

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 05 – SERIES 2017**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING THE TOWN CODE REGARDING  
LOITERING**

WHEREAS, the Town of Minturn (“Minturn” or the “Town”) is a Colorado home-rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter; and

WHEREAS, Section 10-8-100 of the Minturn Town Code (the “Town Code”) prohibits loitering in the Town under certain circumstances; and

WHEREAS, recent legal precedent, including that established by the United States District Court for the District of Colorado in *Browne v. City of Grand Junction*, now draws into question the validity of the Town’s anti-loitering ordinance; and

WHEREAS, the Town Council for the Town of Minturn, Colorado desires to amend Section 10-8-100 of the Town Code to protect individuals’ constitutional rights and to align with the most recent legal precedent now available.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:**

SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2. Section 10-8-100 of the Town of Minturn Municipal Code is hereby amended as follows, with double underlined text added and ~~strike through language deleted~~.

**Sec. 10-8-100. - Loitering.**

(a) *Loiter* means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide or tarry in a public place.

(b) A person commits loitering if he or she does any of the following:

(1) ~~Loiters for the purpose of begging;~~

(2) (1) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;

(3) (2) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;

- (4) (3) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in a school building or on school grounds, or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or
- (5) (4) Loiters with one (1) or more persons for the purpose of unlawfully using or possessing an unlawful substance as defined in Section 10-8-130 below.

(c) It is an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly as part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 15<sup>th</sup> DAY OF MARCH, 2017. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 5<sup>TH</sup> DAY OF APRIL, 2017 AT 6:30p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**

  
 \_\_\_\_\_  
 Matt Scherr, Mayor


ATTEST:

By:   
 \_\_\_\_\_  
 Jay Brunvand, Town Clerk




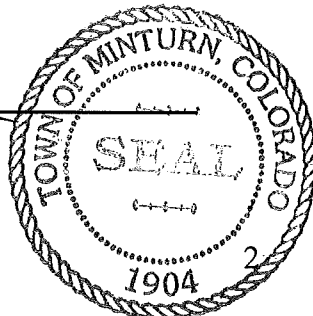
**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 5<sup>TH</sup> DAY OF APRIL, 2017.**

**TOWN OF MINTURN, COLORADO**

  
 \_\_\_\_\_  
 Matt Scherr, Mayor

ATTEST:

By:   
 \_\_\_\_\_  
 Jay Brunvand, Town Clerk



Wed, Mar 29, 2017  
12715558

14:29:36

Ad Ticket #5

**Acct:** 1032852  
**Phone:** (970)827-5645  
**E-Mail:** MANAGER@MINTURN.OR  
**Client:**  
**Caller:** Jay Brunvand  
**Receipt**

**Name:** Town of Minturn  
**Address:** P.O. Box 309

**City:** MINTURN  
**State:** CO  
**Zip:** 81645

**Ad Name:** 12715558A

**Original Id:** 12715544

**Editions:** 8VDI/8VD/

**Class:** 0990

**Start:** 03/18/17

**Stop:** 03/18/17

**Color:**

**Issue** 1

**Copyline:** 4 vd Ordinance 05-2017 AMENDIN

**Rep:** Pam Schultz

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 05 - SERIES 2017

Lines:	27
Depth:	2.26
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total</b>	<b>12.96</b>
Payment	0.00

AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING THE TOWN CODE RE-  
GARDING LOITERING

INTRODUCED, READ BY TITLE, APPROVED ON  
THE FIRST READING AND ORDERED PUB-  
LISHED BY TITLE ONLY AND POSTED IN FULL  
ON THE OFFICIAL TOWN WEB SITE THE 15th  
DAY OF MARCH, 2017. A PUBLIC HEARING ON  
THIS ORDINANCE SHALL BE HELD AT THE  
REGULAR MEETING OF THE TOWN COUNCIL  
OF THE TOWN OF MINTURN, COLORADO ON  
THE 5TH DAY OF APRIL, 2017 AT 6:30p.m. AT  
THE MINTURN TOWN HALL 302 PINE STREET,  
MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO  
Matt Scherr, Mayor

ATTEST:  
By: Jay Brunvand, Town

Published in the Vail Daily March 18, 2017.  
(12715558)

Ad shown is not actual print size



Nathan Woodliff-Stanley, Executive Director  
Mark Silverstein, Legal Director

August 31, 2016

**SENT VIA U.S. MAIL AND EMAIL: jlf56@comcast.net**

Gordon Flaherty, Mayor  
Town of Minturn  
P.O. Box 309  
Minturn, CO 81645

Dear Mayor Flaherty,

Your municipality is one of over thirty in Colorado with a municipal code that makes it a crime to “loiter for the purpose of begging.” Minturn Charter and Municipal Code § 10-8-100(b)(1). This ordinance not only unfairly targets poor and homeless persons whose pleas for assistance are protected by the First Amendment, but it is also legally indefensible. We write to ask that Minturn immediately initiate the steps necessary to repeal the ordinance and take it off the books. While the process of repeal is unfolding, law enforcement should be instructed not to enforce this ordinance.

In recent years, this nation and Colorado have seen a marked uptick in enforcement of laws that effectively criminalize homelessness and extreme poverty, including many laws that prohibit individuals from peacefully asking passersby for help.<sup>1</sup> Not only do these anti-begging ordinances violate the constitutional rights of impoverished people, but they are costly to enforce and serve to exacerbate problems associated with homelessness and poverty. Harassing, ticketing and/or arresting poor persons for asking for help is inhumane, counterproductive and – in many cases – illegal. That is why the American Civil Liberties Union of Colorado (“ACLU”) has devoted considerable resources in recent years to reviewing, and sometimes challenging such ordinances.<sup>2</sup>

---

<sup>1</sup> See National Law Center on Homelessness and Poverty, *No Safe Place – The Criminalization of Homelessness in U.S. Cities* (2015), available at [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place).

<sup>2</sup> Following are recent ACLU actions aimed at challenging laws that criminalize peaceful solicitation of charity:

- In 2013, Colorado Springs repealed an ordinance establishing a “Downtown No Solicitation Zone” after the ACLU obtained a preliminary injunction. As part of the settlement in that case, Colorado Springs paid the ACLU \$110,000 in attorneys’ fees.
- In 2014, in response to a letter from the ACLU, officials in Durango agreed to suspend enforcement of an ordinance that, like the Bennett ordinance, prohibited “loitering . . . for the purpose of begging.” The Durango ordinance has now been repealed.

It is well-settled that peacefully soliciting charity in a public place is protected by the First Amendment. See, e.g., *United States v. Kokinda*, 497 U.S. 720, 725 (1990) (“Solicitation is a recognized form of speech protected by the First Amendment.”); accord *Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980). This constitutional protection applies not just to organized charities, but also to the humblest solitary beggar asking for spare change to get through the day. More than twenty years ago, the Second Circuit explained that begging or panhandling is communicative activity that the Constitution protects:

Begging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation. Even without particularized speech, however, the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance. We see little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former are communicating the needs of others while the latter are

- 
- In a 2015 ACLU case, a federal judge ruled that Grand Junction’s panhandling ordinance violated the First Amendment. *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276 (D. Colo. 2015). Grand Junction repealed the ordinance and paid the ACLU \$330,000 in attorneys’ fees.
  - Also in 2015, the ACLU filed a class action lawsuit challenging Fort Collins’s enforcement of its panhandling ordinance. After legal briefing on the ACLU’s motion for a preliminary injunction, Fort Collins repealed all of the challenged provisions. As part of the subsequent settlement, Fort Collins paid the ACLU \$82,500 in attorney’s fees.
  - In the spring of 2015, the ACLU learned that Telluride had approved, on first reading, a new ordinance that regulated panhandling. After receiving a letter from the ACLU, the town council changed course and adopted a scaled-down version that included only four provisions to which the ACLU did not object.
  - In May 2015, Durango proposed a new panhandling ordinance to replace the repealed ordinance that prohibited “loitering . . . for the purpose of begging.” The ACLU of Colorado wrote a detailed critique that explained why multiple provisions of the proposed ordinance violated the First Amendment. The Durango Town Council then changed course and settled on a scaled-down version that included only a handful of provisions to which the ACLU did not object.
  - In July, 2015, Loveland, noting the ACLU’s court challenges to the Fort Collins and Grand Junction panhandling ordinances, adopted significant revisions to its panhandling ordinance. Loveland’s revised ordinance leaves in place only four provisions to which the ACLU does not object.
  - In August 2015, in response to a letter from the ACLU, Steamboat Springs agreed to cease enforcement of its ordinance prohibiting loitering for the purpose of begging. A month later, the City repealed the ordinance.
  - In October 2015, in response to a letter from the ACLU, Colorado Springs dismissed hundreds of panhandling charges against individuals who had been cited for peacefully soliciting charity with a sign. In 2016, the City repealed one of its panhandling ordinances and revised the other to leave in place only those provisions to which the ACLU does not object.

communicating their personal needs. Both solicit the charity of others. The distinction is not a significant one for First Amendment purposes.

*Loper v. New York Town Police Department*, 999 F.2d 699, 700 (2d Cir. 1993).<sup>3</sup> In the years since the *Loper* decision, numerous courts have held that various regulations or outright prohibitions of solicitation violate the First Amendment. *See, e.g., Norton v. City of Springfield*, 806 F.3d 411, 412-13 (7th Cir. 2015) (anti-panhandling statute is content-based and subject to strict-scrutiny); *Browne v. City of Grand Junction*, 136 F. Supp. 3d 1276, 1287 (D. Colo. 2015) (same); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233 (D. Mass. 2015) (same); *Speet v. Schuette*, 726 F.3d 867, 870 (6th Cir. 2013) (invalidating Michigan's anti-begging statute, which "bans an entire category of activity that the First Amendment protects"); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549 (4th Cir. 2013) (subjecting regulation of solicitation to strict scrutiny); *ACLU of Idaho v. City of Boise*, 998 F. Supp. 2d 908 (D. Idaho 2014) (issuing preliminary injunction); *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624 (S.D. W Va. 2013) (issuing preliminary injunction); *Guy v. County of Hawaii*, 2014 U.S. Dist. Lexis 132226 (D. Hawaii Sept. 19, 2014) (issuing temporary restraining order).

During the litigation of the ACLU's challenge to Grand Junction's panhandling ordinance, the federal district court in Colorado underscored the significance of panhandling's communicative function:

This court believes that panhandling carries a message. Often, a request for money conveys conditions of poverty, homelessness, and unemployment, as well as a lack of access to medical care, reentry services for persons convicted of crimes, and mental health support. The City's attempt to regulate this message is an attempt to restrain the expression of conditions of poverty to other citizens.

*Browne v. City of Grand Junction*, 2015 U.S. Dist. Lexis 73834, \*\*12-13 (D. Colo. June 8, 2015).

The Minturn ordinance prohibiting loitering for the purpose of begging is far broader than many of the anti-panhandling regulations that courts have struck down in recent years. It prohibits passively, silently, and nonintrusively sitting with a sign that asks for charity, and it applies everywhere in the municipality. The ordinance could not survive a legal challenge. Indeed, the language of Minturn's loitering ordinance is familiar to our office. In 1996, the ACLU of Colorado filed a class action lawsuit to challenge an antiquated Colorado statute that, like Minturn's ordinance, prohibited "loitering . . . for the purpose of begging." After the plaintiffs obtained a preliminary injunction, the defendants agreed to ask the legislature to repeal the statute, and it was repealed in the next legislative session.

Through the ACLU's investigation, we know that several jurisdictions have actively enforced this outdated ordinance – whether by means of citations, warnings, or move-on orders. Indeed, of the ten municipalities from which we received records, eight had engaged in some

---

<sup>3</sup> Notably, the New York City ordinance at issue in the *Loper* decision was very similar to Bennett's. The ordinance provided that a person commits a crime when he "Loiters, remains or wanders about in a public place for the purpose of begging." *Loper*, 999 F.2d at 701. The court held the ordinance violates the First Amendment. *Id.* at 706.

form of illegal enforcement of the ordinance within the last few years. We understand, however, that some municipalities may have allowed this unconstitutional ordinance to stay on the books, but have no intention of enforcing it. Your municipality may be one such jurisdiction. Even if that is the case, it is important to remove this archaic law from the municipal code. Leaving the law on the books raises the very real possibility that, at some point in the future, an energetic law enforcement officer will review the entirety of the municipal code and begin enforcing the ordinance.<sup>4</sup>

Based on the foregoing, we ask Minturn to take the following immediate actions:

- 1. Stop enforcing Section 10-8-100(b)(1). This requires instructing any law enforcement officers charged with enforcing the municipal code that Section 10-8-100(b)(1) is no longer to be enforced in any way, including by issuance of citations, warnings, or move-on orders.**
- 2. Immediately initiate the steps necessary to repeal Section 10-8-100(b)(1).**
- 3. If there are any pending prosecutions under Section 10-8-100(b)(1), dismiss them.**

Please provide a written response to this letter by **September 14, 2016**.

Sincerely,



Mark Silverstein  
Legal Director  
ACLU of Colorado



Rebecca Wallace  
Staff Attorney & Policy Counsel  
ACLU of Colorado

cc: Mike Sawyer, Minturn Town Attorney - [mjs@mountainlawfirm.com](mailto:mjs@mountainlawfirm.com)

---

<sup>4</sup> Indeed, after at least eight years of non-enforcement of its loitering for the purpose of begging ordinance, the Town of Bennett recently cited a homeless man who was simply soliciting donations with a sign. The municipal court set the case for trial, but our office was able to secure a dismissal after we shared with the prosecuting attorney some of the caselaw cited in this letter.

Sander N. Karp\*  
James S. Neu  
Karl J. Hanlon  
Michael J. Sawyer  
James F. Fosnaught  
Jeffrey J. Conklin  
Andrew A. Mueller

\* Fellow of the College of  
Labor and Employment  
Lawyers

Matthew L. Trinidad  
Patrick L. Barker  
Jon T. Hoistad  
Delphine F. