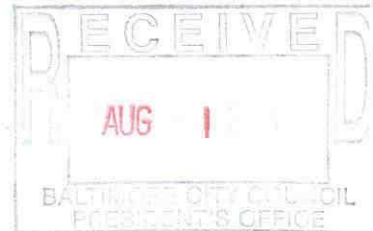




August 1, 2013

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attn: Karen Randle, Executive Secretary



Re: City Council Bill No. 13-0186 – Soliciting - Prohibited Places
Supplemental Report – Revised Downtown Partnership Amendment

Dear President and City Council Members:

The Law Department has discussed the proposed Downtown Partnership of Baltimore (DPB) amendment and has revised the amendment to comply with the constitutional restrictions on solicitation laws. The proposed amendment is as follows:

WHEREAS, there are locations in the City where persons must remove money from a secure place on their person in order to access public or private services located in or near public areas or where persons are confined in an enclosed and/or elevated walkways;

WHEREAS, persons in these locations are vulnerable to a greater degree to intimidation and endangerment of their safety from solicitation activities

Art. 19, Sec. 47-4 - It is unlawful for any person to engage in soliciting:

- (6) within 10 feet of any place where a person pays for goods and services with cash or credit cards
- (7) from persons who are standing within 5 feet of a parking kiosk machine or parking meter; or
- (8) on pedestrian bridges or in the stairwells and entranceways leading to those bridges

The Law Department believes that this language is consistent with the ruling in a recent 4th Circuit case, *Clatterbuck v. City of Charlottesville*, 2013 U.S. App. LEXIS 3651 (4th Cir). In the Fourth Circuit at least, after *Clatterbuck*, laws which define solicitation as requests for immediate donations for something of value must contain a statement of purpose and evidence of content-

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neutral justifications that can defeat allegations of “censorial intent.” The Court suggests some content-neutral justifications that might suffice: impeding traffic and safety concerns (immediate requests for donations of value require the citizen to reach for a wallet, making him more vulnerable to theft). In other words, the City must present evidence that the law was not enacted merely for the purpose of reducing the presence of beggars in certain areas. Once the law passes this test, the City must prove that it is narrowly tailored and leaves open alternate means of communication (tests that the *Clatterbuck* Court could not determine without further evidence).

Restrictions in Public Fora Must Be Narrow And Justified By Content- Neutral Purpose:

Restrictions on solicitation in public forums like streets and sidewalks must survive a higher level of scrutiny than restrictions in more limited forums like arenas and transit stations. Even a content-neutral regulation must be narrowly tailored to serve a significant government interest and “leave open ample alternative channels of communication” if it is in a public forum. Geographic limits to the restriction could help satisfy the “narrowly tailored” requirement. Our law already reflects an anticrime purpose in that it restricts begging/soliciting near places where citizens are most vulnerable (e.g. ATM’s and vehicles etc.). The smaller the geographic limit surrounding these “danger zones,” the more likely a court is to find that the restriction is narrowly tailored.

Conclusion

Unfortunately, decisions across the country over the past few years have not clarified this rather murky area of First Amendment law. However, recent decisions do provide some guidance: the smaller the geographic area of the restriction, the more likely to survive a narrowly tailored challenge (the area must be surrounding some place where the evil (crime or impeding traffic for example) is heightened), if there are “alternative” laws e.g. jaywalking, that do not impact speech that could target the same issue (traffic safety, for example) the court will be less likely to find that the law is narrowly tailored, defining solicitation as requesting something of value immediately (as most of these laws do) makes a “content distinction” which must be justified by a legislative purpose showing no “censorial intent.” The City Council, therefore, must focus on the safety concerns presented by panhandling. To this end, the amendment above recommends that additional whereas clauses be added to the bill to describe the City’s safety concerns surrounding the activity covered in the amendment.

Assuming that the whereas clause will satisfy the court's concerns regarding content distinction and significant governmental purpose, the law must also "leave open ample alternative channels of communication. Clearly, under this bill, solicitation in areas other than those covered in the amendment is not prohibited so ample alternative means of communicating the need for donations is left open.

Based on the foregoing, the DPB amendment to City Council Bill 13-0186, as revised above, could be approved by the Law Department for form and legal sufficiency. Additional amendments were also proposed in the Law Department's original report and must also be included in the bill.

Sincerely yours,


Elena R. DiPietro
Chief Solicitor

cc: George A. Nilson, City Solicitor
Angela Gibson, City Council Liaison, Mayor's Office
Hilary Ruley
Victor Tervalá
Jenny Landis