filed-2016-05-31-00049320.pdf>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Christopher Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Homelessness Perpetuates Poverty* (forthcoming 2018).

²¹⁷ See email from Mark Solomon, Community Crime Prevention Specialist, Seattle Police Dep’t, to author (Apr. 20, 2018, 11:00 PST) (on file with author) (“It would be hard to get an accurate number of ‘move along’ [orders] because we don’t formally track these types of contacts.”).

behavior.²¹⁸ But over a period of approximately twelve years, individuals were arrested only six times under New York's anti-begging law.²¹⁹ In *Loper v. New York*, it was conceded that while very few arrests were made under the anti-begging law, "officers used the statute as an authority to order individuals whom were begging to 'move on.'"²²⁰ The Second Circuit held that panhandling was protected speech entitled to the highest First Amendment protection.²²¹ Yet even today, the city of New York still uses the practice of move-along orders to force individuals experiencing homelessness to disappear from sight.²²²

Although move along orders are invisible because they are not recorded or reported in many jurisdictions, existing data suggests they are a prevalent means of moving people experiencing homelessness. In 2014, a survey of 351 individuals experiencing homelessness in San Francisco found that 70% of individuals had been forced to move from public space by law enforcement.²²³ Of those who were ordered to move, only 9% moved to location indoors while the remaining 91% reported that they remained in public spaces and simply moved to a new outdoor location.²²⁴ Most individuals forced to move simply went "down the street, around the corner, or to walk around and returned after the police left."²²⁵ Further illustrating the prevalence of move-along orders, over 5000 individuals received move-along orders from police in Denver, Colorado in 2016.²²⁶

Move-along orders are also a common practice throughout cities in Washington State. Due to the informal nature of move-along orders, this type of enforcement is not tracked by Washington law enforcement or by cities.²²⁷ Still, as explained below, this virtually invisible practice is common, pervasive, and potent.

²¹⁸ See, e.g., Shankar Vedantam et al., *How a Theory of Crime and Policing was Born, and Went Terribly Wrong*, NPR (Nov. 1, 2016, 12:00AM), <https://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong> ("Rudy Giuliani won election in 1993, promising to reduce crime and clean up the streets. Very quickly, he adopted broken windows as his mantra.").

²¹⁹ Fay Leoussis, *The New Constitutional Right to Beg—Is Begging Really Protected Speech?*, 14 ST. LOUIS U. L. REV. 529, 530 (1995).

²²⁰ *Loper v. New York City Police Dep't*, 999 F.2d 699, 701 (2d Cir. 1993).

²²¹ Leoussis, *supra* note 219.

²²² E.g., Max Rivlin-Nadler, *Homeless New Yorkers Say NYPD's 'Move Along' Rule is Cruel and Illegal*, VILLAGE VOICE (Dec. 15, 2016), <https://www.villagevoice.com/2016/12/15/homeless-new-yorkers-say-nypds-move-along-rule-is-cruel-and-illegal/>.

²²³ COALITION ON HOMELESSNESS, SAN FRANCISCO, PUNISHING THE POOREST: HOW THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES POVERTY IN SAN FRANCISCO 1, <http://www.cohsf.org/Punishing.pdf> (last visited Apr. 27, 2018).

²²⁴ *Id.* at 1–2.

²²⁵ *Id.* at 1.

²²⁶ Michael Bishop, Bridget DuPey, Nicole Jones, Ashely Kline, Joshua Mitson, & Darren O'Connor, University of Denver Sturm College of Law Homeless Advocacy Policy Project, TOO HIGH A PRICE 2: MOVE ON TO WHERE? (Nantinya Ruan & Elie Zwiebel eds. 2018). Denver is one of few jurisdictions where police may collect data on such orders.

²²⁷ See Solomon, *supra* note 217.

Move along orders are potent because the recipient has no recourse, no reasonable due process of law to protect their rights. The recipient has no opportunity to challenge the lawfulness of the underlying ordinance supporting the move-along instruction, nor is there any real choice for the individual to make when ordered to move by law enforcement. Individuals experiencing homelessness are simply told to leave the public space at once or face the full weight of the law. For example, in Seattle, police officers aim for “voluntary compliance” of the city’s sit-lie ordinance and will issue informal move-along orders as the primary means of enforcement.²²⁸ If an individual is sleeping in a doorway or lying on the street, officers will tell them they need to get up and go.²²⁹ This practice is common throughout all of Washington.²³⁰

Further, the city of Centralia purposefully used only warnings to enforce an ordinance that restricted begging at most intersections within the town.²³² That specific ordinance has since been amended.²³³ But the current version of the ordinance explicitly states that the penalty for a first violation of coercive solicitation is a verbal notification and warning.²³⁴ Centralia’s city attorney, Shannon Murphy-Olson, stated that the verbal warning change would “be beneficial because it

“Although being asked to move-along may not seem to criminalize behavior, it is part and parcel of a system that threatens eventual arrest for prohibited conduct.”²³¹

will not immediately impose monetary fines on people who do not have a source of income.”²³⁵ While “a ‘move along’ order may sound benign, it is enormously disruptive and harmful for people who live on the street and do not have homes where they can seek respite from police attention.”²³⁶ Move-along orders circumvent the voluminous repercussions associated with criminal and civil penalties, yet they are no less offensive to civil liberty where an individual is politely but unequivocally banished from the public eye.

Individuals experiencing homeless who spend time in public spaces, such as those individuals who engage in begging or who rest along public sidewalks are easy targets for move-along orders.²³⁷ Because of the insidious, disruptive, and harassing nature of these

²²⁸ Solomon, *supra* note 12.

²²⁹ *Id.*

²³⁰ *E.g., id.* (stating that for Seattle’s sit/lie ordinance an officer would enforce the ordinance by aiming for voluntary compliance, saying “you will need to go, or hey you need to get up, time to go.”); Pesanti, *supra* note 12.

²³¹ Allard K. Lowenstein International Human Rights Clinic, *supra* note 212.

²³² Pesanti, *supra* note 12.

²³³ Graham Perednia, *Centralia City Council Makes Change to Laws Governing Panhandlers*, CHRONICLE (Sept. 14, 2017), http://www.chronline.com/news/centralia-city-council-makes-changes-to-laws-governing-panhandlers/article_69b9be14-9973-11e7-8de1-ebcdc975765d.html.

²³⁴ Centralia MC § 10.37.060 (2017).

²³⁵ Perednia, *supra* note 233.

²³⁶ *Picture the Homeless Complaint*, *supra* note 213, at 2.

²³⁷ *Id.* at 1.

orders, they are a "pervasive penalty" associated with the overarching criminalization of homelessness in Washington State and throughout the country.²³⁸ Pervasive penalties are a "punitive process of policing through move-along orders, citations, and threats of arrest that largely remain hidden from public view and official scrutiny because such enforcement falls short of official booking."²³⁹ As noted above, move-along orders do not trigger the regular recordkeeping process of enforcement required under the law.²⁴⁰ "Official citation and arrest numbers gloss over the thousands of instances in which officers detain, interrogate, search, and make demands of inhabitants without activating the formal criminal justice process."²⁴¹ The public should be especially wary of those police enforcement actions, which evade oversight.

Move-along orders are associated with the overarching criminalization of homelessness in Washington State and throughout the country.²⁴²

The personal experiences of individuals on the receiving end of move-along orders reveal the harmful nature of informal enforcement mechanisms. Individuals have described them as "a constant pestering that keeps you from ever feeling relaxed or belonging just about anywhere."²⁴³ Move-along orders also implicitly encourage individuals to avoid the police, even when facing danger.²⁴⁴ For example, one individual

avoided calling the police to report being assaulted, asking, "What's the point? If I called them, they would have made us all move."²⁴⁵ These move-along orders have been identified as having lasting collateral consequences. Specifically, they push people to unsafe spaces, lead to adverse health effects, and effectively move individuals away from necessary resources.²⁴⁶

Move-along orders find their roots in what has been officially coined the "broken windows" theory of criminality, which has also been used to support anti-begging ordinances. The theory uses the phrase "broken windows" as a metaphor for disorderly conduct—an image of a street with buildings in disrepair, garbage strewn about, and general chaos and lawlessness everywhere.²⁴⁷ Disorderly conduct has been defined as "incivility, boorish, and threatening behavior that disturbs life, especially urban life."²⁴⁸ The broken windows theory

²³⁸ Herring, Dilara & Alatorre, *supra* note 216.

²³⁹ *Id.* at 5.

²⁴⁰ *See id.*

²⁴¹ *Id.*

²⁴² Herring, Dilara & Alatorre, *supra* note 216.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Bishop, *supra* note 226.

²⁴⁷ DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* 200 (Guilford Press Epub ed. 2012) [hereinafter *THE RIGHT TO THE CITY*].

²⁴⁸ *Id.* at 199 (quoting GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 14 (1996))

does not try to hide disdain for visible poverty. Rather, the theory itself clarifies that certain individuals are the benefactors of a lawful orderly society, while certain other individuals should be the subject of heavy policing and strict control.²⁴⁹

The citizen who fears...the importuning beggar is not merely expressing his distaste for unseemly behavior; he is also giving voice to a bit of folk wisdom that happens to be a correct generalization—namely, that serious crime flourishes in areas where disorderly behavior goes unchecked. **The unchecked panhandler is, in effect, the first broken window.** . . . If the neighborhood cannot keep a bothersome panhandler from annoying the passers-by, the thief may reason, it is even less likely to call the police to identify a potentially mugger or to interfere if a mugging takes place.²⁵⁰

The broken windows theory asserts that the “more people there are who are harming no identifiable person but merely engaging in what the authors declare to be ‘disorderly behavior,’ the more just is the engagement in an unjust act, for ‘disorderly behavior’ in and of itself poses a ‘grave threat . . . to our society.’”²⁵¹ The theory expressly encourages police to “push the homeless along” and out of public spaces.²⁵² Essentially, the theory is a “policy of ‘zero tolerance’ for behaviors and actions deemed disorderly or ‘worrisome’”—behaviors which, to a proponent of the theory, undeniably include conduct associated with homelessness.²⁵³

Move-along orders are the primary method officers use to enforce anti-begging ordinances.²⁵⁴ However, in the context of begging, an individual’s First Amendment rights are infringed upon when a police officer tells them to move-along. In *Colten v. Kentucky*, the Supreme Court affirmed a decision by the Kentucky Court of Appeals that found an individual guilty of disorderly conduct when a police officer asked the defendant to leave the scene, rejecting the defendant’s counter claim that his First Amendment rights were infringed upon.²⁵⁵ Specifically, the Court affirmed the lower court’s finding that the defendant “‘was not undertaking to exercise any constitutionally protected freedom.’ Rather, he ‘appears to have had no purpose other than to cause inconvenience and annoyance. So the statute as applied

²⁴⁹ *Id.* at 200.

²⁵⁰ *Id.* (alteration in original) (quoting George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>).

²⁵¹ *Id.* at 201 (alteration in original) (quoting GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 7 (1996))

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Colten v. Kentucky*, 407 U.S. 104, 104 (1972).

here did not chill or stifle the exercise of any constitutional right.”²⁵⁶ Scholars have interpreted *Colten* to mean that “a person who congregates with others with no bona fide intention to exercise a constitutional right . . . can be asked to move along.”²⁵⁷

But courts have routinely rejected enforcement policies that threaten to chill or otherwise infringe upon the exercise of constitutionally protected speech:

When a police officer tells an individual to “move along,” the request comes with an implicit threat that if the person does not leave the area, he or she will be given a citation or arrested. Although citations are used only for infractions for which punishment does not include the possibility of jail time, a person’s failure to pay or plead to a citation can result in a warrant for arrest. Thus, although being asked to move along may not seem to criminalize behavior, it is part and parcel of a system that threatens eventual arrest for prohibited conduct.²⁵⁸

Ultimately, the data—or lack of data—from Washington cities regarding enforcement of anti-begging ordinances leads to only one of two possible conclusions: either these ordinances are being enforced through informal means or they are wholly unnecessary. Because Washington’s cities have no mechanism for keeping track of move-along orders, there is no

²⁵⁶ *Id.* at 109 (1972) (quoting *Colten v. Commonwealth of Kentucky*, 467 S.W.2d 374, 378 (Ky. 1971)) (“[W]e perceive no justification for setting aside the conclusion of the state court that when arrested appellant was not engaged in activity protected by the First Amendment”). Note, that until 1976, the Court of Appeals of Kentucky was the State’s highest court.

²⁵⁷ Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 623 (1997).

²⁵⁸ Herring, Dilara & Alatorre, *supra* note 216.

way to understand the full extent to which these orders are given and how residents' lives are being affected.

But the generalized research on warnings and move-along orders establish that when they used to prevent someone from peacefully begging, they are unconstitutional and have a chilling effect on protected speech. Much like the futility of issuing civil penalties to those least able to pay them, issuing move-along orders to people experiencing homelessness merely compounds the suffering of our vulnerable neighbors.

2. Enforcement Data Retrieved from Lakewood and Marysville

Like all cities, move-along warnings likely buoy most enforcement efforts. But Marysville and Lakewood also formally cited individuals for violating specific begging laws in the past five years. The table below illustrates the number of citations given from January 1, 2013 to January 1, 2018. This citation data fails to capture the full extent of enforcement of anti-begging laws in Lakewood and Marysville since move-along warnings, due to their very nature, are pervasive penalties that escape the paper trail of official booking.

2013-2017 Citations in Lakewood & Marysville		
City	Ordinances	Total Citations
Lakewood	8.76.510: Solicitation 9A.05.050: Unlawful Solicitation 9A.04.020A: Restricted Areas 9A.04.010: Aggressive Begging	51 citations issued
Marysville	6.37.040: Coercive Solicitation 6.37.030: Aggressive Begging 6.37.047: Place of Solicitation	4 citations issued

Over a five-year period, Marysville issued only four citations. Lakewood issued fifty-one citations. Marysville's citations include two citations for *Aggressive Begging*, one citation for *Coercive Solicitation*, and one citation for *Place of Solicitation*. Curiously, in April 2018, the Marysville City Council amended the city's municipal code to eliminate "conflicting provisions."²⁵⁹ Prior to April 2018, section 6.37.030 of Marysville's Municipal Code was titled *Pedestrian Interference*, prohibiting intentionally obstructing pedestrian traffic or aggressively begging.²⁶⁰ Marysville amended that ordinance in 2018 under the new title *Aggressive Begging*. The amended ordinance prohibits aggressively begging only.²⁶¹ The City Council removed the

²⁵⁹ *Executive Summary for Action*, CITY OF MARYSVILLE (Apr. 9, 2018), <http://docs.marysvillewa.gov/htcomnet/Handlers/AnonymousDownload.ashx/Item+9.pdf?file=2a411b79>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

obstructing pedestrian traffic provision because that conduct was already “covered by other provisions in the code.”²⁶²

Still, Marysville’s *Aggressive Begging* ordinance now appears to directly overlap with its *Coercive Solicitation* Ordinance. The overlapping ordinances prohibit effectively the same behavior.

Marysville Overlapping Ordinances	
§ 6.37.030 Aggressive Begging ²⁶³	§ 6.37.040 Coercive Solicitation ²⁶⁴
“It is unlawful to aggressively beg .”	“It is unlawful for a person to make coercive solicitation .”
“‘Aggressively beg’ means to beg with the intent to intimidate or coerce another person...” ²⁶⁵	“‘Solicitation...is any means of asking, begging ...directed to another person, requesting an immediate donation of money...” ²⁶⁷
“‘ Beg ’ means to ask for money or goods as a charity.” ²⁶⁶	

Marysville’s two ordinances contain very similar language. Marysville’s municipal code defines “coerce” and “coercive” as (1) approaching, speaking, or gesturing to a person in a way that would cause a reasonable person to believe they were being threatened with a crime; (2) approaching within one foot of a person for the purpose of making a solicitation without first obtaining the person’s consent; (3) persisting in soliciting after being given a negative response; (4) blocking the passage of a person; (5) engaging in conduct that “would reasonably be construed as intended to compel or force a person being solicited to accede to demands”; or making false or misleading representations while soliciting.²⁶⁸ Both Marysville’s aggressive begging ordinance and coercive solicitation ordinance include the word “coerce” or “coercive” in their language, effectively prohibiting the exact same behavior but with two overlapping ordinances.

²⁶² *Id.*

²⁶³ Marysville MC § 6.37.030 (2012) (amended 2018).

²⁶⁴ Marysville MC § 6.37.040 (2012) (amended 2018).

²⁶⁵ Marysville MC § 6.37.020 (1997) (amended 2018).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Marysville MC § 6.37.020(2) (1997) (amended 2018).

Overlapping ordinances can present due process violations by opening the door to discriminatory enforcement.

Marysville's overlapping ordinances present due process issues. Marysville cited one individual in 2016 for coercive solicitation and two individuals in 2017 for aggressive begging.²⁶⁹ When these two ordinances prohibit the same behavior, how does an enforcing officer know which ordinance to cite one under? What was

the determinative factor that the officer used in deciding which ordinance to apply? According to Marysville's data, of those three charges, only one individual was found guilty of aggressive begging. The coercive solicitation citation was dismissed, and the other aggressive begging citation was "amended." The individual found guilty of aggressive begging was convicted of a misdemeanor, which will carry severe collateral consequences for him.²⁷⁰

Lakewood was the only other city that reported citations. Lakewood issued fifty-one citations for the five-year period from January 1, 2013, to January 1, 2017. This rate reflects a higher degree of enforcement when compared to the other cities surveyed. Of those citations issued, eleven citations were for *Aggressive Begging* under section 9A.04.010 of Lakewood's Municipal Code, and forty were for begging in a *Restricted Area* under section 9A.04.020A. Zero citations were issued for sections 8.76.510 *Solicitation* and 9A.05.050 *Unlawful Solicitation*. Lakewood issued no citations in 2017.

Lakewood's lack of formal enforcement after 2016 suggests the impact of the Washington Supreme Court decision in *City of Lakewood v. Willis*, which held provisions of Lakewood's *Restricted Areas* ordinance unconstitutional.²⁷¹ Still, the decline in formal citations does not mean Lakewood is no longer enforcing these begging restrictions. As previously explained, police commonly use the invisible enforcement mechanism of move-along orders to achieve the same outcome.

The graph below depicts the total number of anti-begging citations Lakewood issued between 2013 and 2017 and the number of citations issued for each ordinance. The data shows a spike in the number of citations issued in 2014. Lakewood issued twenty-five citations in 2014 alone, accounting for nearly half of all citations issued throughout the four-year period.

²⁶⁹ Data on file with author.

²⁷⁰ Marysville MC §§ 6.37.050 (2012) ("Aggressive begging is a misdemeanor. Coercive solicitation is a misdemeanor. Any person violating this chapter shall be punished by a fine not to exceed \$1,000 or by imprisonment and jail for not more than 90 days or by both such fine and imprisonment."); see also *infra* Part III.

²⁷¹ *City of Lakewood v. Willis*, 375 P.3d 1056, 1064 (Wash. 2016).

This data may suggest that, as poverty became more visible in 2014, the city responded with greater enforcement of its begging restrictions. Pierce County, where Lakewood is located, had the highest number of unhoused individuals in 2014, totaling 1474 individuals.²⁷² In 2013, the county had 1303 unhoused individuals,²⁷³ and in 2015, 1283 individuals were considered unhoused.²⁷⁴ So 2014 represented a spike in Pierce County's homeless population and in Lakewood's enforcement of its begging restrictions.

Prior to 2017, Lakewood's enforcement focused primarily on begging in "restricted areas." As illustrated below, citations for begging in restricted areas account for 78% of the issued citations throughout the four-year period, while aggressive begging citations account for 22% of the issued citations:

²⁷² WASH. DEP'T OF COMM., 2014 POINT IN TIME COUNT (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2014.pdf>. Note, this number includes families; however, each member of the family is counted as a single individual.

²⁷³ WASH. DEP'T OF COMM., 2016 POINT IN TIME COUNT (2016), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2013.pdf>.

²⁷⁴ WASH. DEP'T OF COMM., 2015 POINT IN TIME COUNT (2015), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2015.pdf>.

Notably, it was such a "restricted area" anti-begging ordinance that the Washington State Supreme Court held to be unconstitutional in 2016. Lakewood's data does not indicate which provisions of the ordinance applied to citations under during its four-year time period; yet it is quite possible that some people cited under this ordinance were engaged in the very same conduct that the Court held to be constitutionally protected in *Willis*.

Another key finding from Lakewood's data is that most anti-begging citations were dismissed. Specifically, eighteen of the citations were dismissed without prejudice and sixteen were dismissed with prejudice. When a case is dismissed with prejudice, the city is barred from raising the issue again in another lawsuit.²⁷⁵ When a case is dismissed without prejudice, the city can bring another lawsuit against the individual based on the same incident.²⁷⁶ While the dismissal of these citations ultimately means those individuals will not incur criminal record for the alleged violation, the experience of being cited or arrested for engaging in constitutionally protected behavior is still traumatic and carries serious collateral consequences.

Fifteen of Lakewood's fifty-one citations resulted in a finding of guilt. Two of the citations were categorized as "Guilty Other Deferral Revoked," which Lakewood explained "refers to revoked status or violation of a previous deferral or stipulated order of continuance."²⁷⁷ For the two citations labeled "guilty other deferral revoked," the individual was found guilty after violating a previous agreement to defer any sentencing or decision on

²⁷⁵ *Glossary of Terms*, WASH. COURTS (2018), https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.termguide#D.

²⁷⁶ *Id.*

²⁷⁷ Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Apr. 23, 2018 15:29 PST) (on file with author).

the merits of the case.²⁷⁸ It is unclear whether those previous agreements also involved the curtailment of any First Amendment rights. The graph below displays the variations in ultimate disposition of each citation:

While guilty sentences were relatively few, the penalties for those few defendants were disturbingly severe. Both Lakewood's aggressive begging ordinance and its restricted area ordinance results in a misdemeanor if violated.²⁷⁹ The penalties ranged from ninety-day jail sentences, with portions of those sentences suspended, and fines ranging from \$0 to \$500. The table below depicts the penalties for the five individuals found guilty aggressive begging in Lakewood:

Aggressive Begging-Penalties					
	Year	Sex	Race	Jail Sentence	Fine
Defendant 1	2013	Male	White	90 days suspended	\$0
Defendant 2	2014	Female	White	90 days suspended	\$0
Defendant 4	2014	Female	White	90 days, 89 suspended	\$300
Defendant 3	2014	Male	Black	90 days, 88 suspended	\$500
Defendant 5	2016	Female	Black	90 days, 87 suspended	\$0

In contrast, the following table describes the penalties for the ten citations issued to individuals found guilty of begging in restricted areas in Lakewood:

²⁷⁸ *See id.*

²⁷⁹ Lakewood MC § 9A.04.030 (2010) ("Violation of this section shall be a misdemeanor, punishable by a fine up to \$1000 or by a jail sentence of up to 90 days, or by both such fine and jail time.").

Begging in Restricted Areas- Penalties					
	Year	Sex	Race	Jail Sentence	Fine
Defendant 1	2013	Male	White	90 days suspended	\$0
Defendant 2	2014	Male	White	90 days, 85 suspended	\$500
Defendant 3	2014	Male	White	90 days, 88 suspended	\$500
Defendant 4	2014	Male	White	90 days, 80 suspended	\$500
Defendant 5	2014	Female	White	90 days, 80 suspended	\$0
Defendant 6	2014	Female	White	90 days, 80 suspended	\$500
Defendant 7	2014	Male	White	90 days suspended	\$500
Defendant 8	2014	Female	White	90 days suspended	\$0
Defendant 9	2014	Male	White	90 days suspended	\$0
Defendant 10	2015	Male	White	90 days, 87 suspended	\$300

Interestingly, in Lakewood, begging in restricted areas appears to be penalized more severely than aggressive begging. The average jail time served for aggressive begging was 1.2 days, with a range from one to three days served and the rest of the sentence suspended. In contrast, the average time served for violations of begging in restricted areas was four days, with a range from two to ten days served. An individual found guilty of aggressive begging was 40% likely to receive a fine ranging from \$300-\$500; however, an individual found guilty of begging in a restricted area was 60% likely to receive a fine ranging from \$300-\$500. Notably, an individual found guilty of begging in a restricted area had a 50% chance of receiving a \$500 fine.

Men are 75% more likely to be cited for violating anti-begging ordinances in Lakewood than women.

Demographically, men are 75% more likely to be cited for violating anti-begging ordinances than women in Lakewood. Specifically, thirty-eight of the citations were issued to males, while thirteen were issued to females. Interestingly, in 2017, 39% of unhoused individuals counted in Pierce County identified as female and 57% identified as male.²⁸⁰ If

Pierce County's demographics represent the unhoused population in Lakewood,²⁸¹ this data suggests that men are disproportionately cited for violating anti-begging restrictions. Specifically, males account for 18% more of the unhoused population than do females, but men are 75% more likely to be cited for violating Lakewood's anti-begging ordinances.

In fact, the data reveals that one white male²⁸² in particular received numerous citations—eleven in total—accounting for 22% of all citations issued in Lakewood (ten citations

²⁸⁰ PIERCE CTY, WASH., *2017 Point-in-Time Count Results* (Jan. 27, 2017), <http://www.co.pierce.wa.us/DocumentCenter/View/58186>.

²⁸¹ Lakewood is located within Pierce County.

²⁸² This assertion assumes that, based on the data provided by Lakewood, it is the same individual because the citation data showed that single individual with the exact same name and demographics was cited repeatedly over the four years.

for begging in restricted areas, and one for aggressive begging). He was cited twice in 2013, six times in 2014, and three times in 2015. Out of these citations, he was found guilty of begging in restricted areas five times (the aggressive begging citation was dismissed without prejudice), and the other begging in restricted areas citations were dismissed. The penalties for his citations were markedly severe: he was charged \$1500 in fines (three separate \$500 fines) and was sentenced to 90 days jail for each citation, totaling a cumulative of 450 days. He served twenty-five days in jail, receiving suspended sentences on the rest. This individual now has a lengthy criminal record for exercising his First Amendment right to ask for help.²⁸³ Because these are criminal charges, the impact of his record will follow him throughout his life.

Lakewood's data suggests the danger of using anti-begging ordinances to respond to visible poverty. Prior to the Supreme Court's ruling in 2016, Lakewood aggressively enforced its ordinances to deter and punish the free exercise of speech. Violators pay a heavy price for their refusal to be silenced. Many other cities throughout Washington may have taken—or are taking—the same stance. But Lakewood demonstrates the futility of punishing peaceful begging and its costly impact on both the City and its residents.

PART III: BE SILENT: WASHINGTON'S RESTRICTIONS ON BEGGING

Nearly one-third of surveyed Washington cities have enacted laws prohibiting begging without a permit either in public parks²⁸⁴ or throughout the entire city.²⁸⁵

Cities demonstrate considerable creativity in finding ways to restrict begging, but their efforts generally fall within these four categories: (1) restrictions on *who* can beg through permitting requirements; (2) prohibitions on *when* individuals can beg through time restrictions; (3) prohibitions on *where* individuals can beg through distance and place restrictions; and (4) prohibitions on *how* individuals can beg through aggressive panhandling. In each category, several laws stand out as particularly concerning examples of criminalization.

²⁸³ HRAP was unable to obtain specific data surrounding this individual's citation history due to time constraints. Specifically, it is unknown what exact provisions of Lakewood MC § 9A.04.020A the individual was cited under.

²⁸⁴ See Battle Ground MC § 8.18.040(B)(2)(h) (1999); Burien MC § 7.30.310 (2007); Des Moines MC § 19.08.030(6) (1988); Longview MC § 13.01.210 (2009); Kirkland MC § 11.80.090 (2011); Mercer Island MC § 9.30.090 (1991); Puyallup MC § 9.20.015(7) (2005); Sammamish MC § 7.12.610 (2014); Spokane Valley MC § 6.05.090(L) (2003).

²⁸⁵ See Auburn MC § 9.18.050 (2002); Bellingham MC § 6.18.050 (1980); Lakewood MC § 9A.05.050 (2010); Mukilteo MC § 5.04.120(A) (1995).

A. Restrictions on Who Can Beg: Permitting Requirements

*It has long been held that streets and parks are traditional public fora, appropriately used for the purposes of peaceful assembly, whereupon public discourse and the exchange of ideas may take place.*²⁸⁶

Permitting requirements are the most common method of restricting *who* may solicit, whether they do so for organized causes or for individual charity. Nearly one-third of surveyed Washington cities have enacted laws prohibiting begging without a permit either in public parks²⁸⁷ or throughout the entire city.²⁸⁸ Obtaining a permit can be difficult, if not impossible, for someone experiencing homelessness as it usually involves a complex administrative process. This process often requires the applicant to provide an address, telephone number, other personal information, and a monetary fee that an individual experiencing homelessness might not be able to afford.²⁸⁹

Functionally, permitting requirements can constitute a *de facto* prohibition on begging. At the least, these restrictions have the potential to chill constitutionally protected speech by punishing individuals for failing to plan ahead by obtaining a permit prior to exercising their First Amendment right to ask for help. Some cities allow individuals caught while begging without a permit to face a combination of criminal, civil, and injunctive punishments for the same violation.²⁹⁰ Due to their potential to chill constitutionally protected speech, permitting laws have been successfully challenged in court.²⁹¹ Preventing individuals from engaging in protected speech creates a prior restraint, and there is a strong presumption against the constitutionality of any such restraint.²⁹² As shown in the following examples, the permitting schemes utilized throughout Washington can severely restrict an individual's ability to exercise free speech.

²⁸⁶ *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939); *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 817 (1985).

²⁸⁷ See Battle Ground MC § 8.18.040(B)(2)(h) (1999); Burien MC § 7.30.310 (2007); Des Moines MC § 19.08.030(6) (1988); Longview MC § 13.01.210 (2009); Kirkland MC § 11.80.090 (2011); Mercer Island MC § 9.30.090 (1991); Puyallup MC § 9.20.015(7) (2005); Sammamish MC § 7.12.610 (2014); Spokane Valley MC § 6.05.090(L) (2003).

²⁸⁸ See Auburn MC § 9.18.050 (2002); Bellingham MC § 6.18.050 (1980); Lakewood MC § 9A.05.050 (2010); Kenmore MC § 5.70.020 (1998); Mukilteo MC § 5.04.120(A) (1995); Redmond MC § 5.08.030(A) (1926); Spokane MC § 10.42.030 (2007).

²⁸⁹ *E.g.*, Burien MC § 5.10.080 (2002).

²⁹¹ See *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 (1988) (recognizing "that when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license")

²⁹² See *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 129–30 (1992).

1. Citywide Permitting Requirements: Lakewood

The city of Lakewood criminalizes begging through several ordinances, one of which requires solicitors to register with the city's finance department ten days prior to soliciting within the city.²⁹³ The ordinance defines "solicitation" as a "request for contribution, including . . . any appeal . . . *made for a charitable purpose.*"²⁹⁴ Further, the ordinance exempts "[a]ny organizations which are...operated principally for charitable purposes, other than the raising of funds, when the solicitation of contributions is confined to the bona fide membership of the organization...."²⁹⁵ This law appears to apply to panhandling as it includes any person "having or purporting to have a charitable nature and [who] solicits and collects contributions for any charitable purpose."²⁹⁶ Those registering must provide their contact information, purpose of solicitation, and dates of solicitation.²⁹⁷ They also must pay a \$10 permit fee.²⁹⁸ As expected, soliciting without registering is prohibited.²⁹⁹

Notably, all individuals soliciting must "provide personal identification of himself or herself upon demand by any law enforcement officer, and, upon demand, provide and exhibit a solicitor's permit" from the city.³⁰⁰ In effect, this provision allows Lakewood police officers to interrupt and briefly seize any panhandler to demand to see their identification and permit. However, losing and replacing identification is a common struggle for people experiencing homelessness.³⁰¹ Any violation of these permitting ordinances results in a misdemeanor.³⁰²

Lakewood's registration requirement is subject to a constitutional challenge because it targets a protected speech activity (charitable solicitation) for additional regulation not faced

²⁹³ Lakewood MC § 9A.05.030 (2010). Further, the registration is only valid for 90 days.

²⁹⁴ Lakewood MC § 9A.05.010(D) (2010) (emphasis added). The statute further defines solicitation to also include "the solicitor's offer or attempt to sell any . . . thing in connection with which: (1) any appeal is made for a charitable purpose; or (2) the name of any charitable purpose is used as an inducement for consummating the sale."

²⁹⁵ Lakewood MC § 9A.05.020 (2010).

²⁹⁶ Lakewood MC § 9A.05.010(A) (2010).

²⁹⁷ Lakewood MC § 9A.05.030 (2010).

²⁹⁸ Lakewood MC § 9A.05.040 (2010).

²⁹⁹ Lakewood MC § 9A.05.050(A) (2010).

³⁰⁰ Lakewood MC § 9A.05.060 (2010).

³⁰¹ Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle*, PEW CHARITABLE TRUSTS (May 15, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle>. Irreparable harm results from city-sanctioned encampment sweeps, including "harm to homeless people's security and dignity." For example, people experiencing homelessness "lose medicine and health supplies; tents and bedding that shelter them from the elements; clothing and hygiene supplies; identification documents and other personal papers; the tools by which they try to make a meager income; and items of immeasurable sentimental value." Without important identification documents, medication, clothing, and hygiene supplies, people experiencing homelessness are further hindered from finding and maintaining adequate employment. *Kincaid v. City of Fresno*, No. 106CV-1445, 2006 WL 3542732, at *40 (E.D. Cal. Dec. 8, 2006).

³⁰² Lakewood MC § 9A.01.010(M) (2010).

by other speakers.³⁰³ A law enforcement officer would not know whether they have authority to stop a speaker and ask to see a permit without first examining the content of the speech to determine if it is a “charitable solicitation.”³⁰⁴ Similarly, the Washington Supreme Court found another Lakewood ordinance content-based because it did “not prohibit solicitation generally (it allows, for example, the solicitation of votes or customers), but only solicitation with the particular purpose: obtaining ‘money or goods as charity.’”³⁰⁵ Because Lakewood’s ordinance is content-based, it is therefore subject to strict scrutiny.³⁰⁶ Upon judicial review, Lakewood would have to show that the permitting laws are the least restrictive means of achieving a compelling state interest.³⁰⁷

Whether Lakewood’s ordinance would survive judicial scrutiny depends on the compelling interest that motivated the statute. Although not required, the ordinance contains no statement of purpose or any compelling government motive behind the registration requirement. If the compelling interest behind Lakewood’s statute is the success of its business or tourism industry, courts have previously rejected such an interest, and the statute would fail to survive strict scrutiny.³⁰⁸ If the compelling interest behind Lakewood’s statute is public health or public safety, the city must present meaningful evidence-based data that the law is narrowly tailored to meet that interest.³⁰⁹

However, the ordinance is unlikely to survive this heightened scrutiny because it criminalizes all charitable solicitation without connection to harmful conduct. The statute is a broad-based, rather than a narrowly tailored, prohibition on charitable solicitation.

Lakewood’s ordinance is unlikely to survive judicial scrutiny because it criminalizes all charitable solicitation without connection to harmful conduct.

The registration requirements do not give panhandlers a chance to communicate their message without first registering with the city, and therefore, the law is more restrictive than necessary.³¹⁰ Lakewood’s law effectively criminalizes the act of asking for help absent registration with the city.³¹¹ It is difficult to see how prohibiting all begging without a permit is “narrowly drawn” to achieve a “compelling state interest,” as this method of regulating begging fails to differentiate between peaceful

³⁰³ Under Lakewood MC § 9A.05.020, organizations “which are organized and operated principally for charitable purposes, other than raising funds, when the solicitation of contributions is confined to the bona fide membership of the organization and when the solicitation is managed and conducted solely by officers and members of such organizations who are unpaid for services” are exempt from these registration requirements.

³⁰⁴ *McLaughlin*, 140 F. Supp. 3d at 186 (citing *McCullen v. Coakley*, 134 S. Ct. 2518, 2531 (2014)).

³⁰⁵ *Lakewood v. Willis*, 375 P.3d 1056, 1063 (Wash. 2016).

³⁰⁶ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015).

³⁰⁷ *Id.*

³⁰⁸ *See, e.g., McLaughlin*, 140 F. Supp. 3d at 189.

³⁰⁹ *Id.* at 187.

³¹⁰ *See id.* at 177 (finding that a statute allowing panhandlers only one chance to convey their message, “without following or following-up, is more restrictive than necessary”).

³¹¹ Telephone Interview Jason McGill, YouthCare Engagement Manager (Oct. 10, 2017).

begging representing an individual's exercise of free speech in a classic public forum and begging that is truly in the government's interest to prevent.³¹² By any measure, Lakewood's registration requirement is likely unconstitutional.

Setting aside the legal infirmities, Lakewood's ordinance poses significant practical barriers to people experiencing homelessness. The permitting process is not suited to applicants needing to solicit immediate donations, and the application requirements such as providing an address, phone number, and application fee may not be feasible for homeless individuals.³¹³ In addition, the limited nature of many cities' permits (e.g., valid for 90 days)³¹⁴ means an individual would endure a reoccurring administrative grind just to ask for the help they need.

2. Permitting Requirements in Public "Parks"

Many Washington cities prohibit all begging within public parks without a permit or similar authorization from the city.³¹⁵ The definition of "park," when it is explicitly defined, commonly includes "all public parks" but also includes other public areas of the city that are not obviously parks, such as "playgrounds . . . sidewalks and parking lots."³¹⁶ These permitting requirements effectively operate to restrict begging throughout large portions of public space.

Public parks are imperative to individuals experiencing homelessness because the parks often take on aspects of the home.³¹⁷ Individuals experiencing homelessness rarely, if ever, have access to private spaces in which they can perform basic life sustaining activities such as sleeping and bathing. Not surprisingly, people experiencing homelessness are therefore forced

³¹² *Perry Educ. Ass'n v. Perry Local Educ.' Ass'n*, 460 U.S. 37, 45 (1983).

³¹³ So, Scott, Olson & Mansell, *supra* note 47, at 35 (explaining that the realities of homeless mobility make providing a permanent address impractical, if not impossible). Even if food banks, shelters, and other service offices were used as a permanent address, people experiencing homelessness would not likely receive the actual notice due to the realities of homeless mobility.

³¹⁴ Lakewood MC § 9A.05.030(A) (2010).

³¹⁵ Battle Ground MC § 8.18.040 (1999); Burien MC § 7.30.310 (2007); Des Moines MC § 19.08.030(6) (1988); Monroe MC § 9.28.100 (1990); Mukilteo MC § 9.60.090 (2009); Redmond § 9.32.100 (1982); Sammamish MC § 7.12.610 (2014); Spokane MC § 10.10.40 (2007); Spokane Valley MC § 6.05.090(L) (2003); Sunnyside MC § 12.04.020(E) (1956).

³¹⁶ Battle Ground MC § 8.18.020 (1999); *see also* Longview MC § 13.01.005(1)(f) (1989) (defining "park" as "all public parks, public squares, golf courses, bathing beaches, and play and recreation grounds within the city limits"); Puyallup MC § 9.20.005(8) (2005) (defining "park" as "an area under the ownership, management, or control of the city used for public recreation, leisure, and park purposes"); Spokane Valley MC § 6.05.010 (2003) (defining "facility" as "any building . . . shelter . . . or other physical property including but not limited to . . . lawns, play equipment, tables, picnic areas, athletic fields, trails, or parking and pedestrian areas (including curbs, sidewalks and driveways or internal roads)"); Sammamish MC § 7.12.010(10) (defining "facility" as "any building, structure, or park area operated by the City . . . department of parks and recreation").

³¹⁷ Don Mitchell, *The End of Public Space? People's Park, Definitions of the Public, and Democracy*, 85 ANNALS ASS'N AM. GEOGRAPHERS 108, 118 (1995) [hereinafter Mitchell 1995], <http://sites.middlebury.edu/jgst404/files/2014/01/Mitchell-End-of-Public-Space.pdf>.

to do these activities in public space.³¹⁸ When cities place restrictions on begging within public parks, the possible areas of reprieve for the city's most vulnerable population grows smaller and smaller. Despite the popularity of begging restrictions in parks, the U.S. Supreme Court has long held that parks are "quintessential public fora," where the "government's power to regulate speech is most constrained."³¹⁹ In such a public forum, governments may enact only limited regulations on speech.³²⁰ Park permitting requirements too often cross the line into impermissible content-based restrictions, resulting in the suffocation of speech in public fora.

For example, Des Moines' park use regulations, enacted in 1988 and most recently updated in 2017, prohibits begging in all city parks.³²¹ The ordinance reads, "No person shall take up collections, *or* act as or play the vocation of solicitor [or] beggar . . . without first obtaining a written permit from the Department."³²²

³¹⁸ *Id.*

³¹⁹ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 185 (2015).

³²⁰ *Perry Educ. Ass'n v. Perry Local Educ's Ass'n*, 460 U.S. 37, 45 (1983).

³²¹ Des Moines MC § 19.08.030(7) (1988).

³²² Des Moines MC § 19.08.030(6) (1988).

³²³ *City of Lakewood v. Willis*, 186 P.3d 1056 (2016). In *Willis*, the court considered a ban on begging at freeway ramps and major intersections and held that the ban was facially overbroad and "imposed a content-based restriction in a substantial number of traditional public forums."

³²⁴ *Id.*

The restriction is not likely to withstand judicial scrutiny. Just as with general permitting ordinances described above, park permitting requirements are a content-based restriction on protected speech. Not only does Des Moines' prohibit the actual act of begging, it prohibits acting or playing the role of a "beggar." An enforcing officer would have to listen to the content of the message being communicated to determine whether an individual violated Des Moines' permitting ordinance.

Des Moines' ordinance is unlikely to survive judicial scrutiny because the city is unlikely to produce meaningful evidence-based data to support its asserted compelling interest of public safety; alternatively, the ordinance is likely to be found overbroad for prohibiting substantial speech within a traditional public forum.

However, even if Des Moines' ordinance is a content-neutral law, it is unlikely to even withstand intermediate scrutiny. In Washington, cities must show a compelling state interest for their content-neutral laws to withstand intermediate scrutiny.³²⁵ With Des Moines' park permitting ordinance, the city has stated that the law was enacted to further the "best interest of the public health, safety, and general welfare."³²⁶ While public safety is a compelling interest, there is no connection between protected peaceful

begging and any safety risk. Unless Des Moines can produce meaningful evidence-based data to support its assertion that the permitting ordinance is necessary for public health, safety, and general welfare, the ordinance is likely to be deemed unconstitutional.

Des Moines' ordinance prohibits substantial speech within a traditional public forum. Regardless of whether Des Moines' ordinance is categorized as content-based or content-neutral, the city would be unlikely to win a constitutional challenge to the ordinance because it is likely to be found overbroad for prohibiting substantial speech within a traditional public forum.

B. Restrictions on When Individuals Can Beg: Time Restrictions

Another common way to curb begging is to restrict *when* begging may be performed.³²⁷ Frequently, Washington cities designate a broad period of time when individuals may not beg.

³²⁵ The Washington Supreme Court has raised the standard for content-neutral laws based on the State constitution. *Collier v. City of Tacoma*, 854 P.2d 1046, 1051(1993) (holding "[w]e diverge from the Supreme Court on the state interest element of the time, place, and manner test, 'as we believe restrictions on speech can be imposed consistent with [the State constitution] only upon a showing a compelling state interest.'").

³²⁶ Des Moines, Wash., Ordinance 1675 (Mar. 28, 2017), <http://www.desmoineswa.gov/ArchiveCenter/ViewFile/Item/1561>.

³²⁷ See, e.g., Auburn MC § 9.18.050 (2002); Issaquah § 9.45.040 (2008); Lakewood MC § 9A.05.050 (2010); Lakewood MC § 5.56.060 (1998); Marysville MC § 6.37.045 (2014); Monroe MC § 9.35.040(A) (2008); Mukilteo MC § 9.54.040 (1977); Mukilteo MC § 5.04.120(D) (1995); Sunnyside MC § 9.86.050(E) (1978); Tacoma MC § 8.13A.030(b) (2007).

For example, one law prohibited begging “on public property or in the residential area of the city between the hours of 9:00 p.m. and 7:00 a.m.”³²⁸ Another law covered more than half the day, prohibiting begging within the city between the hours of 6:00 p.m. and 9:00 a.m.³²⁹ Other cities simply prohibit begging on public property “after sunset or before sunrise.”³³⁰

Issaquah’s *Regulation of Solicitation* ordinance, which includes a blanket prohibition on begging after sunset, is one example of a common time restriction.³³² Specifically, the ordinance states it is “unlawful to make solicitation to pedestrians on public property after sunset or before sunrise.”³³³ Solicitation is defined as “any means of asking, begging, requesting, or pleading made in person, orally or in a written or printed manner, directed to another person, requesting an immediate donation of money”³³⁴

Blanket prohibitions on begging after dark are overbroad and not the least restrictive means of keeping the public safe.³³¹

Issaquah’s ordinance is a content-based restriction on speech. The law does not prohibit all communications after sunset; rather, it prohibits sharing a very specific message—requests for immediate donations of money. The law further applies to all areas of public property, which unequivocally qualifies as a public forum. Accordingly, to survive judicial scrutiny, the law must be necessary to serve a compelling state interest and be narrowly tailored to achieve that end.³³⁵ Like many of the surveyed cities, Issaquah’s anti-begging ordinance purports to serve a compelling public safety interest.³³⁶ Specifically, the ordinance aims “to regulate and punish acts of coercive and aggressive begging, and acts of begging that occur at locations or under circumstances . . . which create an enhanced sense of fear or intimidation in the person being solicited, or pose risk to traffic and public safety.”³³⁷ In essence, the city argues that every request for help made after sunset is inherently and unavoidably aggressive or coercive, a stunning claim for which the city can likely provide no scientific support.

Courts have long held that time-based prohibitions on begging are unconstitutional when the city cannot cite meaningful evidence establishing that blanket prohibitions on panhandling at night are necessary to advance public safety.³³⁸ Although Issaquah has a

³²⁸ See Auburn MC § 9.18.050(E) (2002); Sunnyside MC § 9.86.050(E) (1978).

³²⁹ See, e.g., Mukilteo MC § 9.54.040 (1977).

³³⁰ See, e.g., Centralia MC § 10.37.040 (2014); Issaquah MC § 9.45.040 (2008); Marysville MC § 6.37.045 (2014); Monroe MC § 9.35.040 (2008); Tacoma 13.A.030(A)(2)(b) (2007).

³³¹ *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292 (D. Colo. 2015).

³³² Issaquah MC § 9.45.040 (2008).

³³³ *Id.*

³³⁴ Issaquah MC § 9.45.020(B) (2008) (emphasis added).

³³⁵ *Perry Educ. Ass’n v. Perry Local Educ.’s Ass’n*, 460 U.S. 37, 45 (1983).

³³⁶ Issaquah MC § 9.45.010 (2008).

³³⁷ *Id.*

³³⁸ *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 235 (D. Mass. 2015).

significant interest in promoting safety in its public areas after dark, a court would likely find Issaquah's content-based prohibition against begging between sunset and sunrise not narrowly tailored to achieve that purpose.³³⁹ The time restriction prohibits "any means of . . . begging. . . orally. . . or written" or "requests for items of service of value after dark."³⁴⁰ The ordinance is unconstitutionally overbroad because it encompasses peaceful begging that does not threaten public safety without leaving alternate means of communication.³⁴¹

Issaquah's ordinance is unlikely to survive judicial scrutiny because it unconstitutionally overbroad.

Courts have considered and dismissed laws that make no distinction between harmful conduct and innocent behavior.³⁴² Courts have also dismissed overbroad laws that prohibit protected speech that does not threaten safety.³⁴³ Because "[t]here is no indication that panhandling at night . . . is inherently dangerous or threatening to the public," a blanket prohibition on begging after dark is overbroad and is not the least restrictive means of keeping the public safe.³⁴⁴ The law does not mention particular conduct, instead presupposing that all requests for help after sunset inherently and incurably create an enhanced sense of fear or intimidation. The ordinance also excludes all forms of begging, including written requests for aid.³⁴⁵ Between sunset and sunrise, a person who passively holds a sign asking for aid risks a criminal record, severe fines, and jail time.³⁴⁶

Laws that prohibit begging between sunset and sunrise are subject to vagueness challenges. Because these laws regulate expression protected by the First Amendment, there is a "heightened requirement for specificity."³⁴⁷ Without designating a specific time, a "person

³³⁹ See *id.*; *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292–93 (D. Colo. 2015) (The court found that an ordinance that made it unlawful for any person to panhandle "[o]ne-half (1/2) hour after sunset to one-half (1/2) hour before sunrise" was not narrowly tailored to serve the city's valid interest of public safety; the ordinance was over-inclusive because it prohibited protected speech that posed no threat to public safety).

³⁴⁰ Issaquah MC § 9.45.020(B) (2008).

³⁴¹ *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 235 (D. Mass. 2015) (holding that a blanket prohibition on soliciting from 30 minutes after sunset to 30 minutes after sunrise unconstitutionally overbroad).

³⁴² See *id.* at 1292–93 (emphasizing that a prohibition on begging at night was "over-inclusive" because it prohibited "protected speech that poses no threat to public safety"); *City of Seattle v. Pullman*, 514 P.2d 1059, 1061 (Wash. 1973) (overturning Seattle's curfew ordinance as an unconstitutional exercise of the city's police power because it made "no distinction between conduct calculated to harm" and "innocent behavior").

³⁴³ See *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292–93 (D. Colo. 2015) (emphasizing that a prohibition on begging at night was "over-inclusive" because it prohibited "protected speech that poses no threat to public safety"); *City of Seattle v. Pullman*, 514 P.2d 1059, 1061 (Wash. 1973) (overturning Seattle's curfew ordinance as an unconstitutional exercise of the city's police power because it made "no distinction between conduct calculated to harm" and "innocent behavior").

³⁴⁴ *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1292 (D. Colo. 2015).

³⁴⁵ Issaquah MC § 9.45.020(B) (2008).

³⁴⁶ See Issaquah § MC 9.45.060 (2008).

³⁴⁷ *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (demanding a greater degree of specificity when "a statute's literal scope . . . is capable of reaching expression sheltered by the First Amendment").

of ordinary intelligence” might not know at what exact time begging is prohibited.³⁴⁸ “The hour of ‘sun set’ on any given day, as it might appear to different persons, could hardly be expected to be accurately observed. . . . One person might conclude the sun had set, and another might not think so.”³⁴⁹ This lack of clarity raises possible violations of due process because of the possibility of both discriminatory enforcement and lack of notice of the law.³⁵⁰

Finally, many individuals are heading to work before 9:00 a.m. and leaving work between the hours of 4:00 p.m. and 8:00 p.m. Time restrictions that prohibit begging during such periods of high foot traffic effectively prohibit begging when it is most likely to occur; these busy hours are the time when people are most likely to receive help when they ask.

C. Restrictions on Where Individuals Can Beg: Place and Distance Restrictions

*[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.*³⁵¹

Besides restricting *when* individuals can beg, many cities go to great lengths to control *where* individuals can beg by enacting place and distance restrictions.³⁵²

A few ordinances outright prohibit begging throughout the entire city limits.³⁵³ Cities with such laws justify targeting the free speech of poor individuals by suggesting that even

³⁴⁸ *People ex rel. Springfield, E. & S. R. Co. v. Bishop*, 111 Ill. 124, 135–36 (1884).

³⁴⁹ *Id.* at 135–36.

³⁵⁰ See *Mass. Fair Share, Inc. v. Rockland*, 610 F. Supp. 682, 690 (D. Mass. 1985) (concluding that the failure to define the term “sunset” and “daylight hours” in an ordinance raises the specters of both chilling effect and discriminatory enforcement); *West Virginia Citizens Action Grp. v. Daley*, 324 S.E.2d 713, 720–21 (1984) (concluding that the failure to define the term “sunset” in an ordinance rendered the ordinance unconstitutionally vague and that “[a] fine line drawn through dusk is too slender a thread upon which to hang the exercise of fundamental free speech rights”).

³⁵¹ *Schneider v. State*, 308 U.S. 147, 163 (1939).

³⁵² See, e.g., Auburn MC § 9.08.010(B)(6)(b) (2002); Bremerton MC § 9A.44.140(b) (2014); Centralia MC § 10.37.050(C) (2014); Covington MC § 9.190.040 (2010); Lacey MC § 5.21.30 (1998); Lakewood MC § 9A.05.050 (2010); Marysville MC § 6.37.047 (2014); Mountlake Terrace MC § 9.40.40 (2015); Pasco MC § 9.44.060 (2013); Redmond MC § 5.08.035 (1988); Spokane MC § 10.10.25(B) (2015); Spokane MC § 10.10.27 (2008); Sunnyside MC § 5.22.050 (2007); Sunnyside MC § 9A.86.050 (1978); Tacoma MC § 8.13A.030(A) (2007); Yakima MC § 6.75.025 (2013).

³⁵³ See *Maple Valley MC § 5.05.080(A)* (1999) (“No person shall solicit contributions for himself in or upon any public street or public place in the City of Maple Valley.”).

peaceful or silent requests for help pose a danger to the public simply because the request is made near a specific location.³⁵⁴ Laws that restrict individuals' access to public streets and sidewalks for speech defy the "hallowed . . . [F]irst [A]mendment doctrine," which protects the right to engage in speech in a traditional public forum.³⁵⁵ Much like public parks, traditional public fora include "streets, sidewalks, and roadways," and are "subject to the strictest free speech protections."³⁵⁶ As Justice Owen Roberts wrote:

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and . . . have been used for the purposes of . . . communicating thoughts between citizens Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.³⁵⁷

Cities can exclude a person from "a traditional public forum 'only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.'"³⁵⁸ Throughout Washington, courts closely scrutinize and often strike down laws that restrict substantial speech in traditional public fora.³⁵⁹ For example, in *City of Lakewood v. Willis*, the Washington Supreme Court recently found two provisions of Lakewood's "Begging in Restrictive Areas" ordinance unconstitutional because the provisions were facially overbroad "content-based speech restriction[s] in a substantial number of traditional public forums."³⁶⁰ Specifically, Lakewood's ordinance prohibited begging "(1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the city...."³⁶¹ The city defined begging as "asking for money or goods as charity, whether by words, bodily gestures, signs or other means."³⁶² The court began its analysis of the constitutionality of the provisions by analyzing the type of forum in which the laws operated.³⁶³ The court found that the ordinance

³⁵⁴ See, e.g., Auburn MC § 9.08.010(6)(b) (2002) (prohibiting begging from people in vehicles at intersections controlled by traffic signals); Sunnyside MC § 9.86.050(B) (1978) (prohibiting begging within 10 feet of any entrance or exit of any building in use by the public); Sunnyside MC § 9.86.050(A) (1978) (prohibiting begging in public streets or alleys); Tacoma MC § 8.13A.030(A)(1)(g) (2007) (prohibiting begging within 15 feet of any parked vehicle where people are entering or exiting the vehicle); Renton MC § 6.25.1(B) (1997) (stating that begging within 25 feet of an ATM machine is presumptively aggressive).

