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Mayor Becker
Salt Lake City
mayor@slcgov.com

July 27, 2010

Re: Salt Lake City's Revised Proposed Commercial Solicitation Ordinance

Dear Mayor Becker,

The ACLU of Utah appreciates your recognition that the first proposed Commercial Solicitation Ordinance, submitted to the public for comment in 2009, was unworkable and likely unconstitutional. While we applaud your efforts to address the concerns we, and others, brought to your attention, the newly revised ordinance still suffers from many of the same flaws we addressed in our letter of September 18, 2009.

We stress again that despite the benign title of the ordinance, purporting to target "commercial solicitation," it is clear that the ordinance will restrict the ability of individuals in Salt Lake City to engage in First Amendment protected activity, including the right to request charitable solicitations.

While the revised ordinance removes the highly problematic section allowing for penalties if citizens are untruthful in soliciting charity, it still contains restrictions, albeit narrowed, on the locations where an individual can engage in First Amendment protected charitable solicitations.

From a legal perspective, a statute that limits the situs of expression based on the content of the message runs the risk of violating Utah's constitutional provisions regarding free speech, previously interpreted by the Utah Supreme Court as providing for *greater* protection than the federal counterpart.¹

As you may recall from our last communication on this topic, in March 2009, a judge in Oregon ruled that the city of Medford's similar anti-panhandling ordinance violated Article 1, Section 8, of the Oregon Constitution, which prohibits passing any law restricting freedom of speech.² The court concluded that the ordinance's

¹ See *Provo City Corp. v. Willden*, 768 P.2d 455, n. 2 Utah, 1989; see also *American Bush v. City of South Salt Lake*, 140 P.3d 1235, 1242 Utah, 2006.

² See *Volkart v. City of Medford*, No. 08-1030-E1 (Oregon Circuit Court March 19, 2009) (order granting summary judgment).

prohibition against “in-person requests” for “immediate donations” in certain locations was unconstitutional under the Oregon Constitution.³

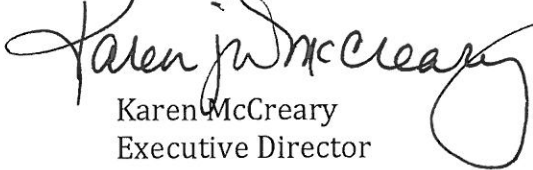
In Utah, it remains to be seen if an ordinance, such as your revised Commercial Solicitation Ordinance, which implicates free speech, will prove vulnerable to challenge under the similarly exacting Utah free expression standards.

Finally, we must reiterate that passing an ordinance like the Revised Commercial Solicitation Ordinance is likely to be difficult to enforce and may prove ineffective. Police and prosecutorial resources are scarce, targets of this type of ordinance are unlikely to have funds to pay fines or to appear in court and jails have limited space and are already overcrowded with serious offenders. Furthermore, this type of ordinance may invite selective enforcement on the part of law enforcement, whereby certain speakers are targeted because of an unpopular message, while other more established charities are free to solicit charity, even in violation of the letter of the ordinance.

We respectfully urge the city to consider alternatives to criminalizing charitable solicitation, and instead focus on more positive ways to increase social services to those members of our community who are in need.

Please feel free to contact us should you have any questions.

Sincerely,



Karen McCreary
Executive Director



Marina Lowe
Legislative & Policy Counsel

cc: Russell Weeks

³ *Id.*