



March 15, 2021

Mayor Ken Sissom & City Council of Merriam
9001 W. 62nd St.
Merriam, KS 66202

Sent only via email to mayors@merriam.org, sdiebold@merriam.org, jsilvers@merriam.org,
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Re: Merriam Panhandling Ordinance

Dear Mayor Ken Sissom and City Council members,

We write on behalf of the ACLU of Kansas and the National Homelessness Law Center to express our concerns regarding an ordinance approved by the Merriam City Council, which amends Chapter 68 of the Merriam Code of Ordinances by prohibiting pedestrians from standing on certain medians. The American Civil Liberties Union of Kansas is a non-profit organization dedicated to protecting the civil rights and liberties of all people living in Kansas. The National Homelessness Law Center is the only national legal organization dedicated solely to ending and preventing homelessness.

We all share the goal of reducing the number of people who need to ask for charity on Merriam's streets. But if we share the same goal, we should also share the desire to implement the best, evidence-based ways of getting there. This proposed ordinance, unfortunately, is both unconstitutional and a step in the wrong policy direction, and our organizations write to urge the City of Merriam to consider adopting proven, constructive alternatives instead.

We also write to share the exciting news that federal COVID-relief resources could enable Merriam to safely house its entire homeless population in hotels or motels for the duration of the pandemic at no cost to the city, which would eliminate the need for many individuals to panhandle. Rather than spending its time debating this ordinance, the city should instead direct its efforts at obtaining these federal resources, which could help dramatically reduce homelessness (and panhandling) far into the future.

Although the ordinance does not reference “panhandling” on its face, one purpose of proposing this ordinance is to prohibit individuals from standing in medians near stoplights holding signs with written messages asking for charity (commonly called “panhandling”). The effect of an ordinance like this one is disproportionate impact and harm to vulnerable persons without homes and who are in need of assistance. However, this is not a constitutionally sound purpose. Just as the First Amendment prohibits the City from infringing on its residents’ rights to speak about religion, education, sports, or politics, so too does the First Amendment prohibit the City from infringing on its residents’ rights to request charity. Case law is extensive in this area.

The First Amendment to the United States Constitution protects the speech of everyone in public forums, including individuals who are homeless. The proposed ordinance restricts standing on medians, which means it prohibits making charitable requests by holding a sign while standing on median. Traffic medians are public forums and thus are subject to First Amendment protection. *Cutting v. City of Portland*, 802 F.3d 79, 83 (1st Cir. 2015) (City’s medians are traditional public fora for First Amendment purposes). Councilmember McLaughlin acknowledged that the ordinance would be enforced against a person if, while on the median, they attempted to interact with the occupants of a vehicle, distinguishing this speech from being on the median and using the pedestrian crosswalk signal to safely cross the street. The government’s ability to regulate speech within public fora is very limited.

Since the landmark Supreme Court ruling in *Reed v. Gilbert*, 576 U.S. 155 (2015), laws in Kansas and throughout the nation, which were like the one you are considering, have been consistently declared unconstitutional by the courts. In fact, since *Reed*, every panhandling ordinance challenged in federal court, including many with features like the City’s ordinance, has been found constitutionally deficient.

Merriam’s ordinance not only almost certainly violates the constitutional right to free speech protected by the First Amendment, but there are numerous examples of better alternatives that exist which the City could draw on. We understand that protecting pedestrian safety is a top priority of the City. However, this proposal does not address those issues that make roadways unsafe. Indeed, we respectfully suggest that it will have the opposite effect and make pedestrians less safe.

We applaud the City for making this proposed ordinance a non-criminal infraction, but issuing fines to people standing on the roadway asking for money is counterproductive. It will contribute to a cycle of poverty. We strongly oppose punishments that escalate the cost and involve individuals in court hearings of any kind, as failure to appear in court hearings can lead to incarceration in our county jail. These types of ordinances are costly to enforce and only

exacerbate problems associated with homelessness and poverty. Numerous communities have created alternatives that are more effective, and leave all involved—homeless and non-homeless residents, businesses, city agencies, and elected officials—happier in the long run. See National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (December 2019), <https://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>

For many individuals, this ordinance will not deter them from standing in the medians. Why do people asking for charity in the roadways stand in the medians? It is the side closest to the driver. Individuals do not have to walk into traffic or on the street to receive money or food. Even with the adoption of such an ordinance, individuals will risk getting cited because no ordinance can deter people who are desperate to survive. For other individuals, they will move to the roadside. We will see more people on sidewalks or shoulders of the road. More people will walk into the roadways when traffic is stopped. In this way, the ordinance will simply move pedestrians to other parts of the roadway and will create unintended consequences for pedestrians and traffic by creating more dangerous situations not less.

The COVID-19 pandemic, the resulting economic crisis, and the looming eviction avalanche create a perfect storm of risk and vulnerability for persons experiencing homelessness in our community. But there are also opportunities as there are numerous federal funding streams available to house homeless persons in non-congregate shelter under the CARES Act and the recent COVID relief package. The Federal Emergency Management Agency has approved waivers of both its 30 day renewal and 25% match requirements, offering 100% reimbursement funding for the duration of the pandemic. See <https://nlihc.org/resource/fema-changes-policy-approve-non-congregate-shelterreimbursement-duration-emergency>, <https://nlihc.org/resource/new-executive-orderaddresses-urgent-health-and-housing-needs-people-experiencing>. This means communities have no fiscal constraint to stop them from offering non-congregate shelter to people experiencing homelessness for the duration of the crisis.

The persons who are standing in medians to ask for help need social workers to connect them to housing and services, not police officers to give them tickets and notices to appear in court. And the pedestrians, bicyclists, and drivers need a more meaningful approach to traffic safety than an ordinance that was not truly designed with them in mind. As always, we remain available and committed to help the City pursue meaningful solutions. Our organizations are willing to sit down with the City to discuss the above issues and work toward an effective solution. It is our hope we can work together to find a mutually agreeable solution to address pedestrian safety and homelessness in the community, while protecting the constitutional rights of the individuals



involved. Please feel free to contact us at etars@nlchp.org or 202-638-2535 x. 120 if you are willing to discuss these constructive solutions with us.

Sincerely,

A handwritten signature in black ink that reads "Sharon Brett". The signature is written in a cursive style.

Sharon Brett
Legal Director, ACLU of Kansas

A handwritten signature in black ink that reads "Eric S. Tars". The signature is written in a cursive style.

Eric S. Tars
Legal Director, National Homelessness Law Center