³⁵⁵ Anthony J. Rose, Note, *The Beggar's Free Speech Claim*, 65 IND. L.J. 191, 204 (1989).

³⁵⁶ *City of Lakewood v. Willis*, 186 P.3d 1056, 1059 (Wash. 2016).

³⁵⁷ *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939).

³⁵⁸ MICHAEL A. ZIZKA ET. AL., STATE & LOCAL LAND USE LIABILITY: § 17:13 USE OF PUBLIC LANDS (Dec. 2017) (citing *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998)).

³⁵⁹ See *City of Lakewood v. Willis*, 375 P.3d 1056, 1059 (Wash. 2016).

³⁶⁰ *Id.* at 1064.

³⁶¹ *Id.* at 1057–58.

³⁶² *Id.* at 1057.

³⁶³ *Id.* at 1064 (writing "[a] law restricting speech is subject to different levels of scrutiny, depending on the 'forum in which it operates. Thus, in a First Amendment challenge, we begin by identifying the forum at issue. A law restricting expression in a traditional public forum is subject to the highest level of scrutiny: it must be 'content

applied to locations that were “likely to have sidewalks, which are generally held to be traditional public for[as].”³⁶⁴ The court ultimately concluded that the provisions covered a substantial number of locations in traditional public fora because the provisions applied to every sidewalk at “on and off ramps leading to and from state intersections...” and “at intersections of major/principal arterials...in the city[.]”³⁶⁵ Next, the court stated that while cities can impose reasonable time, place, and manner restrictions, they cannot impose content-based restrictions on speech.³⁶⁶ After consulting the Supreme Court’s definition of content-based laws in *Reed*,³⁶⁷ the court concluded that Lakewood’s ordinance was content-based because it did not prohibit solicitation generally, but only prohibited solicitation with a particular purpose of obtaining money as charity.³⁶⁸ Lakewood’s provisions were found unconstitutional.³⁶⁹

A court would likely find a law prohibiting begging at expansive locations in traditional public fora as unconstitutionally overbroad.

The concurrence in *Willis* also acknowledged that the city’s other location-based ordinances were vulnerable to overbreadth challenges.³⁷⁰ A law is overbroad when it restricts substantially more speech than necessary to achieve a legitimate public interest.³⁷¹ Courts are concerned that laws prohibiting too many behaviors related to speech can “chill a substantial amount of activity protected by the First Amendment,”³⁷² particularly when the law “imposes criminal sanctions.”³⁷³ But this extensive, overbroad application is precisely that which is common in cities throughout

Washington.

Given Washington precedent, a court would likely find that prohibiting begging at such an expansive list of locations in traditional public fora (as seen in *City of Lakewood v. Willis*) is unconstitutionally overbroad. For example, laws that prohibit begging near bus stops or

neutral narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication.”) (internal citations omitted).

³⁶⁴ *Id.* at 1062 (the court stated that a sidewalk can be a nonpublic forum in some circumstances, but the city did not meet its burden of showing that the sidewalks existed to solely facilitate access to a private locations).

³⁶⁵ *Id.* at 1063.

³⁶⁶ *Id.*

³⁶⁷ “[A] law is content based if ‘on its face [it]...define[s] regulated speech by particular subject matter...[or] by its function or purpose.’” *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.* at 1064.

³⁷⁰ *Id.* at 1064 (Stephens, J., concurring) (“[e]xamining the entire ordinance under which the City charged *Willis*, I conclude that LMC 9A.04.020A is facially overbroad. While the ordinance might conceivably have legitimate applications in nonpublic areas, on its face, it substantially restricts protected speech in a wide range of public for[a] traditionally open to First Amendment activity. And, on its face, it targets a particular category of protected speech, making it an unconstitutional content-based restriction under...*Reed*[.]”) (internal citations omitted).

³⁷¹ *Speet v. Schuette*, 726 F.3d 867, 879 (6th Cir. 2013).

³⁷² *Id.* at 878.

³⁷³ *Id.* (quoting *Virginia v. Hicks*, 539 U.S. 113 (2003)); see also *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (finding laws that impose “criminal penalties on protected speech . . . a stark example of speech suppression”).

business entrances might still fail judicial scrutiny because bus stops and business entrances are themselves within the public fora. Although some city officials might bristle at such critical review of begging ordinances, the fact remains that local laws must conform to constitutional requirements that protect all residents, not just residents with stable housing.³⁷⁴

Once again, the City of Lakewood provides a specific example. In addition to the permitting requirements previously outlined, following *Lakewood v. Willis*, the city of Lakewood continues to restrict range of distance for solicitors. The city has two ordinances with specific distances restrictions on soliciting within the city.³⁷⁵ The ordinances and the specific restrictions are detailed in the table below.

Lakewood MC § 9A.05.050: Unlawful solicitations ³⁷⁶	Lakewood MC § 9A.04.020A: Restrictive Areas ³⁷⁷
Defines solicitation as “any oral or written request for a contribution...any appeal is made for any charitable purpose.”	Defines begging as “asking for money or goods or charity, whether by words, bodily gestures, <i>signs</i> or other means.”
Exempts “any organizations which are... operated principally for charitable purposes, other than the raising of funds, when the solicitation of contributions is confined to the bona fide membership of the organization. . .”	No exemptions.
Unlawful to solicit: <ul style="list-style-type: none"> • in public streets/alleys or to solicit anyone who is “in or upon” public streets/alleys; • within ten feet of any crosswalk or any entrance or exit of a building used by the general public; or • from any sidewalk within ten feet of its intersection with an alley or driveway. 	Unlawful to solicit: <ul style="list-style-type: none"> • within twenty-five feet of an ATM or financial institution; • within fifteen feet of any occupied “handicapped” parking space, bus stop, train station; or • in any public parking lot, structure, or walkway dedicated to such parking lot or structure; • before sunrise or after sunset at any public transportation facility or on any public transportation vehicle.

³⁷⁴ See Michael Simpson, *ACLU Raises Concerns with Lakewood’s Rewrite of Panhandling Law*, NEWS TRIBUNE (Feb. 23, 2017). After the Washington State Supreme Court’s ruling in *Willis*, Lakewood Mayor Don Anderson decried the Court’s “activist . . . attempts to legislate policy rather than interpret the law.” *Id.* Such a statement reveals a common misunderstanding by elected officials as to the constitutionally protected nature of begging as speech and the court’s role in enforcing those protections.

³⁷⁵ Lakewood MC § 9A.05.050 (2010) and MC § 9A.04.020A.

³⁷⁶ Lakewood MC § 9A.05.050 (2010).

³⁷⁷ Lakewood MC § 9A.04.020A.

First, Lakewood’s restrictions close off many downtown areas and access points that, besides being traditional public fora, are the most logical places to beg. Specifically, the ordinances impose restrictions on begging in public streets and alley or attempting to beg anyone in public streets or alleys;³⁷⁸ they prohibit begging from *any* sidewalk within ten feet of a public driveway or alley;³⁷⁹ and they prohibit begging within fifteen feet of any bus stop or train station.³⁸⁰

These restrictions are hardly intuitive; a person experiencing homelessness would have no reasonable way of knowing where they may ask for help or where they risk incurring a fine or incarceration. For example, the image below shows a satellite photo of a downtown area in Lakewood. Based on the ordinance, the image shows red boxes indicating peripheries within ten or fifteen feet of which an individual cannot beg. The blue lines enclose public streets that are also prohibited areas for begging. As illustrated below, when considering that Lakewood MC § 9A.04.020A also prohibits begging in any parking lot,³⁸¹ much of the geographic area within Lakewood becomes a “restricted area” where individuals cannot ask for help without risking criminal liability.

Second, Lakewood’s ordinances impose content-based restrictions on speech. Lakewood MC § 9A.05.050, while at first glance may appear to be content-neutral because it appears to impose restrictions on solicitation in general, the separate provisions of the ordinance work together to create a content-based restriction. Specifically, Lakewood MC

³⁷⁸ Lakewood MC § 9A.05.050 (2010).

³⁷⁹ *Id.*

³⁸⁰ Lakewood MC § 9A.04.020 (2011).

³⁸¹ *Id.*

§ 9A.05.050 defines solicitation as a request for a charitable purpose.³⁸² In analyzing whether Lakewood MC § 9A.05.050 imposes a content-based restriction on speech, one need only look as far as *Lakewood v. Willis*, where the court found that Lakewood's previous law was content-based because it did not prohibit solicitation generally, but only solicitation with a particular purpose of obtaining money as charity.³⁸³ Similarly, Lakewood MC § 9A.05.050 prohibits solicitations requested for *charitable purposes*, not solicitation generally.³⁸⁴

Third, even if both ordinances were content-neutral, a court would likely find they fail to leave open alternative channels of communications. For example, Lakewood's ordinances prohibit both oral and written requests for help. Lakewood MC § 9A.05.050 defines solicitation as "oral or written" requests for contributions,³⁸⁵ and Lakewood MC § 9A.04.020A defines begging as "asking for money...whether by words, bodily gestures, signs or other means."³⁸⁶ The city's ordinances fail to allow individuals alternative means of communicating their need for help. The city could allow for passive sign-holding in some locations,³⁸⁷ rather than prohibiting both oral and written requests for help; however, the ordinances literally prohibit all possible means of communicating a message. In considering any compelling interest that the city may assert as justification for these laws, the only threat to public safety might come from forceful, repeated verbal solicitations. But the ordinances do not distinguish between harmful conduct and peaceful begging—leaving the city vulnerable to overbreadth challenges.³⁸⁸

Fourth, Lakewood's ordinances place "buffer zones" around crosswalks, intersections, ATM's and financial institutions, parking spaces, parking lots, train stations, and bus stations.³⁸⁹ Courts have found that while buffer zones around facilities like ATMs may be appropriate if they are the least restrictive means of meeting the city's interest, buffer zones are not always required to protect public safety.³⁹⁰ Here, Lakewood's buffer zones around crosswalks, "handicapped" parking spaces, bus stops, and train stops are unlikely to withstand judicial scrutiny because they are unlikely to be narrowly tailored to meet the compelling interest of public safety. For example, panhandling within buffer zones around bus stops has been described as "more bothersome" but not as "demonstrably more dangerous."³⁹¹ Absent evidence to the contrary, a court would likely find that Lakewood's buffer zones are not the least restrictive means necessary to achieve a compelling interest.³⁹²

³⁸² Lakewood MC § 9A.05.050 (2010).

³⁸³ *City of Lakewood v. Willis*, 375 P.3d 1056, 1063 (Wash. 2016).

³⁸⁴ Lakewood MC § 9A.05.050 (2010).

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Willis*, 375 P.3d at 1064 (Stephens, J., concurring).

³⁸⁹ Lakewood MC §§ 9A.05.050 (2010) & 9A.04.020 (2011).

³⁹⁰ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d. 177, 196 (D. Mass. 2015).

³⁹¹ *Id.* at 195.

³⁹² *Id.*

Overall, place and distance restrictions raise serious constitutional concerns because they limit otherwise protected speech in traditional public fora—a cherished space for free speech protections. These place and distance restrictions do not try to hide the fact that they are entirely content-based restrictions, which stifle the exercise of one form of speech but not others. Although a resident may stand near a crosswalk or bus stop advertising local businesses or asking motorists to vote for an upcoming candidate, that same resident may face criminal penalties when the content of her speech shifts from business advertising or political lobbying to a request for help. Washington’s Supreme Court has already signaled its willingness to strike down such hopelessly unconstitutional ordinances.

Place and distance restrictions raise serious constitutional concerns because they limit otherwise protected speech in a traditional public fora.

D. Restrictions on How Individuals Can Beg: Manner Restrictions

The last category of anti-begging laws includes sweeping restrictions on *how* begging can be performed. These ordinances are often labeled to suggest they target “aggressive” or “coercive” begging. However, such categorization is misleading because these laws are often “designed to be enforced against people who are engaging in harmless activities when requesting a donation.”³⁹³

Aggressive begging ordinances are typically not triggered by the intentionally aggressive or coercive behavior of the panhandler; rather, culpability is most often triggered by the “reasonable fear” of the listener.³⁹⁴ But as discussed above, studies show that society frequently responds to evidence of visible poverty and human desperation with fear.³⁹⁵ This fear is so common that even peaceful non-coercive begging can be interpreted as frightening or disturbing to people who witness it. Compelling sociological studies show that mere exposure to visible poverty triggers highly negative reactions from those who witness it.³⁹⁶ Thus, begging restrictions that turn on a witness’s perception—as opposed to some objective measure of conduct—are overbroad. People asking for help could be punished not because of anything *they did* but because of how their conduct was *perceived*.

1. The Problem with Perception-Based Definitions of Aggressive Begging

A core principle of criminal law is that culpability attaches based on conduct. It is our knowing and intentional decision to engage in wrongful conduct—the *mens rea*—that makes a bad act unlawful. Yet laws deriving culpability on the subjective perception of the victim turns this core concept of criminal law on its head, attaching criminal liability without the accused

³⁹³ See NAT’L LAW CTR. 2014, *supra* note 63, at 20.

³⁹⁴ See Ordinance Chart, *supra* note 180.

³⁹⁵ See Rankin 2015, *supra* note 55.

³⁹⁶ *Id.*

having any intention of wrongdoing. More important, speakers have no way of knowing what conduct is acceptable under the law. Individuals will inevitably be forced to censor or silence their speech out of fear it could be interpreted as a threat by the “reasonable” person who happens to hear, see, or read their message.

96% of all aggressive begging laws in Washington include a subjective perception-based component.³⁹⁷

By far the most common, 96% of all aggressive begging laws in Washington include a subjective perception-based component.³⁹⁸ For example, many ordinances begin by defining “aggressive begging” as asking for help “with the intent to intimidate another person into giving money or goods.”³⁹⁹ But intimidation is most often defined as “engag[ing] in conduct which would make a reasonable person feel fearful or compelled.”⁴⁰⁰ Even attempting to ground the law in the accused’s “intent to intimidate,” the laws define intimidation wholly on the subjective standards of the listener. Such an approach to criminalization presents several constitutional concerns and erodes the breathing space that safeguards the free exchange of ideas.⁴⁰¹

Perception-based laws make it challenging to know whether a reasonable person feels fearful or compelled because of the speaker’s specific conduct or because a visibly poor person subconsciously elicits feelings of discomfort or even repulsion.⁴⁰² Both the appearance of a visibly poor person and the circumstances of asking for help make one feel compelled, whether by fear or sympathy, to make a donation. When the mere sight of visible poverty triggers

³⁹⁷ Ordinance Chart, *supra* note 180.

³⁹⁸ *Id.*

³⁹⁹ Anacortes MC § 9.24.050 (1999); Arlington MC § 9.56.020(1) (2014) (“with the intent to intimidate *or coerce*. . .”) (emphasis added); Auburn MC § 9.08.010(B)(1) (2002); Bellevue MC § 10.06.010(B)(1) (2005); Bonney Lake MC § 9.11.060(A) (2016) (“‘Aggressive solicitation’ means behavior that is intended to harass or intimidate . . .”); Bremerton MC § 9A.44.110(b) (2014); Des Moines MC § 9.68.030(2), (1)(a) & (c) (1988); Everett MC § 9.52.010(A)(2) (1987); Federal Way RMC § 6.35.030(1)(a),(2) (1994); Lake Stevens MC § 9.08.030(b)(1) (2012); Marysville MC § 6.37.020(1) (2012) (“with the intent to intimidate *or coerce* . . .”) (emphasis added); Moses Lake MC § 9.22.010 (2011); Mount Vernon MC § 9.21.060(A) (2011); Oak Harbor MC § 6.95.030(2), 020(1) (2013) (“with the intent to intimidate *or coerce*. . .”) (emphasis added); Port Angeles MC § 11.18.020(A) (2005); Renton MC § 6-25-1 (1997).

⁴⁰⁰ See, e.g., Arlington MC § 9.56.020(7) (2014); Bonney Lake MC § 9.11.060(c) (2016) (intimidate “means to coerce or frighten into submission or obedience or to engage in conduct which would make a reasonable person fearful or feel compelled to give the person money or goods.”); Bremerton MC § 9A.44.110(a)(1) (2014); Everett MC § 9.52.020(D) (1987); Federal Way RMC § 6.35.030(1)(e) (1994) (Intimidate “means to engage in words or conduct which would make a reasonable person feel compelled to give money to a person”); Port Angeles MC 11.18.020(B) (2005); Renton MC § 6-25-1 (1997) (intimidate “means to use words or engage in conduct that would likely cause a reasonable person to fear bodily harm, fear damage to or loss of property, or otherwise be compelled into giving money or other things of value”); Sammamish MC § 22.05.110(b) (2000); Seattle MC § 12A.12.015(A)(2) (1987); University Place MC § 9.55.010 (2)(A)(2) (2004); Vancouver MC § 7.04.030(3) (2003).

⁴⁰¹ *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

⁴⁰² See Rankin 2015, *supra* note 55, at 390 (citing Lasana T. Harris & Susan T. Fiske, *Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups*, 17 PSYCHOL. SCI. 10, 848 (2006)); Steven J. Ballew, *Panhandling and the First Amendment: How Spider-Man Is Reducing the Quality of Life in New York City*, 81 BROOK. L. REV. 1167, 1168, 1171–72 (2016).

fearful reactions, how can a person experiencing homelessness hope to ask for help in conformance with the law? How can a police officer, responding to a complaint, be expected to reliably determine which impulse led to the donation? In these situations, even peaceful begging can trigger a conviction for aggressive begging based on the reaction of the person being solicited.⁴⁰³ The Supreme Court has “explained [that] a regulation is not vague because it may at times be difficult to prove . . . but rather [it is vague] because it is unclear as to what fact must be proved.”⁴⁰⁴ While these aggressive begging laws are popular Washington ordinances, it is often unclear what facts support a conviction under an aggressive begging ordinance above and beyond the mere appearance of a visibly poor person and the peaceful exercise of free speech.⁴⁰⁵

The simplest solution to this problem would be to replace perception-based ordinances with objective conduct-based ordinances that specifically describe how a person cannot ask for help. But even then, such ordinances would impact the exercise of free speech and would need to be narrowly tailored to conform to the strict scrutiny standard. As illustrated below, manner-based components to aggressive begging laws are often overly broad and criminalize otherwise lawful conduct.

Manner-based components to aggressive begging laws are often overly broad and criminalize otherwise lawful conduct.

2. Not in that Way: Conduct-Based Begging Laws

Municipalities attempt to avoid judicial scrutiny of their anti-begging restrictions by prohibiting different conduct under the guise of protecting public health and safety.⁴⁰⁶ However, these attempts fail when the prohibited conduct is attached to a regulatory scheme that targets a particular form of expression, like immediate requests for donations.⁴⁰⁷ In one example, a city in Illinois added a conduct-based element to an ordinance that prohibited oral requests for money after the Seventh Circuit Court of Appeals held that the ordinance was a

⁴⁰³ See NAT’L LAW CTR. 2014, *supra* note 63, at 20 (stating that laws “purportedly aimed at curbing threatening . . . behavior . . . are sometimes designed to be enforced against . . . harmless activities” like begging).

⁴⁰⁴ *F.C.C. v. Fox Television Stations Inc.*, 132 S. Ct. 2307, 2317 (2012).

⁴⁰⁵ *United States v. Williams*, 553 U.S. 285, 306 (2008) (asserting that the Supreme Court has “struck down statutes that tied . . . culpability to . . . wholly subjective judgments without statutory definitions, narrowing context or settled legal meanings”).

⁴⁰⁶ See, e.g., Arlington MC § 9.56.010(1) (2014) (stating that its solicitation and camping regulations serve to “protect and preserve the public safety of pedestrians and to insure the safe and efficient movement of pedestrian and vehicular traffic in public places”); Lacey MC § 5.21.010 (1998) (stating that its begging regulations serve the purpose of promoting “the health, safety, peace, and general welfare” of its citizens and visitors).

⁴⁰⁷ See, e.g., *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 185 (2015) (noting that a law purporting to regulate conduct accompanying expression will be subject to strict scrutiny when it “targets a particular form of expressive speech—the solicitation of immediate charitable donations—and applies its regulatory scheme only to that subject matter”); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 221 (D. Mass. 2015) (interpreting a content-based prohibition that made it “unlawful for any person to beg, panhandle or solicit in an aggressive manner”).

form of content discrimination and was subject to strict scrutiny.⁴⁰⁸ The new addition prohibited individuals from requesting a donation “while knowingly approaching within five feet” of the person solicited.⁴⁰⁹ When the modified ordinance was re-challenged, the city argued that the ordinance “regulate[d] activity, not speech.”⁴¹⁰ However, the Seventh Circuit again held that the ordinance was a content-based restriction on speech because it restricted individuals from approaching a person while asking for a donation but allowed individuals to approach a person while engaging in other types of speech.⁴¹¹ Following the Court’s analysis in *Reed*, the analysis of the Seventh Circuit represents a growing trend of courts invalidating aggressive begging laws.

Many begging restrictions target such a broad array of conduct they would fail judicial tests that require restrictions of speech to be the least restrictive means of achieving a compelling governmental interest.⁴¹² For example, many of the surveyed cities⁴¹³ prohibit (1) approaching within a certain distance of a person without receiving that person’s consent;⁴¹⁴ (2) persisting in begging after being given a negative response;⁴¹⁵ (3) begging in the company of any other person;⁴¹⁶ (4) begging with a child;⁴¹⁷ (5) begging from anyone under the age of sixteen;⁴¹⁸ (6) using false or misleading information while begging for the purpose of making a

⁴⁰⁸ *Norton v. City of Springfield*, 806 F.3d 411, 413 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173 (2016).

⁴⁰⁹ *Norton v. City of Springfield*, No. 15-3276, 2015 WL 8023461, at *1 (C.D. Ill. Dec. 4, 2015) (quoting Springfield MC § 131.06(a)(1)).

⁴¹⁰ *Id.* at *2 (quoting Springfield MC § 131.06(a)(1)).

⁴¹¹ “Although the language of the current ordinance has been modified, it still addresses the content of the plaintiffs’ speech. The plaintiffs can ask for the time, talk about the weather, ask someone to sign a petition, or even solicit support (either nonmonetary support or for a future contribution) for causes or organizations while approaching within five feet of the person being addressed. However, the plaintiffs are not permitted to ask pedestrians for ‘an immediate donation of money or other gratuity’ while ‘knowingly approaching within five feet’ of the individual. The ordinance subjects the Plaintiffs to criminal penalties for asking for immediate donations of money in those circumstances.” *Id.*

⁴¹² *Supra* Part I, Section B.

⁴¹³ In addition to perception and conduct, most cities include the “place” and “distance” provisions, discussed in Section III, Part C of this Brief (e.g., near bus stops, ATMs, intersections, and gas stations) in their “aggressive” begging ordinances, which purport to serve as evidence of aggressive begging.

⁴¹⁴ *See, e.g.*, Arlington MC § 9.56.020(6)(B) (2014); Centralia MC § 10.37.030 (2014); Covington MC § 9.190.020(1)(b) (2010); Issaquah MC § 9.45.020(A)(2) (2008); Lacey MC § 5.21.040(A) (1998); Longview MC § 9.23.040(1) (2008); Marysville MC 6.37.020(2)(b) (2012); Monroe MC § 9.35.020(A)(2) (2008); Oak Harbor MC § 6.95.020(2)(b) (2014).

⁴¹⁵ *See, e.g.*, Arlington MC § 9.56.020(6)(C) (2014) (persisting provision); Bonney Lake MC § 9.11.060(A)(a) (2016) (persisting and following provisions); Covington MC § 9.190.020(1)(c) (2010) (persisting provision); Federal Way RMC § 6.35.030(1)(e)(i)–(ii) (1994) (persisting and following provisions); Issaquah MC § 9.45.020(A)(3) (persisting provision); Marysville MC § 6.37.020(2)(c) (2012) (persisting provision); Monroe MC § 9.35.020(A)(3) (2008) (persisting provision); Oak Harbor MC 6.95.020(2)(c) (2014) (persisting provision). Bonney Lake explains “negative statements” as those statements that communicate that the individual does “not intend to donate.” Bonney Lake MC § 9.11.060 (2016).

⁴¹⁶ *See, e.g.*, Lacey MC § 5.21.040(G) (1998).

⁴¹⁷ *See, e.g.*, Arlington MC § 9.56.070 (2014); Auburn MC § 9.08.010(B)(1) (2002); Bonney Lake MC § 9.11.050(B) (2016); Covington MC § 9.190.020(1)(h) (2010); Renton MC § 6-25-1 (1997); SeaTac MC § 8.05.740(B)(1)(d) (1995).

⁴¹⁸ *See, e.g.*, Lacey MC § 5.21.040(D) (1998); Longview MC § 9.23.040(4) (2008). This type of prohibited conduct is problematic. How is an individual supposed to accurately know the age of the person they are soliciting from?

solicitation;⁴¹⁹ (7) engaging with the driver of a parked car;⁴²⁰ (8) begging and blocking or impeding pedestrian traffic;⁴²¹ and (9) begging for the purpose of soliciting vehicular traffic.⁴²²

Content-neutral laws already exist to prohibit many behaviors targeted in aggressive begging laws.

Although each point listed above might appear to refer to conduct, they are tied to the content of the speech being communicated. Content-neutral laws already exist to prohibit many of the above behaviors.⁴²³ For a police officer to find a violation of the above laws, the officer must evaluate the message being communicated. Because these laws specifically target begging and have the potential of chilling peaceful constitutionally protected

requests for donations, they are both content-based restrictions on speech and subject to strict scrutiny. A closer examination of each manner-based provision reveals the constitutional infirmities. For instance, many of the surveyed cities prohibit individuals from coming within a certain distance of another person to make a solicitation without receiving that person's consent.⁴²⁴ But what qualifies as consent? Is a smile, a nod, a gesture, or a look of acknowledgment sufficient, or must consent be verbally expressed? Further, it is unclear whether the solicitor must obtain the consent of the person before or after making the request.⁴²⁵ Because these provisions do not provide fair notice of what is prohibited, they may fail under a constitutional challenge for vagueness.⁴²⁶

⁴¹⁹ See, e.g., Auburn MC § 9.08.010(B)(1) (2002); Centralia MC § 10.37.020(B)(7) (2014); Covington MC § 9.190.020(1)(g) (2010); Issaquah MC § 9.45.020(A)(6) (2008); Lakewood MC § 05.56.140 (1998); Marysville MC § 6.37.020(2)(f) (2012); Monroe MC § 9.35.020(A)(6) (2008); Oak Harbor MC § 6.95.020(2)(f); SeaTac MC § 8.05.740(B)(1) (1995).

⁴²⁰ See, e.g., Mount Vernon MC § 9.21.050(E)(1)(g) (2011); Lacey MC § 5.21.030(C) (1998); Tacoma 13.A.030(A)(1)(g) (2007).

⁴²¹ See, e.g., Arlington MC § 9.56.020(6)(D) (2014); Auburn MC § 9.08.010(B)(1) (2002); Bonney Lake MC § 9.11.060(A)(2) (2016); Centralia MC § 10.37.020(B)(4) (2014); Covington MC § 9.190.020(1)(d) (2010); Everett MC § 9.52.010(A)(1) (1987); Federal Way RMC § 6.35.030(1)(c), (2)(b) (1994); Issaquah MC § 9.45.020(A)(4) (2008); Lacey MC § 5.21.040(B) (1998); Longview MC § 9.23.040(2) (2008); Marysville MC § 6.37.020(2)(d) (2012); Monroe MC § 9.35.020(A)(4) (2008); Puyallup MC § 9A.08.020(2)(c) (2009); Sunnyside MC § 5.22.050(C) (2007); Tacoma MC § 8.13.A.020(B)(3) (2007); Wenatchee MC § 6A.13.020(1) (1989).

⁴²² Interestingly, these types of restrictions raise the question of why it is not illegal for business owners to solicit customers by waiving signs towards traffic.

⁴²³ For example, many cities have content-neutral ordinances that prohibit harassment, fraud, and pedestrian interference. These content-neutral laws target the harmful behavior without infringing on constitutionally protected speech.

⁴²⁴ See, e.g., Arlington MC § 9.56.020(6)(B) (2014) (one foot); Centralia MC § 10.37.030, 020(b) (2014) (two feet and provides progressive penalties); Covington MC § 9.190.020(1)(b) (2010) (one foot); Issaquah MC § 9.45.020(A)(2) (2008) (one foot); Lacey MC § 5.21.040(A) (1998) (three feet); Longview MC § 9.23.040(1) (2008) (three feet); Marysville MC § 6.37.020(2)(b) (2012) (one foot); Monroe MC § 9.35.020(A)(2) (2008) (one foot); Oak Harbor MC § 6.95.020(2)(b) (2014) (one foot).

⁴²⁵ *Browne v. City of Grand Junction*, 136 F. Supp. 1276, 1297 (D. Colo. 2015).

⁴²⁶ *But cf. id.* (finding that a law requiring consent before making a solicitation is not unconstitutionally vague under Due Process requirements because consent may be expressed via an affirmative statement or implied via action or inaction).

As another example, many of the surveyed cities prohibit individuals from (1) following a person to ask for money after that person has given a negative response⁴²⁷ and (2) continuing to beg from a person after that person has given a negative response.⁴²⁸ Aside from the vagueness of the phrase “negative response,” these “bans on following a person and panhandling after a person has given a negative response are not the least restrictive means available.”⁴²⁹ As the United States District Court of Massachusetts aptly explained:

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. Both behaviors might be utilized where a promising target—someone who might want to hear a panhandler’s message—walks by a panhandler without noticing him at all. If panhandling is truly valuable expressive speech, then panhandlers may have a right to more than one shot at getting their message across.⁴³⁰

In a third example, at least one of the surveyed cities prohibits individuals from begging in a group of two or more people.⁴³¹ Prohibiting individuals from begging together, “whose

⁴²⁷ See, e.g., Bonney Lake MC § 9.11.060(A)(c) (2016) (“[f]ollowing a person for purposes of solicitation at a close distance where a reasonable person would be intimidated or in fear of their safety”); Federal Way RMC § 6.35.030(2)(a), (1)(e)(i)–(ii) (1994); Lacey MC § 5.21.040(E) (1998); Longview MC § 9.23.040(5) (2008) (“following a person who walks away from the panhandler, if the panhandler’s conduct is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation”); Spokane MC § 10.10.025(B)(1) (2015).

⁴²⁸ See, e.g., Arlington MC § 9.56.020(6)(C) (2014); Bonney Lake MC § 9.11.060(A) (2016); Covington MC § 9.190.020(1)(c) (2010); Federal Way Revised Code § 6.35.030(1)(e)(i)–(ii) (1994); Issaquah MC § 9.45.020(A)(3) (2008); Marysville MC § 6.37.020(2)(c) (2012); Monroe MC § 9.35.020(A)(3) (2008); Oak Harbor MC § 6.95.020(2)(c) (2014); Puyallup MC § 9A.08.020(2)(b) (2009); Spokane MC § 10.10.025(B)(1) (2015); Sunnyside MC § 9.86.050(D) (2007); Tacoma MC § 8.13A.020(B)(2) (2007).

⁴²⁹ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 193 (D. Mass. 2015).

⁴³⁰ *Id.* (emphasis added).

⁴³¹ See, e.g., Lacey MC § 5.21.040(G) (1998) (imposing criminal penalties for begging “in a group of two or more persons, except where one or more panhandler(s) is/are under the age of eighteen and is/are the dependent child(ren) of the other panhandler”); Lacey MC § 5.21.040(H) (1998) (imposing criminal penalties for begging “within fifty feet of any other panhandler, except where one or more panhandler(s) is/are under the age of eighteen and is/are the dependent child(ren) of the other panhandler”).

activity is otherwise permissible,” fails to satisfy strict scrutiny.⁴³² Such prohibitions violate both the First Amendment’s protection of speech and protection of assembly.⁴³³ Even if the city attempts to prohibit group begging in an “intimidating manner,” the law will not survive strict scrutiny “in the absence of . . . evidence . . . that ‘intimidating’ group panhandling is more dangerous than ‘intimidating’ solo panhandling.”⁴³⁴

In many of the surveyed cities, begging prohibitions duplicate existing pedestrian interference provisions and obstruction of traffic laws.⁴³⁵ These laws commonly prohibit blocking or impeding pedestrian traffic and blocking, impeding, or distracting vehicular traffic while begging.⁴³⁶ Yet many cities already address the corresponding public safety concerns through facially neutral and constitutionally valid “obstruction of traffic” or “pedestrian interference” laws that apply to everyone regardless of the type of speech.⁴³⁷

For example, Tacoma has a *Solicitation by Coercion*⁴³⁸ ordinance duplicative of its *Pedestrian Interference*⁴³⁹ ordinance. The ordinances are described in the chart below:

⁴³² See *McLaughlin*, 140 F. Supp. 3d at 194-95 (holding that group panhandling restrictions cannot survive strict scrutiny “in the absence of record evidence that panhandling in a group of two or more is a greater threat to public safety than panhandling alone”).

⁴³³ *Id.* at 194 (holding that a prohibition on begging “in a group of two or more ‘in an intimidating’ manner” was vague because it did not define “intimidating,” and infringed upon the First Amendment’s protection of speech and of assembly).

⁴³⁴ See *id.* at 195.

⁴³⁵ For example, compare Mount Vernon MC § 9.21.050(F) (2011), which defines as a part of aggressive begging walking or standing “in such a manner as to block passage by another person or a vehicle,” with Mount Vernon MC § 9.21.045(B) (2012), which prohibits entering or being present in a prohibited roadway when the roadway is open to traffic.

⁴³⁶ See, e.g., Arlington MC § 9.56.020(6)(D) (2014); Auburn MC § 9.08.010(B)(1) (2002); Bonney Lake MC § 9.11.060(A) (2016); Centralia MC § 10.37.020(B)(4) (2014); Covington MC § 9.190.020(1)(d) (2010); Everett MC § 9.52.010(A)(1) (1987); Federal Way RMC § 6.35.030(2)(b) (1994); Issaquah MC § 9.45.020(A)(4) (2008); Lacey MC § 5.21.040(B) (1998); Longview MC § 9.23.040(2) (2008); Marysville MC § 6.37.020(2)(d) (2012); Monroe MC § 9.35.020(A)(4) (2008); Puyallup MC § 9A.08.020(2)(c) (2009); Sunnyside MC § 5.22.050(C) (2007); Tacoma MC § 8.13.A.020(B)(3) (2007); Wenatchee MC § 6A.13.020(3) (1989).

⁴³⁷ Of course, even facially neutral laws may be disproportionately enforced against people experiencing homelessness such that the laws become another mechanism for criminalizing individuals with no reasonable alternative. See Olson & MacDonald, *supra* note 37.

⁴³⁸ Tacoma MC § 8.13A.040 (2007).

⁴³⁹ Tacoma MC § 8.13.030 (1991).

	§ 8.13A.040 Solicitation by Coercion	§ 8.13.030 Vehicular or Pedestrian Interference
Ordinance Language	<ul style="list-style-type: none"> ▪ “It is unlawful for a person to solicit by coercion.”⁴⁴⁰ ▪ Coercion means “to block, either individually or as part of a group of persons, the passage of a solicited person.”⁴⁴¹ 	<ul style="list-style-type: none"> ▪ Obstruct pedestrian traffic means to “walk, stand, sit, lie, or place an object in such a manner as to block passage by another person.”⁴⁴² ▪ A person is guilty of pedestrian interference “if he or she intentionally obstructs pedestrian traffic.”⁴⁴³
Penalty	<ul style="list-style-type: none"> ▪ Gross misdemeanor. ▪ Fine of \$5,000, incarceration up to one year, or both fine and imprisonment.⁴⁴⁴ 	<ul style="list-style-type: none"> ▪ Misdemeanor. ▪ Fine not to exceed \$1000, imprisonment not to exceed 90 days, or both fine and imprisonment.⁴⁴⁵

This table illustrates how Tacoma’s two ordinances overlap to prohibit almost the exact same behavior—blocking pedestrian traffic. However, the difference in the *Solicitation by Coercion* ordinance is that the behavior of blocking pedestrian traffic is combined with making a solicitation.⁴⁴⁶ Tacoma defines solicitation as “ask[ing], beg[ging]. . . whether orally or in a printed manner, for the purpose of immediately receiving contributions. . . .”⁴⁴⁷ Again, this is a content-based restriction on speech because an enforcing officer would have to listen to the solicitor’s message before determining if the solicitor violated the law, and because it allows solicitations for other means, such as registering others to vote. Further, Tacoma’s *Solicitation by Coercion* statute has a drastically different penalty for engaging in a constitutionally protected form of speech, causing due process issues to likely arise due to arbitrary enforcement.

⁴⁴⁰ Tacoma MC § 8.13A.040 (2007).

⁴⁴¹ Tacoma MC § 8.13A.020 (2007).

⁴⁴² Tacoma MC § 8.13.030 (1991).

⁴⁴³ Tacoma MC § 8.13.030 (1991).

⁴⁴⁴ Tacoma MC § 8.13A.060 (2007). Interestingly, Tacoma’s Solicitation by Coercion has steeper penalties than the city’s Sexual Assault Ordinance. Tacoma MC § 8.12.090 (1987) (“Any person convicted of sexual assault shall be guilty of a *misdemeanor*. . . .”) (emphasis added).

⁴⁴⁵ Tacoma MC § 8.13.030 (1991).

⁴⁴⁶ Tacoma MC § 8.13A.040 (2007).

⁴⁴⁷ Tacoma MC § 8.13A.020(l) (2007). Tacoma defines solicit as “Solicit and all derivative forms of solicit means to ask, beg, solicit, or plead, whether orally or in a written or printed manner, for the *purpose of immediately receiving contributions*, alms, charity, or gifts of items of value for oneself or another person.” *Id.* (emphasis added). Only if the solicitor was asking for an immediate contribution would the solicitor be in violation of the law because the law regulates the solicitor’s “function or purpose.”

Overall, aggressive begging laws consistently raise constitutional and policy concerns. The perception-based component, in almost every aggressive begging ordinance, provides no guidance to people experiencing homelessness on how to conform their conduct in a manner consistent with the law. Adding enumerated lists of prohibited behavior rarely helps. More often than not, these enumerated lists raise questions of vagueness and are suspect to overbreadth challenges because they have the potential of chilling peaceful requests accompanying such behavior.

If public safety is the true aim of aggressive begging laws, these laws should be triggered only if someone begging is engaged in objectively aggressive, threatening, or harassing behavior—behavior that already constitutes a crime in virtually every jurisdiction. Given the scope of protection already afforded by existing criminal codes, aggressive begging laws are unnecessary and overbroad, especially because they so often apply to otherwise peaceful begging—a form of free speech. If particular conduct would not trigger liability under existing assault or harassment laws, then the conclusion is obvious: the conduct is not unlawful, even in the context of solicitation.

If public safety is the true aim of aggressive begging laws, they should be triggered only if someone begging is engaged in objectively aggressive behavior—conduct that already constitutes a crime in virtually every jurisdiction.

Part IV: Recommendations and Conclusion

448

Washington State's pervasive policy of restricting begging as a form of disfavored speech prompts four key recommendations: (1) peaceful begging should not be criminalized; (2) cities should repeal laws that apply to peaceful begging; (3) aggressive begging laws should be repealed; and (4) cities should recognize peaceful begging as a legitimate plea for help.

A. *Peaceful Begging Should Not Be Criminalized*

First, as evidenced by the data collected, cities are criminalizing peaceful begging through implementing geographical, distance, time, and manner restrictions on begging. As demonstrated, these restrictions work to chill and prohibit First Amendment protected speech and violate individuals' due process rights. The First Amendment and Due Process Clause are hallmarks of America's society; any negative impact on these rights is a direct attack on the United States Constitution.

⁴⁴⁸ Illustration by Simon Kneebone, *Homeless? Don't Hold Your Breath...* (Apr. 5, 2012), <https://simonkneebone.com/tag/homeless/>.

Research has shown that criminalization ordinances are ineffective at addressing the root causes of homelessness.⁴⁴⁹ Civil and criminal penalties charged by anti-begging laws are significant,⁴⁵⁰ hearings and jail time can lead to unemployment, probation conditions can be impossible to comply with,⁴⁵¹ and a criminal record can prevent individuals from being eligible for housing subsidies and federal benefits.⁴⁵² Cities can easily expend vast amounts of resources defending the legality of these ordinances, only to have courts repeatedly affirm that begging is a form of protected speech worthy of the highest constitutional scrutiny.⁴⁵³

454

With these geographic, distance, and time restrictions, cities are punishing peaceful, constitutionally protected behavior. The data collected shows that cities often severely punish violations as misdemeanors. These misdemeanors carry real, collateral consequences that severely affect an individual's ability to gain housing, employment, and government benefits.⁴⁵⁵ Even where begging is punished by fines, "civil sanctions do not provide for the

⁴⁴⁹ NAT'L LAW CTR. 2017, *supra* note 2, at 36.

⁴⁵⁰ NAT'L LAW CTR. 2014, *supra* note 63, at 34 (stating that "costs resulting from criminalization measures ... are present at multiple stages of the criminal justice process," and people experiencing homelessness are often unable to pay, resulting in increased jail time, suspension of their driver's license, and poor credit); *see also* Joseph Shapiro, *As Court Fees Rise, the Poor are Paying the Price*, NPR.ORG (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

⁴⁵¹ NAT'L LAW CTR. 2017, *supra* note 2, at 37 ("[H]omeless people are more prone to violate their probation due to practical difficulties in complying with the ordered conditions. Maintaining a stable location where they can be monitored by probation officers, affording public transportation to and from required appointments, and remaining out of high crime areas can all be difficult, if not impossible, conditions for homeless people to comply with.").

⁴⁵² *Id.* at 32–33.

⁴⁵³ The exact cost of defending such lawsuits is worthy of further research. Unfortunately, some cities are highly resistant toward compliance with the Public Records Act and transparency in government overall. Poor public access to municipal data and records is a finding that has been noted by HRAP researchers for years. Olson & MacDonald, *supra* note 37.

⁴⁵⁴ Rhodan, *supra* note 7.

⁴⁵⁵ *Id.*

same due process protections as criminal penalties.”⁴⁵⁶ Further, these fines contribute to the debtor’s prison when individuals cannot pay them.

Ultimately, criminalization measures—including anti-begging ordinances—waste taxpayer dollars because they cycle people experiencing homelessness through the costly criminal justice system with no meaningful results.⁴⁵⁷ Providing reasonable housing options to those in need is more effective than processing people through the criminal justice system.⁴⁵⁸ This brief uncovers a consistent theme: cities are eager to circumvent the free speech and due process rights of homeless residents to lift pressure from business owners and residents. But local and national jurisprudence increasingly suggests that courts will not permit cities to restrict peaceful requests for help under the guise of public safety. Cities should work to create solutions to homelessness that will help individuals, rather than worsen the homelessness crisis.

Many of Washington’s begging restrictions would not survive judicial scrutiny.

Time, distance, place, and manner of begging regulations are the predominant means by which municipalities attempt to avoid strict scrutiny. However, these regulations are still subject to strict scrutiny if they facially restrict a particular type of expression, such as solicitation for donations.⁴⁵⁹ The Washington State

Supreme Court recently demonstrated its own commitment to interpreting these laws as they are: content-based restrictions on speech in areas traditionally considered public fora.⁴⁶⁰ Put more simply, many of Washington’s begging restrictions would not survive judicial scrutiny. Municipalities should take careful note and begin repealing these laws that would not survive a costly judicial challenge.

⁴⁵⁶ NAT’L LAW CTR. 2017, *supra* note 2, at 37–38 (emphasizing that “a homeless person who has received a ticket does not have the right to an attorney or the right to secure a jury trial . . . even though the person may be incarcerated later for failure to pay the underlying fine”).

⁴⁵⁷ See generally Howard & Tran, *supra* note 91 (finding that investment in permanent housing in just two cities, rather than utilizing criminalization strategies, could save taxpayers over \$2 million in criminal justice and other costs every year); see NAT’L LAW CTR. 2017, *supra* note 2, at 38 (reporting that “[o]ver 11 million people are cycled through our nation’s jails each year, costing local governments approximately \$22 billion annually”).

⁴⁵⁸ NAT’L LAW CTR. 2017, *supra* note 2, at 47 (explaining that research demonstrates “permanent supportive housing saves public resources, improves communities by reducing street homelessness, and improves the health and well-being of homeless people”); see also NAT’L LAW CTR. 2014, *supra* note 63 (summarizing that criminalization measures often “create additional barriers” to resources needed to escape homelessness); Sylvestre, *supra* note 73, at 1 (showing how “prevalent stereotypes and prejudice faced by homeless persons as they are policed and criminalized, both historically and in the present, are perpetuating disadvantage and have occluded consideration of the broader structural causes of homelessness”).

⁴⁵⁹ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2222 (2015) see also *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233–34 (D. Mass. 2015).

⁴⁶⁰ See *City of Lakewood v. Willis*, 186 P.3d 1056, 1063 (Wash. 2016). Although four justices in the lead opinion held that two particular “time, place, and manner” provisions of Lakewood’s ordinance were unconstitutional, two other justices determined that the entire ordinance was facially overbroad, “substantially restrict[ing] protected speech in a wide range of public forums traditionally open to First Amendment activity.” *Id.* at 228 (Stephens, J., dissenting).

B. Repeal Laws that Apply to Peaceful Begging

Second, cities should repeal ordinances that prohibit or restrict peaceful begging. Cities can act as gatekeepers for their resident's constitutional rights, and they should treat that opportunity seriously. "Our [C]onstitution enshrines the principle that government exists to protect the rights of all citizens, and has no legitimate power to deprive any citizen or class of citizen of their rights without due process of the law."⁴⁶¹ Due to the nature of these laws and the influence of the fear of visible poverty, the laws are likely to be enforced in a discriminatory manner,⁴⁶² infringing individuals' due process rights.

Although businesses and cities receive complaints regarding the presence of panhandlers and the act of begging, cities must consider the true motivation behind these complaints. Cities respond to the fear of visible poverty by implementing these laws that restrict begging.⁴⁶³ However, cities and local governments have no power to deprive citizens of their constitutional rights, regardless of how strong the public's aversion to visible poverty is. People experiencing homelessness are already marginalized; cities should proactively try to protect already vulnerable groups, rather than implementing and maintaining laws that reinforce stigma and isolation. As individuals experiencing homelessness "become more marginalized over time. . . they are by definition less able to access the resources needed to maintain stable housing."⁴⁶⁴ These laws not only criminalize constitutionally protected behavior, but they work to further marginalize individuals experiencing homelessness and contribute to the cycle of homelessness.

Cities have no power to deprive citizens of their constitutional rights, regardless of how strong the public's aversion to visible poverty.

The city of Olympia provides a proactive example of how cities can protect the constitutional rights of its residents. In Olympia, the city attorney's office routinely reads court decisions that may affect Olympia's municipal code.⁴⁶⁵ The attorney's office will then discuss potential impacts within the legal department, and will suggest to the city manager that staff bring a proposed ordinance for the city council to amend the city code if necessary.⁴⁶⁶ After advice from the city attorney's office, the Olympia city council recently decided to remove

⁴⁶¹ *Is the Constitution Important?*, BILL OF RIGHTS INST. (Oct. 21, 2011), <https://www.billofrightsinstitute.org/is-the-constitution-important/>.

⁴⁶² *Supra* Part I, Section C.

⁴⁶³ *Supra* Part I, Section A.

⁴⁶⁴ Ben Alexander-Eitzman, *Substance Abuse, Marginalization, and Homelessness: Bayesian Perspectives on a Persisting Problem*, WASH. UNIV. ST. LOUIS OPEN SCHOLARSHIP 21 (May 24, 2009), <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1877&context=etd>.

⁴⁶⁵ Interview with Annaliese Harsen, Deputy City Attorney/Police Legal Advisor, City of Olympia (Mar. 2, 2018).

⁴⁶⁶ *Id.*

references to panhandling from its municipal code in response to *Lakewood v. Willis*.⁴⁶⁷ Olympia's municipal code had prohibited panhandling within twenty-five feet of an ATM or parking station and banned aggressive panhandling.⁴⁶⁸ Olympia defined panhandling as "any solicitation made in person, requesting an immediate donation of money or things of value..."⁴⁶⁹ The city noted that its definition was "problematic because of the *Lakewood* ruling given that our definition targets speech based on its content—a solicitation for a donation of money or thing of value—and prohibits that conduct in places historically recognized as a traditional public forum, such as sidewalks and other 'public places.'"⁴⁷⁰ The city attorney's office presented the city council with three options: "1. Approve the proposed ordinance amending OMC Section 9.16.180, Pedestrian Interference on second reading. 2. Direct staff to make different or additional amendments to OMC Section 9.16.180, Pedestrian Interference. 3. Decide not to approve the proposed ordinance. This option creates a potential liability risk for the City."⁴⁷¹ The city council subsequently voted to remove references of panhandling from its city code.⁴⁷²

Olympia recognized that its ordinance imposed content-based restrictions on the freedom of speech,⁴⁷³ and that the *Lakewood v. Willis* rendered the ordinance unconstitutional.⁴⁷⁴ Olympia's removal of panhandling from its municipal code illustrates that other cities within Washington can do the same thing—they can repeal ordinances that prohibit peaceful begging. Just as Olympia identified, cities can risk liability for having laws that restricting peaceful begging.⁴⁷⁵ At the least, that risk should motivate cities to revisit and repeal ordinances that restrict peaceful begging.

C. Repeal Aggressive Begging Laws

Third, aggressive begging laws that are duplicative of preexisting ordinances should be repealed unless they provide for a lower penalty for engaging in a constitutionally protected behavior. These overlapping ordinances often result in arbitrary and discriminatory enforcement while simultaneously infringing on individuals' due process rights. Cities are prohibited from "[catering] to the preference of one group," such as business owners or financially secure individuals, "to avoid the expressive acts of others," such as begging.⁴⁷⁶

⁴⁶⁷ Abby Spegman, *Olympia Gets Rid of its Anti-Panhandling Rules Following State Supreme Court Decision*, OLYMPIAN (Jan. 6, 2018, 4:49 PM), <https://www.courts.wa.gov/content/publicupload/eclips/2018%2001%2008%20Olympia%20gets%20rid%20of%20its%20anti%20panhandling%20rules%20following%20state%20Supreme%20Court%20decision.pdf>.

⁴⁶⁸ *Id.*; Olympia MC § 9.16.180 (1993) (amended 2018).

⁴⁶⁹ Olympia MC § 9.16.180 (1993) (amended 2018).

⁴⁷⁰ Olympia City Staff Report 1 (on file with author).

⁴⁷¹ Olympia City Staff Report 1 (on file with author).

⁴⁷² Spegman, *supra* note 467; Olympia MC § 9.16.180 (1993) (amended 2018).

⁴⁷³ Olympia City Staff Report 1 (on file with author).

⁴⁷⁴ Harksen, *supra* note 465.

⁴⁷⁵ As illustrated by the case studies contained in this brief. *Supra* Part III.

⁴⁷⁶ *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 189 (D. Mass. 2015).

Because these ordinances disproportionately affect visibly poor people and are content-based restrictions on speech, they must be necessary to serve a compelling governmental interest.⁴⁷⁷ Cities should examine their aggressive begging laws and determine whether those laws target behavior already covered by other laws.

Objectively aggressive behavior is already addressed by existing laws via assault and harassment laws. For example, the City of Kennewick recognized that its own aggressive begging ordinance would not withstand judicial scrutiny and repealed its ordinance, noting that its municipal code already adequately addressed the public safety concerns that its aggressive begging law did.⁴⁷⁹ Kennewick recognized a distinction between peaceful constitutionally protected begging and objectively aggressive behavior. Accordingly, the city took the affirmative step of repealing its aggressive begging ordinance, both removing itself

Existing laws already prohibit objectively unlawful conduct purportedly addressed by aggressive begging ordinances; cities already have ways to target unacceptable behavior “without eroding someone’s First Amendment rights.”⁴⁷⁸

from risk of legal liability, while respecting the constitutional rights of its residents. Ideally, more Washington’s cities should follow and assess their anti-begging laws to determine whether their laws would pass judicial scrutiny. Further, when Olympia removed its references to aggressive panhandling, the city did not consider any potential negative pushback it might receive from residents or business owners because panhandling is protected by the United States Constitution.⁴⁸⁰ Similar to Kennewick, Olympia’s Deputy City Attorney noted there are other laws addressing the objectively unlawful conduct purportedly addressed by aggressive begging ordinances—laws such as disorderly conduct and harassment—which means there are other ways to target the unacceptable behavior “without eroding someone’s First Amendment rights.”⁴⁸¹

Perception-based triggers in aggressive begging laws sweep in a staggering array of otherwise peaceful behaviors. These triggers target the speaker or the message, not the conduct. Peaceful begging can trigger a violation because begging itself—or even just the presence of a visibly poor person—commonly provokes feelings of anxiety, fear, or compulsion in others. Such laws risk suppressing even lawful speech and leave cities open to vagueness

⁴⁷⁷ *Reed*, 135 S. Ct. at 2226–28, 2231; *McLaughlin*, 2015 WL 6453144, at *25; *Browne*, 136 F. Supp. 3d at 1288, 1287–90; see also NLCHP, *Criminalization of Homelessness* at 18; Olson & MacDonald, *supra* note 18, at 31.

⁴⁷⁸ Harksen, *supra* note 465.

⁴⁷⁹ Sena, *supra* note 89, at 306–07.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

and due process challenges.⁴⁸² Aggressive begging ordinances are especially troubling because the majority of these impose criminal penalties.⁴⁸³

Yet these laws represent a growing trend among Washington cities. Cities implement anti-begging laws to allegedly remedy a harm that occurs when individuals stand on the sidewalk with a sign asking for help; however, no harm actually occurs from asking for help.⁴⁸⁴ In reality, cities are using anti-begging laws to address visible poverty, not to address homelessness.⁴⁸⁵ Such a justification cannot support the broad curtailing of constitutional liberties, especially one as precious and central to democracy as free speech. Aside from constitutional concerns, Washington cities must grapple with the fact that as long as poverty exists, some people must ask strangers for help.

D. Recognize Peaceful Begging as a Protected Plea for Help

Finally, cities should recognize peaceful begging as a plea for help. Municipalities increasingly enact laws with the explicit or even unconscious impact of removing visible poverty from public view. This spike continues even though these laws are less effective and more expensive than non-punitive alternatives to poverty and homelessness, such as social services and affordable housing.⁴⁸⁶

Cities should accept that as long as poverty exists, some people must ask strangers for help.

Cities should consider the implicit and unconscious biases that motivate these begging restrictions, and with that knowledge work to be strong advocates for individuals experiencing homelessness. Cities have the opportunity and the power to impact the lives of their residents, how we respond to human need and human desperation reflects our collective moral compass.

⁴⁸² See, e.g., *Browne*, 136 F. Supp. 3d at 1286, 1297.

⁴⁸³ See *supra* text and chart accompanying notes 187–189.

⁴⁸⁴ Talner, *supra* note 17.

⁴⁸⁵ *Id.*

⁴⁸⁶ Howard & Tran, *supra* note 91.

BIBLIOGRAPHY

Ben Alexander-Eitzman, *Substance Abuse, Marginalization, and Homelessness: Bayesian Perspectives on a Persisting Problem*, WASH. UNIV. ST. LOUIS OPEN SCHOLARSHIP (May 24, 2009), <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1877&context=etd>.

Allard K. Lowenstein International Human Rights Clinic, *"Forced into Breaking the Law": The Criminalization of Homelessness in Connecticut*, YALE L. SCH. (Nov. 2016), https://law.yale.edu/system/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf.

AM. CIVIL LIBERTIES UNION OF WASH. & COLUMBIA LEGAL SERVS., MODERN-DAY DEBTORS' PRISON: THE WAYS COURT-IMPOSED DEBTS PUNISH PEOPLE FOR BEING POOR (Feb. 2014), <https://www.aclu-wa.org/docs/modern-day-debtors-prisons-washington>.

Anacortes MC § 9.24.050 (1999).

Arlington MC § 9.56.010 (2014).

Arlington MC § 9.56.020 (2014).

Arlington MC § 9.56.070 (2014).

Arlington MC § 9.56.080 (2014).

Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

Auburn MC § 9.08.010 (2002).

Auburn MC § 9.18.050 (2002).

Photograph by Steve Baker, FLICKR CREATIVE COMMONS (Apr. 27, 2016), <https://www.flickr.com/photos/littlebiglens/26682208695/in/photostream/>.

Steven J. Ballew, *Panhandling and the First Amendment: How Spider-Man Is Reducing the Quality of Life in New York City*, 81 BROOK. L. REV. 1167 (2016).

MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE (1st ed. 2013).

Battle Ground MC § 8.18.020 (1999).

Battle Ground MC § 8.18.040 (1999).

Bellevue MC § 10.06.010 (2005).

Bellingham MC § 6.18.050 (1980).

Benefit v. City of Cambridge, 679 N.E.2d 184 (1997).

Berger v. City of Seattle, 569 F.3d 1029 (9th Cir. 2009).

Is the Constitution Important?, BILL OF RIGHTS INST. (Oct. 21, 2011),
<https://www.billofrightsinstitute.org/is-the-constitution-important/>.

Michael Bishop, Bridget DuPey, Nicole Jones, Ashely Kline, Joshua Mitson, & Darren O'Connor, University of Denver Sturm College of Law Homeless Advocacy Policy Project, TOO HIGH A PRICE 2: MOVE ON TO WHERE? (Nantinya Ruan & Elie Zwiebel eds. 2018).

JOEL BLAU, *THE VISIBLE POOR: HOMELESSNESS IN THE UNITED STATES* (1993).

Blitch v. City of Slidell, 260 F. Supp. 3d 656 (E.D. Louisiana, 2017).

Bonney Lake MC § 9.11.050 (2016).

Bonney Lake MC § 9.11.060 (2016).

PHILIPPE BOURGOIS & JEFF SCHONBERG, *RIGHTEOUS DOPEFIEND* (2009).

Rohit Bose & Stephen W. Hwang, *Income and Spending Patterns Among Panhandlers*, 167(5) CMAJ 477-479 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC121964/>.

Bremerton MC § 9A.44.110 (2014).

Bremerton MC § 9A.44.140 (2014).

Browne v. City of Grand Junction, 136 F. Supp. 1276 (D. Colo. Sept. 30, 2015).

Burien MC § 5.10.080 (2002).

Burien MC § 7.30.310 (2007).

Aaron Burkhalter, *Signs of the Times*, REAL CHANGE (Dec. 19, 2013),
<http://realchangenews.org/2013/12/19/signs-times>.

Carroll v. Pres. & Comm'rs of Princess Anne, 393 U.S. 175 (1968).

Centralia MC § 10.37.020 (2014).

Centralia MC § 10.37.040 (2014).

Centralia MC § 10.37.050 (2014).

Centralia MC § 10.37.060 (2014).

Centro De La Comunidad Hispana De Locust Valley v. Town of Oyster Bay, 128 F. Supp. 3d 597 (E.D.N.Y. 2015).

City of Arlington & City of Marysville, *This Community Cares*,
<http://www.arlingtonwa.gov/DocumentCenter/View/918> (retrieved Oct. 17, 2017).

City of Chicago v. Morales, 527 U.S. 41 (1999).

City of Houston v. Hill, 482 U.S. 451 (1987).

City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750 (1988).

City of Lakewood v. Willis, 37 P.3d 1056 (Wash. 2016).

Executive Summary for Action, CITY OF MARYSVILLE (Apr. 9, 2018),
<http://docs.marysvillewa.gov/htcomnet/Handlers/AnonymousDownload.ashx/Item+9.pdf?file=2a411b79>.

City of Seattle v. Pullman, 514 P.2d 1059 (Wash. 1973).

City of Seattle v. Webster, 802 P.2d 1333 (Wash. 1990).

Clatterbuck v. City of Charlottesville, 708 F.3d 549 (4th Cir. 2013).

Coates v. City of Cincinnati, 402 U.S. 611 (1971).

Collier v. City of Tacoma, 854 P.2d 1046 (Wash. 1993).

Colten v. Kentucky, 407 U.S. 104 (1972).

Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788 (1985).

Covington MC § 9.190.020 (2010).

Covington MC § 9.190.040 (2010).

Cox v. State of New Hampshire, 312 U.S. 569 (1941).

Des Moines MC § 19.08.030 (1988).

Des Moines, Wash., Ordinance 1675 (Mar. 28, 2017), <http://www.desmoineswa.gov/ArchiveCenter/ViewFile/Item/1561>.

Steve DeVane, *Council Members Suggest Fines for Giving to Panhandlers*, FAYETTEVILLE OBSERVER (Oct. 31, 2017), <http://www.fayobserver.com/news/20171031/council-members-suggest-fines-for-giving-to-panhandlers>.

The Editorial Board, Opinion, *The Pope on Panhandling: Give Without Worry*, N.Y. TIMES (Mar. 3, 2017), https://www.nytimes.com/2017/03/03/opinion/the-pope-on-panhandling-give-without-worry.html?_r=0.

Everett MC § 9.52.010 (1987).

F.C.C. v. Fox Television Stations Inc., 132 S. Ct. 2307 (2012).

Federal Way RMC § 6.35.030 (1994).

What is a Public Forum?, FIRST AMEND. CTR. (Nov. 1, 2017), <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>.

Forsyth Cty. v. Nationalist Movement, 505 U.S. 123 (1992).

Due Process of Law, FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/due+process+of+law> (last visited Nov. 29, 2017).

Gresham v. Peterson, 225 F.3d 899 (7th Cir. 2000).

Hague v. Comm. for Indus. Org., 307 U.S. 496 (1939).

Interview with Annaliese Harsen, Deputy City Attorney/Police Legal Advisor, City of Olympia (Mar. 2, 2018).

Noe Hernandez, *Panhandling Mom Raises \$10K for Daughter's College, Ends Tuition Quest to Return to Work*, USA TODAY (Aug. 28, 2017), <https://www.usatoday.com/story/news/nation-now/2017/08/28/mom-begs-college-tuition/609384001/>.

Christopher Herring, Dilara Yarbrough & Lisa Marie Alatorre, *Pervasive Penalty: How the Criminalization of Homelessness Perpetuates Poverty* (forthcoming 2018).

HOMELESS RTS. ADVOC. PROJECT, *The Criminalization of Homelessness: Additional Resources*, SEATTLE UNIV. SCHL. LAW, <https://law.seattleu.edu/centers-and-institutes/korematsu->

center/initiatives/homeless-rights-advocacy-project/additional-resources (last visited Nov. 25, 2017).

Josh Howard & David Tran, Seattle University Homeless Rights Advocacy Project, *AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE & SPOKANE* (Sara K. Rankin ed. 2015), <http://ssrn.com/abstract=2602530>.

Ino, Inc. v. City of Bellevue, 937 P.2d 154 (1997).

Issaquah MC § 9.45.010 (2008).

Issaquah MC § 9.45.020 (2008).

Issaquah MC § 9.45.040 (2008).

Issaquah MC § 9.45.060 (2008).

Mark Johnson, *American Fork Places Barriers to Block Panhandlers*, DAILY HERALD (May 8, 2013), http://www.heraldextra.com/news/local/north/american-fork/american-fork-places-barriers-to-block-panhandlers/article_8348fdb4-3092-5e98-aaa3-f8006ca34f99.html.

Kincaid v. City of Fresno, No. 106CV-1445, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006).

Katie Kindelan, *Oklahoma Teacher Panhandles to Raise Money for School Supplies*, ABC NEWS (July 25, 2017), <http://abcnews.go.com/Lifestyle/oklahoma-teacher-panhandles-raise-money-school-supplies/story?id=48815271>.

Kirkland MC § 11.80.090 (2011).

LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 24 SEATTLE U. L. REV. 373 (2000).

Illustration by Simon Kneebone, *Homeless? Don't Hold Your Breath...* (Apr. 5, 2012), <https://simonkneebone.com/tag/homeless/>.

Heather Knight, *The City's Panhandlers Tell Their Own Stories*, SF GATE (Oct. 27, 2013), <http://www.sfgate.com/bayarea/article/The-city-s-panhandlers-tell-their-own-stories-4929388.php>.

Lacey MC § 5.21.010 (1998).

Lacey MC § 5.21.30 (1998).

Lacey MC § 5.21.040 (1998).

Lakewood MC § 05.56.140 (1998).

Lakewood MC § 9A.04.010 (2010).

Lakewood MC § 9A.04.020A (2011).

Lakewood MC § 9A.05.010 (2010).

Lakewood MC § 9A.05.020 (2010).

Lakewood MC § 9A.05.030 (2010).

Lakewood MC § 9A.05.050 (2010).

Lakewood MC § 9A.05.060 (2010).

Lake Stevens MC § 9.08.030 (2012).

Dion Lefler, *New Wichita Law: You Could go to Jail for Giving Money to a Roadside Panhandler*, WHICHITA EAGLE (Dec. 12, 2018), <http://www.kansas.com/news/politics-government/article189336969.html>.

LEGAL INFORMATION INSTITUTE, WEX, INTERMEDIATE SCRUTINY, https://www.law.cornell.edu/wex/intermediate_scrutiny (last visited Nov. 25, 2017).

Fay Leoussis, *The New Constitutional Right to Beg—Is Begging Really Protected Speech?*, 14 ST. LOUIS U. L. REV. 529 (1995).

Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551 (1997).

Longview MC § 9.23.040 (2008).

Longview MC § 13.01.005 (1989)

Longview MC § 13.01.210 (2009).

Loper v. New York City Police Dep't., 999 F.2d 699 (2d Cir. 1993).

Kaya Lurie & Breanne Schuster, Seattle University Homeless Rights Advocacy Project, DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS AND OTHER MARGINALIZED GROUPS (Sara Rankin ed. 2015).

Mercer Island MC § 9.30.090 (1991).

Nancy A. Millich, *Compassion Fatigue and the First Amendment: Are the Homeless Constitutional Castaways?*, 27 U.C. DAVIS L. REV. 255 (1994).

Marysville MC § 6.37.010 (1997).

Marysville MC § 6.37.020 (2012).

Marysville MC § 6.37.030 (2012).

Marysville MC § 6.37.040 (2012).

Marysville MC § 6.37.045 (2014).

Mass. Fair Share, Inc. v. Rockland, 610 F. Supp. 682 (D. Mass. 1985).

McCullen v. Coakley, 134 S. Ct. 2518 (2014).

Telephone Interview Jason McGill, YouthCare Engagement Manager (Oct. 10, 2017).

McLaughlin v. Lowell, 140 F. Supp. 3d 177 (D. Mass. 2015).

Don Mitchell, *The End of Public Space? People's Park, Definitions of the Public, and Democracy*, 85 ANNALS ASS'N AM. GEOGRAPHERS 108 (1995),
<http://sites.middlebury.edu/igst404/files/2014/01/Mitchell-End-of-Public-Space.pdf>.

Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States*, RADICAL J. GEOGRAPHY (1997),
<http://onlinelibrary.wiley.com/doi/10.1111/1467-8330.00048/epdf>.

DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* 200 (Guilford Press Epub ed. 2012).

Monroe MC § 9.28.100 (1990).

Monroe MC § 9.35.020 (2008).

Monroe MC § 9.35.040 (2008).

Moses Lake MC § 9.22.010 (2011).

Mountlake Terrace MC § 9.40.40 (2015).

Mount Vernon MC § 9.21.045 (2012).

Mount Vernon MC § 9.21.050 (2011).

Mount Vernon MC § 9.21.060 (2011).

Mukilteo MC § 5.04.120 (1995).

Mukilteo MC § 9.54.040 (1977).

NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOMES NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009), http://timefolds.com/nch/wp-content/uploads/2013/11/CrimzReport_2009.pdf.

NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE, THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014), https://www.nlchp.org/documents/No_Safe_Place.

NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2017), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

Norton v. City of Springfield, No. 15-3276, 2015 WL 8023461 (C.D. Ill. Dec. 4, 2015).

Norton v. City of Springfield, 806 F.3d 411 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1173, (2016).

Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT (Sara Rankin ed. 2015).

Maple Valley MC § 5.05.080 (1999).

Oak Harbor MC § 6.95.020 (2014).

Oak Harbor MC § 6.95.030 (2013).

Olympia City Staff Report 1.

Olympia MC § 9.16.180 (1993).

Javier Ortiz & Matthew Dick, Seattle University Homeless Rights Advocacy Project, THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN & HISTORICAL CRIMINALIZATION LAWS (Sara Rankin ed. 2015).

Memorandum from Justin Olson to Professor Sara Rankin, Director of the Homeless Rights Advocacy Project at Seattle University School of Law, *Washington's Panhandling Ordinances: Graphical Representations* (2017).

Joe Palazzolo & Alejandro Lazo, *Denver's Bus's Take Active Role in Homeless Policies*, WALL ST. J. (Oct. 16, 2016), <http://www.wsj.com/articles/denvers-businesses-take-active-role-in-homeless-policies-1476639643>.

Pasco MC § 9.44.060 (2013).

People ex rel. Springfield, E. & S. R. Co. v. Bishop, 111 Ill. 124 (1884).

Graham Perednia, *Centralia City Council Makes Change to Laws Governing Panhandlers*, CHRONICLE (Sept. 14, 2017), http://www.chronline.com/news/centralia-city-council-makes-changes-to-laws-governing-panhandlers/article_69b9be14-9973-11e7-8de1-ebcdc975765d.html.

Perry Educ. Ass'n v. Perry Local Educ's Ass'n, 460 U.S. 37 (1983).

Damon Pesanti, *No Tickets Issued Under Centralia's New Panhandling Ban*, CHRONICLE (July 10, 2014), http://www.chronline.com/news/no-tickets-issued-under-centralia-s-new-panhandling-ban/article_68f63e5a-085b-11e4-99fd-001a4bcf887a.html.

Complaint at 1, *Picture the Homeless, Inc., v. New York City Police Department*, No. M-I-J-16-1034067 (filed with City of New York Comm'n Human Rights May 31, 2016), <http://picturethehomeless.org/wp-content/uploads/2016/05/Revised-Verified-Complaint-to-NYC-Commn-on-Human-Rights-filed-2016-05-31-00049320.pdf>.

PIERCE CTY, WASH., *2017 Point-in-Time Count Results* (Jan. 27, 2017), <http://www.co.pierce.wa.us/DocumentCenter/View/58186>.

Katie Pilgram Neidig, *The Demise of Anti-Panhandling Laws in America*, 49 ST. MARY'S L.J. 543 (2017).

Port Angeles MC § 11.18.020 (2005).

Port Angeles MC § 12.04.130 (2016).

Puyallup MC § 9.20.005 (2005).

Puyallup MC § 9.20.015 (2005).

Puyallup MC § 9A.08.020 (2009).

Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383 (2015).

Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. 4 (2016).

Redmond MC § 5.08.035 (1988).

Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015).

Renton MC § 6.25.1 (1997).

Maya Rhodan, *A Misdemeanor Conviction is Not a Big Deal, Right? Think Again*, TIME (Apr. 24, 2014), <http://time.com/76356/a-misdemeanor-conviction-is-not-a-big-deal-right-think-again/>.

Max Rivlin-Nadler, *Homeless New Yorkers Say NYPD's 'Move Along' Rule is Cruel and Illegal*, VILLAGE VOICE (Dec. 15, 2016), <https://www.villagevoice.com/2016/12/15/homeless-new-yorkers-say-nypds-move-along-rule-is-cruel-and-illegal/>.

Roulette v. City of Seattle, 850 F. Supp. 1442 (W.D. Wash. 1994), *aff'd*, 78 F.3d 1425 (9th Cir. 1996), *opinion amended and superseded on denial of reh'g*, 97 F.3d 300 (9th Cir. 1996), *as amended on denial of reh'g and reh'g en banc* (Sept. 17, 1996), and *aff'd*, 97 F.3d 300 (9th Cir. 1996), *as amended on denial of reh'g and reh'g en banc* (Sept. 17, 1996).

