March 14, 2012

TO: Richard Haesler, City Attorney’s Office

FROM: Ron Redmond, Church Street Marketplace

cc: Marketplace Commission and Staff; Burlington Police Department

RE: FOLLOW UP FROM PUBLIC SAFETY COMMITTEE MEETING RE:

 PROPOSED AMENDMENTS TO BCO 21-8

Hi Richard: Thanks again for the reminder to provide an update to the City Council’s Public Safety Committee. Here are my responses. Let me know if we’re on the right track for addressing the committee’s questions. Very best, Ron.

1. **Copy of proposed Aggressive Panhandling and Solicitation Ordinance, approved by the Marketplace Commission**. Following is the most current version of the proposed ordinance.
2. **Map to illustrate footage restrictions being proposed.** RESPONSE: Forthcoming under separate cover.
3. **Examples of other city ordinances utilizing some of the restrictions being put forward.** RESPONSE: The draft resolution that precedes the proposed Aggressive Panhandling and Solicitation ordinance provides the best explanation for both rationale and objectives. Essentially, we’re proposing a modest update the City of Burlington’s aggressive

 panhandling and solicitation ordinance, last updated in 2002.

 We reviewed aggressive panhandling and solicitation ordinances in a range of US cities.

 Anchorage, AK

 Berkeley, CA

 Boulder, CO

 Chicago, IL

 Concord, CA

 Denver, CO

 Ithaca, NY

 Los Angeles, CA

 Minneapolis, MN.

 New Haven, CT

 New Orleans, LA

 Providence, RI Raleigh, NC

 Santa Barbara, CA

 Seattle, WA

 Wilmington, DE

Universally, we found that those municipalities surveyed use the same wording in their ordinances. Most, however, were more complete and thorough in their definitions of “Findings,” “Definitions,” “Aggressive Manner,” “Public Place,” and “Prohibited Acts,” versus what is was described in Burlington’s ordinance. The majority of the proposed amendments, therefore, represent an effort to be more complete and thorough.

Secondly, the proposed ordinance changes are the result of an August 17, 2011 Marketplace Commission meeting where approximately 50 downtown stakeholders from the public, private and non-profit and residential sectors were asked to provide input; comments received from the general public; and responses received from over 100 downtown stakeholders (public, private, non-profit, residents) who were asked to review and comment on proposed changes and additions. We also worked very closely with the City Attorney’s office to thoroughly analyze the proposed changes.

Below, I have included specific sections of the ordinance where amendments are being proposed: ***Findings, Definitions, Public Place, Prohibited Acts***.

 **(a) *Findings.* The Burlington City Council finds that aggressive begging, panhandling, or solicitation negatively affects the following significant governmental interests:**

 **(7) Protection of citizens from manipulation by individuals claiming to be a veteran, homeless, from out of town, stranded, or disabled, in order to gain financially, when such is not true**

 *SOURCE: As we surveyed ordinances from other cities, we noticed that most included a*

 *section that protects citizens from false or misleading solicitation. We have noted from*

 *public comments we have received that many of downtown Burlington’s panhandlers*

 *make claims that are not true, as a way to gain financially from the general public.*

 *There was a desire expressed that we “level the playing field” by offering a some degree*

 *of consideration for residents and visitors.*

 **(b) *Definitions***

 **(1) *Aggressive manner* shall mean any of the following:**

**h. Coming within three feet of a person unless that person has**

 **agreed to give funds.**

1. **Soliciting in a group of two or more persons**

 *SOURCE: Additions to the definition of “Aggressive manner,” were derived from*

 *public comment from individuals who had felt intimidated and/or threatened by being*

 *approached by a group of two or more panhandlers, or by having a panhandler be less*

 *than three feet away when making a request. We also note that this particular definition appears in most of the panhandling ordinances we surveyed.*

 **(3) *Public place* shall mean a place where a governmental entity has title to or**

 **which the public or a substantial group of persons has access, including but**

 **not limited to any** **street, highway, parking lot, plaza, transportation structure**, **alley, bridge**, **driveway**, **doorways, alcoves, alleys, benches, facility**

 **or vehicle, school, place of amusement, park, playground or sidewalk or to**

 **the doorways and entrances to buildings or dwellings, or grounds enclosing**

 **them thereupon.**

 *SOURCE: Further definition of “Public Place” derived from both public*

 *comment taken by the Marketplace Commission and by a survey of panhandling*

 *ordinances of the cities identified*

 **(c) Prohibited Acts**

**(11) No person shall solicit between 6 PM and 9 AM**

*SOURCE: Many ordinances surveyed include a provision to limit panhandling and solicitation in the evening and early morning hours. This proposed addition is based on those panhandling ordinances with time restrictions, and public comments received about safety and security concerns in the evening and early morning hours when there can be fewer people on Church Street and our downtown; and workers walking to their jobs in the morning hours.*

**(12) No person shall solicit in an area that is not** **~~unless the area is~~** **sufficiently illuminated to allow the solicitee to fully observe the solicitor at a distance of** **~~fifteen (15) feet~~ twenty (20)** **feet**.

 *SOURCE: Survey of panhandling ordinances. The distance of 20 feet is*

 *common among many ordinances surveyed including cities like Billings, MT;*

 *Denver, CO; Louisville, KY; Salt Lake City, UT; Raleigh, NC; Many cities*

 *require a distance of from 50 to 100 feet from ATMs*

**(13) No person shall solicit at freeway exits/entrances and at intersections with traffic signals.**

*SOURCE: Survey of city panhandling ordinances and public input.*

 **(14) No person shall solicit in any one city block for more than one hour.**

 *SOURCE: Public input. Stakeholders asked that solicitors and panhandlers be*

 *held to the same standard as Church Street’s street performers.*

 **(15) No person shall solicit while sitting or lying down upon the public**

 **right of way or upon a blanket, chair, stool, or any other object placed upon a public sidewalk. Shall not apply to any person or persons sitting or lying**

 **down on a public right of way due to a medical emergency or who as the**

 **result of a disability, utilizes a wheelchair, walker, or similar device to move**

 **about the public right of way.**

 *SOURCE: Ordinance from Santa Barbara, CA and fears and frustrations from*

 *residents, stakeholders and visitors who expressed their belief that their right to*

 *free passage on the public right of way is often obstructed, especially when the*

 *Marketplace is crowded.*

 *We have received public comment about the need for more*

 *seating on the Marketplace. The Marketplace has had the same number of*

 *benches since 1998. In 2012, the Marketplace will launch a public*

 *fundraising campaign for ten new “backless” benches with arm rests. The*

 *backless benches will provide more short term and flexible seating and cost*

 *approximately $1,000 per bench. Please let us know of any individuals,*

 *organizations or companies who might want to sponsor a bench!*

**(16) No person shall be permitted to solicit if they have unresolved civil or**

**criminal charges or they have conditions of probation or parole that**

**prohibit them from soliciting.**

*SOURCE: Stakeholders expressed their commitment to helping individuals in our downtown who need services get to those services. At the same time, stakeholders expressed an expectation that there be a blanket of protection from those who are panhandling who have unresolved civil or criminal charges or conditions of probation or parole that would prohibit them from panhandling.*

**DRAFT RESOLUTION BY THE CHURCH STREET MARKETPLACE DISTRICT COMMISSION**

**RECOMMENDING AMENDMENTS TO THE CURRENT BURLINGTON CITY ORDINANCE,**

**21-8, “AGGRESSIVE PANHANDLING PROHIBITED.”**

 WHEREAS, the Church Street Marketplace District Commission seeks to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against abusive conduct of persons engage in aggressive panhandling, by imposing reasonable time, place and manner restrictions on solicitation while respecting the constitutional rights of free speech for all citizens; and

 WHEREAS, in 2002, the City updated its aggressive panhandling ordinance to insure that it addresses the constitutional protections afforded to individuals by the First Amendment and since that time, the Church Street Marketplace Staff, Street Outreach Program Staff, Church Street Businesses and Burlington Police have regularly distributed to panhandlers on Church Street and the downtown, a two-sided flyer that explains the City’s Aggressive Panhandling Ordinance so that panhandlers are informed and work within the city’s ordinance; and

 WHEREAS, Burlington has a proud tradition of promoting free speech and no City Ordinance should ever limit any persons from exercising their constitutional rights to solicit funds, picket, protest or engage in other constitutionally protected activity, rather to protect citizens from the fear and intimidation accompanying certain kinds of solicitations that have become unwelcome and overwhelming presence in downtown; and