Challenges to Bans of Restrictions on Panhandling, SACRAMENTO REG'L COAL. TO END HOMELESSNESS (Oct. 2017).

Sammamish MC § 7.12.010 (2014).

Sammamish MC § 7.12.610 (2014).

Sammamish MC § 22.05.110 (2000).

Schneider v. State, 308 U.S. 147 (1939).

Ariel Schreiber & Becca Butler-Dines, *Too High a Price What Criminalizing Homelessness Costs Colorado: Denver City Spotlight*, <http://www.law.du.edu/documents/homeless-advocacy-policy-project/2-16-16-Final-Report.pdf> (accessed on Feb. 3, 2018).

SeaTac MC § 8.05.740 (1995).

Seattle MC § 12A.12.015 (1987).

BARRY JAY SELTSE & DONALD EARL MILLER, HOMELESS FAMILIES: THE STRUGGLE FOR DIGNITY (1993).

Drew Sena, Note, *A Constitutional Critique on the Criminalization of Panhandling in Washington State*, 41 SEATTLE U. L. REV. 287 (2017).

Joseph Shapiro, *As Court Fees Rise, the Poor are Paying the Price*, NPR.ORG (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

Telephone Interview with Mark Silverstein, Legal Dir., Am. Civil Liberties Union of Colo. (Feb. 2016).

Michael Simpson, *ACLU Raises Concerns with Lakewood's Rewrite of Panhandling Law*, NEWS TRIBUNE (Feb. 23, 2017).

Telephone Interview with Mark Solomon, Community Crime Prevention Specialist, Seattle Police Dep't (Sept. 26, 2017).

Email from Mark Solomon, Community Crime Prevention Specialist, Seattle Police Dep't, to author (Apr. 20, 2018, 11:00 PST) (on file with author).

Abby Spegman, *Olympia Gets Rid of its Anti-Panhandling Rules Following State Supreme Court Decision*, OLYMPIAN (Jan. 6, 2018, 4:49 PM), <https://www.courts.wa.gov/content/publicupload/eclips/2018%2001%2008%20Olympia%20gets%20rid%20of%20its%20anti%20panhandling%20rules%20following%20state%20Supreme%20Court%20decision.pdf>.

Smith v. Goguen, 415 U.S. 566 (1974).

Megan Smith, Note, *The Constitutionality of Panhandling Ordinances: Making "Cents" out of Reed v. Town of Gilbert*, 35 J.L. & COM. 255 (2017).

Jessica So, Scott MacDonald, Justin Olson & Ryan Mansell, Seattle University Homeless Rights Advocacy Project, *LIVING AT THE INTERSECTION: LAWS & VEHICLE RESIDENCY* (Sara Rankin ed. 2016).

Speet v. Schute, 726 F.3d 867 (6th Cir. 2013).

Spokane MC § 10.10.25 (2015).

Spokane MC § 10.10.27 (2008).

Spokane MC § 10.10.40 (2007).

Spokane Valley MC § 6.05.090 (2003).

State v. Dean, 866 N.E.2d 1134 (1st Cir. 2007).

Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Feb. 2, 2018 13:17 PST) (on file with author).

Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Feb. 21, 2018 14:40 PST) (on file with author).

Email from Erika Sullivan, Paralegal, City of Lakewood, to author (Apr. 23, 2018 15:29 PST) (on file with author).

Sunnyside MC § 5.22.050 (2007).

Sunnyside MC § 9.86.050 (1978).

Sunnyside MC § 12.04.020 (1956).

Marie-Eve Sylvestre & Celine Bellot, *Challenging Discriminatory and Punitive Responses to Homelessness in Canada*, in *ADVANCING SOCIAL RIGHTS IN CANADA* (Martha Jackman & Bruce Porter eds., Irwin Law 2014) <http://ssrn.com/abstract=2484975>.

Tacoma MC § 8.13A.030 (2007).

Tacoma MC § 8.13A.040 (2007).

Tacoma MC § 8.13A.060 (2007).

Telephone Interview with Nancy Talner, Staff Attorney, Am. Civil Liberties Union of Wash. (Oct. 3, 2017).

Texas v. Johnson, 491 U.S. 397 (1989).

Thayer v. City of Worcester, 755 F.3d 60 (1st Cir. 2014).

Thayer v. City of Worcester, 144 F. Supp. 3d 218 (D. Mass. 2015).

E. FULLER TORREY, *OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS* (1997).

Turner Broad. Sys., Inc. v. Fed. Commc'ns Comm'n, 512 U.S. 622 (1994).

THE U.S. CONF. OF MAYORS, *HUNGER & HOMELESSNESS SURV.: A STAT. REP. ON HUNGER & HOMELESSNESS IN AMERICA'S CITIES* (Dec. 2015), <http://chicagohelpinitiative.org/assets/uploads/files/1221-report-hhreport.pdf>.

U.S. CONST. amend XIV, § I.

United States v. Williams, 553 U.S. 285 (2008).

University Place MC § 9.55.010 (2004).

Vancouver MC § 7.04.030 (2003).

Shankar Vedantam et. al., *How a Theory of Crime and Policing was Born, and Went Terribly Wrong*, NPR (Nov. 1, 2016, 12:00AM), <https://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong>.

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

Glossary of Terms, WASH. COURTS (2018), https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.termguide#D.

WASH. DEP'T OF COMM., 2014 POINT IN TIME COUNT (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2014.pdf>.

WASH. DEP'T OF COMM., 2015 POINT IN TIME COUNT (2015), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2015.pdf>.

WASH. DEP'T OF COMM., 2016 POINT IN TIME COUNT (2016), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-pit-final-summary-2013.pdf>.

Watchtower Bible and Tract Soc'y of New York, Inc. v. Vill. of Stratton, 536 U.S. 150 (2002).

Wenatchee MC § 6A.13.020 (1989).

A WRAP Primer on Transforming Rental Assistance, WESTERN REG'L ADVOCACY PROJECT, <http://wraphome.org/wraparchives/downloads/A%20WRAP%20Primer%20on%20TRA.pdf> (last visited Nov. 25, 2017).

Theresa Wiltz, *Do New Laws Help or Hurt the Homeless?* PEW CHARITABLE TRUSTS (Nov. 17, 2014) [hereinafter Wiltz 2014], <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/11/17/do-new-laws-help-or-hurt-the-homelessness>.

Teresa Wiltz, *Anti-Panhandling Laws Spread, Face Legal Challenges*, PEW CHARITABLE TRUSTS (Nov. 12, 2015) (quoting Ken Paulson, President of FIRST AMEND. CTR), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/12/anti-panhandling-laws-spread-face-legal-challenges>.

Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle*, PEW CHARITABLE TRUSTS (May 15, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle>.

Wolf v. McDonnell, 418 U.S. 539, 588 (1974).

Telephone interview with Sarah Wunsch, Deputy Legal Dir., Am. Civil Liberties Union of Mass. (Feb. 26, 2016).

Yakima MC § 6.75.025 (2013).

DANIEL YOHANNA, DEINSTITUTIONALIZATION OF PEOPLE WITH MENTAL ILLNESS: CAUSES AND CONSEQUENCES, AM. MED. ASS'N J. ETHICS (Oct. 2013), <http://journalofethics.ama-assn.org/2013/10/mhst1-1310.html>.

MICHAEL A. ZIZKA ET. AL., STATE & LOCAL LAND USE LIABILITY: § 17:13 USE OF PUBLIC LANDS (Dec. 2017) (citing *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998)).

APPENDIX

Part I: This Community Cares Flier

Referred to on page 8 of the brief, below is the flier distributed by Marysville and Arlington.⁴⁸⁷

THIS COMMUNITY CARES

- Arlington and Marysville have many generous people who want to help others.
- Please consider keeping your wallet closed when approached by panhandlers.
- Panhandling is a community-wide problem that adversely impacts our cities' and neighborhoods' images, local businesses, and perception of public safety.
- When you give money to a stranger, you can't know how it will be spent.
- If we stop giving cash to panhandlers, their behavior won't be rewarded and is likely to decrease.

Because you care, we want you to know that Marysville and Arlington have several free resources for people who need hot meals, groceries and/or clothing.
Feel free to share this information with those who may be in need.
When you want to donate, please consider giving to a local charity instead of to panhandlers.

Community Resources		
Arlington Community Food Bank 360-435-1631	Mon 12-1 pm (seniors/disabled), Wed 5:30-6:30 pm, Fri 12-1 pm	A2*
Arlington Community Resource Center 360-386-7989	Food & resources: Mon-Wed 9 am-5 pm, Thurs 9 am-6 pm	A4
City of Arlington Flex Fund 360-403-3421	Mon-Fri 9 am-5 pm	A1
DSHS Community Service Office 1-877-501-2233	Mon-Fri 9 am-5 pm	A3
Marysville Community Food Bank 360-658-1054	Mon 9-11 am (seniors/disabled), Tues 3-6 pm, Fri 9-11 am	M3
Marysville Community Lunch- marysvillecommunitylunch@gmail.com	Lunch Mon/Wed/Fri 1-2 pm	M7
Master's Feast 360-659-6716	Dinner Tues 5 pm	M1
Reset Feeding Ministry 360-322-7725	Dinner Sun 4-5 pm	M6
Salvation Army 360-926-2228	Breakfast Tues/Thurs 9:30-11 am; Dinner Wed 5-6:30 pm; Clothing Wed 4:30-5:30 pm	M5
Seeds of Grace 360-659-7335, ext 212	Food & resources: Sat 9-10 am (no 4th Sat), Wed 2-3 pm (seniors/disabled)	M4
St. Joseph's House 360-651-8246	Clothing Tues/Thurs 10 am-Noon, 1-5 pm, Sat 9 am-Noon	M8
The Table 360-659-0445	Dinner Thurs 6 pm	M2

* see addresses and map locations on reverse

⁴⁸⁷ City of Arlington & City of Marysville, *This Community Cares*,
<http://www.arlingtonwa.gov/DocumentCenter/View/918> (retrieved Oct. 17, 2017).

Part II: Graphical Comparison of the Rise in Begging Ordinances and the Rise in Criminalization

⁴⁸⁸ Olson & MacDonald, *supra* note 37, at 3.

⁴⁸⁹ See *supra* Part II.

Part III: Methodology

A. Master Chart Methodology

HRAP researchers analyzed municipal codes laws of sixty-four cities across the state of Washington, searching for ordinances that work to prohibit begging. At the time of selection, the sixty-four cities chosen were the most populous in the State, with an additional few chosen in an attempt to capture all geographic areas across the State. Researchers then used the Municipal Research and Services Center (MSRC), a nonprofit website, to locate the municipal codes for each city. The resulting “Master Chart” cited to throughout this brief was created and is on file with the authors.

Using the 2010 Census, researchers collected demographic data on each of the sampled cities. Researchers analyzed the data to determine whether there was any correlation between a city’s ordinances and its: population density, median household income, percentage of residents below the poverty level, and racial makeup. Researchers did not find any significant correlations.

Using MRSC, and the search function for each municipal code being sampled, HRAP researchers then searched the city code for references to panhandling, including key words such as

Panhandle	Solicit	Beg	Aggressive
Panhandling	Soliciting	Begging	Solicitation
Panhandles	Solicits	Begs	Automated Teller Machine
Panhandler	Solicitor	Beggar	ATM

Researchers then manually analyzed each ordinance containing a key word. Researchers also did a manual check of common code sections, including the criminal code, public health, park rules, public safety, and offenses against public order sections.

Once an ordinance was identified as a “begging restriction,” the ordinance was classified into one of four categories: (1) zone/geographic restrictions, (2) distance restrictions, (3) Time Restrictions, and (4) Manner restrictions (i.e. aggressive panhandling). Researchers created the master chart, with the following categories:

<u>Demographic Data</u>	<u>Ordinance Specific Data</u>
Total Population	Total Anti-Panhandling Ordinances
Population Density (Persons per Square Mile)	Dates of Enactment-Total
Persons Below Poverty Level, Percent, 2009-2013	Total Ordinances with Zone/Geographic Restrictions
Median Household Income, 2009-2013	Total Ordinances with Distance Restrictions
Percentage Households Earning Less than \$15,000	Specific Ordinances with Distance Restrictions
Veterans, 2009-2013	Dates of Enactment - Distance Restrictions
Demographic - Caucasian, 2010	Language of Distance Restrictions: How Far From Where?
Demographic - African American, 2010	Total Ordinances with Time Restrictions
Demographic - Asian, 2010	Specific Ordinances with Time Restrictions
Demographic - American Indian or Alaska Native, 2010	Dates of Enactment - Time Restrictions
	Total Ordinances with "Aggressive" Panhandling Limitations
	Specific Ordinances with "Aggressive" Panhandling Limitations
	Dates of Enactment - "Aggressive" Panhandling
	"Aggressive" Panhandling Defined?
	"Aggressive" Definition Based on Objective Conduct?
	"Aggressive" Definition Based on Reception?
	Penalties (Civil infraction or Misdemeanor)
	Progressive penalties (one that worsens with each offense)

The data from the ordinance was inputted into the master chart: a spreadsheet created in Microsoft Excel. Several researchers reviewed the chart at various stages to ensure accuracy. The last review was completed in March 2018. Researchers used the “sort” function in Microsoft Excel to sort the data in the master chart, allowing researchers to spot trends and possible correlations. Researchers then used the “chart” function in Microsoft Word to create the charts contained in this brief.

B. Enforcement Data Methodology

For the enforcement data, HRAP sent requests for public record information to eleven cities. The cities chosen were the cities used in the case study section of the brief, as well as eight additional cities in order to obtain enforcement data on ten “aggressive begging” laws. An example request is included in the appendix below. HRAP researchers followed up with cities via email and phone.

Once the requests were received, researchers discovered that many cities were not enforcing the ordinances via measures such as arrests and citations. A google search discovered that “move-along” orders were prevalent in Centralia. Researchers then contacted each city to ask whether the city had a routine of issuing “move-along” orders rather than formal citations. No cities stated that they had a formal policy. However, when considering the prevalence of move-along orders in other contexts, as well as the information discovered regarding Centralia, researchers concluded that cities are likely issuing informal “move-along” orders to individuals experiencing homelessness. Statements from professionals throughout the community confirmed that move-along orders are prevalent in Seattle.

C. Scope of Methodology

While HRAP’s methodology was effective, it is not without a few restrictions. First, HRAP researchers only considered codified ordinances. As HRAP researchers noted years earlier in Washington’s WAR, “there is a very real risk that ordinances may have been enacted or amended but not included in online databases.”⁴⁹⁰ Second, while researchers attempted to use key language that would trigger most ordinances, it is possible that some ordinances containing creative language were missed.

⁴⁹⁰ Olson & MacDonald, *supra* note 37, at 48.

Part IV: Example Public Records Request Letter

[Date]
[City Clerk]
[address]

[Via email:]

RE: Public Records Act Request – Citation Information for [city] Municipal Code

To Whom It May Concern:

I am requesting that the records described below be made available for inspection, pursuant to the Washington Public Records Act (RCW §42.56 et seq.). In accordance with RCW 42.56.520, you must, within five business days of receipt of this request, respond and let me know the status of the request and how soon you will be able to produce all discoverable records. I am requesting certain information (see specific questions below) pertaining to citations issued due to violations of the following [city] Municipal Code:

[specific ordinance];
[specific ordinance].

Specifically, I am requesting all relevant records related to the following questions for the time period between January 1, 2013, and January 1, 2018. Please separate each of the responses by ordinance and by year:

1. How many total citations were issued under each of the city codes specified above, for each year?
2. How many of these citations resulted in misdemeanor charges against the recipient?
 - A. How many of these charges resulted in convictions?
 - B. How many citation recipients spent time in jail as a result?
 - i. How much time did each recipient spend in jail?
 - C. How many citation recipients spent time in police custody as a result of these citations?
 - i. How much time did they spend in law enforcement custody?
3. How many of these citations resulted in fines assessed against the recipient?
 - A. What was the amount of fines assessed for each citation?
 - B. How many fines were dismissed before payment?
 - C. How many fines were paid in full?

- D. How many fines resulted in a default?
 - i. How many defaulted fines resulted in further charges, such as failure to appear or pay charges, against the citation recipient?
4. How many of these citations resulted in a failure to appear?
5. Do you maintain records that may indicate whether a citation recipient is homeless or staying in temporary housing such as a shelter or an encampment?
 - A. How many of the citations (by ordinance and by year) were issued to people who were experiencing homelessness?
 - B. How many of the citations (by ordinance and by year) were issued to people who were not able to provide a residential address?
 - C. How many of the citations (by ordinance and by year) were issued to people who were staying in an encampment or temporary shelter?
 - D. If you cannot produce the data in response to 5.A., 5.B, or 5.C, in how many instances did recipients of these citations provide the same residential address? Put another way, in how many instances was the same address recorded for recipients of these citations?
6. What was the race of each individual cited if identified?
7. What was the gender of each individual cited if identified?
8. For citations issued under [ordinance number], how many of those citation recipients simultaneously received citations for assault [applicable ordinance number], battery [applicable ordinance number], or harassment [applicable ordinance number].
 - A. Among the results for request #8, how many of these defendants was offered (or accepted) a plea deal?

If the City of [city name] does not track the data related to any of the requests above, please let us know.

At this time, please refrain from making hard copies of any responsive documents. The production of data in electronic form is preferred. If the records are available electronically, please specify what electronic forms are available, as well as any cost associated with accessing this electronic form. You may send any written responses to this request by email to [name and email] or by mail to:

[mailing address]

If any documents or responses are withheld in whole or in part, please specify the reason for withholding such document or response or any portion thereof. To the extent that portions of the request are specifically exempted from disclosure, please provide all non-exempt portions as allowed for under the Washington Public Records Act. To the extent that any portion of the

requested records contain classified information, please redact such information and furnish the requested records.

We very much appreciate your attention to this request. If you would like to contact me with questions or concerns about the requested information, please feel free to do so as I am more than happy to clarify in any way I can. Please contact me with any questions at [contact information].

I look forward to hearing from you within five business days. Thank you for your assistance!

Sincerely,

[Name]

[Affiliation]