 WHEREAS, in spite of the current updated ordinance and efforts to educate panhandlers, an increase in aggressive and abusive solicitation throughout the downtown has become disruptive for residents, visitors and businesses; aggressive and abusive solicitation has contributed not only to the loss of access and freedom to enjoy public spaces, but also to an enhanced sense of fear and intimidation and disorder; and

 WHEREAS, In addition to making Burlington a less desirable place to live, fear for personal safety created by aggressive and abusive solicitation also damages the city’s economic health. When city residents and others avoid downtown, our downtown businesses (the majority of which are locally owned) suffer.

 WHEREAS, the Church Street Marketplace Commission requested public comment from downtown stakeholders about aggressive panhandling in the downtown district and heard from residents, downtown non-profit organization employees, downtown business owners, managers and employees, property owners and visitors.

 WHEREAS, residents, non-profits and business owners have communicated their concerns about aggressive solicitation by people in places where they are a captive audience in which it is impossible or difficult for them to exercise their own right to decline to listen to or avoid solicitation from others; and

 WHEREAS, residents, non-profits and business owners have communicated that amendments to the current ordinance are needed that will provide a balance between the rights of solicitors and the rights of persons who wish to decline or avoid such solicitations, and will help avoid or diminish the threat of violence in such unavoidable confrontations; and

 THEREFORE, the Church Street Marketplace District Commission requests the Burlington City Council’s Public Safety Committee consider the following recommended amendments to Burlington City Ordinance 21-8, shown below in red.

**Sec. 21-8. - Aggressive panhandling prohibited.**

**(a)** *Findings.* The Burlington City Council finds that aggressive begging, panhandling, or solicitation negatively affects the following significant governmental interests:

**(1)** Protection of citizens from physical threats or injury and from damage to property;

**(2)** Prevention of harassment and intimidation of members of the public;

**(3)** Prevention of violent crime;

**(4)** Traffic control and public safety;

**(5)** Orderly movement of traffic and pedestrians; and

**(6)** Provision and maintenance of a safe, aesthetically attractive environment in areas designed to attract tourist revenue.

**(7) Protection of citizens from manipulation by individuals claiming to be a veteran, homeless, from out of town, stranded, or disabled, in order to gain financially, when such is not true**

The city council finds that aggressive begging, panhandling or solicitation is extremely disturbing and disruptive to the public and contributes to a loss of access to and enjoyment of public place, and to an enhanced sense of fear, intimidation, and disorder. This law is intended to promote these governmental interests and combat the negative effects of aggressive begging, panhandling or solicitation. It is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity.

**(b)** *Definitions.* For the purpose of this section:

**(1)** *Aggressive manner* shall mean any of the following:

**a.** Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another or damage to or loss of property or otherwise be intimidated into giving money or other thing of value;

**b.** Continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting;

**c.** Intentionally or recklessly touching or causing physical contact with another person or that person's property without that person's consent in the course of soliciting;

**d.** Intentionally or recklessly blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

**e.** Using violent, obscene or threatening gestures toward a person solicited; by any **language,** statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

**f.** Following the person being solicited, with the intent of asking that person for money or other things of value;

**g.** Speaking in a volume unreasonably loud under the circumstances;

**h. Coming within three feet of a person unless that person has agreed**

 **to give funds.**

**i. Soliciting in a group of two or more persons**

**(2)** *Soliciting* shall mean asking for money or objects of value in a public place, with the intention that the money or object be transferred at that time, and at that place. Soliciting shall include using the spoken, written or printed word, bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services. However, this ordinance is not intended to prescribe any demand for payment for services rendered or goods delivered. Nor is this ordinance or the definition of solicitation intended to include or prescribe fixed advertising attached to an existing premises. Nor is it intended to include or prescribe signs or written material allowed under city ordinance[section 21-5](http://library.municode.com/HTML/13987/level3/PTIICOOR_CH21OFMIPR_ARTIINGE.html#PTIICOOR_CH21OFMIPR_ARTIINGE_S21-5SIPUWAVE) or any other applicable city ordinance, regulation, license or permit.

 **(3)** *Public place* shall mean a place where a governmental entity has title to or which the public or a substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation structure, **alley, bridge**, **driveway**, **doorways, alcoves, alleys, bench** facility or vehicle, school, place of amusement, park, playground or sidewalk or to the doorways and entrances to buildings or dwellings, or grounds enclosing them thereupon.

 **(4)** *Financial institution* shall mean any banking corporation, credit union, foreign exchange office or like institution as defined in §11101 of Title 8 of the Vermont Statutes Annotated.

 **(5)** *Check cashing business* shall mean any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to Title 8 of the Vermont Statutes Annotated.

**(6)** *Automated teller machine* shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries and mortgage and loan payments.

 **(7)** *Automated teller machine facility* shall mean the area comprised of one or more automatic teller machines and any adjacent space which is made available to banking customers after regular banking hours.

 **(c)** *Prohibited acts.*

 **(1)** No person shall solicit in an aggressive manner in any public place.

 **(2)** No person shall solicit on private or residential property without permission from the owner or other person lawfully in possession of such property.

 **(3)** No person shall solicit within **~~fifteen (15)~~ ~~feet~~ twenty (20)** **feet** of public toilets.

 **(4)** No person shall solicit within **~~fifteen (15)~~ ~~feet~~ twenty (20)** **feet** of any entrance or exit of any financial institution or check cashing business or within **~~fifteen (15)~~ ~~feet~~ twenty (20)** **feet** of any automated teller machine without the consent of the owner of the property or another person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the facility.

 **(5)** No person shall solicit while under the influence of alcohol or a controlled substance.

 **(6)** No person shall solicit in any public transportation vehicle or within **~~fifteen (15)~~**

 **~~Feet~~ twenty (20)** **feet** of any handicapped parking space, taxicab stand,

 bus, ~~train~~ **~~or subway~~** station or stop or in any public parking lot or structure or

 dedicated walkway to such parking lot or structure.

 **(7)** No person shall solicit within **~~fifteen (15) feet~~ twenty (20)** **feet** of an

entrance to abuilding.

 **(8)** No person shall solicit within **~~fifteen (15) feet~~ twenty (20)** **feet** **of** **any**

 **outside eating or dining establishment**, of any valid vendor location as set

forth in[Chapter 23](http://library.municode.com/HTML/13987/level2/PTIICOOR_CH23PESO.html#PTIICOOR_CH23PESO) of this Code of Ordinances;

**(9)** No person shall solicit within **~~fifteen (15) feet~~ twenty (20)** **feet** of any pay telephone, public information booth, board or other structure, **or public toilet** ~~provided that when a pay telephone is located within a telephone booth or other~~  ~~facility, such distance shall be measured from the entrance or exit of the~~ ~~telephone booth or facilit~~y.

 **(10) No person shall solicit between 6 PM and 9 AM**,

 **(11) No person shall solicit in an area that is not**

 ~~unless the area is~~ sufficiently illuminated to allow the solicitee to fully observe the solicitor at a distance of **~~fifteen (15) feet~~ twenty (20)** **feet**.

 **(12) No person shall solicit at freeway exits/entrances and at intersections with**

 **traffic signals.**

 **(13) No person shall solicit in any one city block for more than one hour.**

 **(14) No person shall solicit while sitting or lying down upon the public right of way or upon a blanket, chair, stool, or any other object placed upon a**

 **public sidewalk. Shall not apply to any person or persons sitting or lying**

 **down on a public right of way due to a medical emergency or who as the**

 **result of a disability, utilizes a wheelchair, walker, or similar device to move**

 **about the public right of way**

 **(15) No person shall be permitted to solicit if they have unresolved civil or**

 **criminal charges or they have conditions of probation or parole that**

 **prohibit them from soliciting.**

 **(d)** *Penalties.* Any violation of the provisions of this law constitutes a civil offense punishable by a finefrom fifty dollars ($50.00) to five hundred dollars ($500.00). The waiver penalty for such offense shall be fifty dollars ($50.00). In lieu of or in addition to the penalty provided for in this section, a person in violation of this ordinance may be required to perform community service work as ordered by the court.

 **(e)** *Severance.* If any section, sentence, clause or phrase of this law is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this law.

 *(Rev. Ords. 1962, § 3551; Ord. of 3-18-02)*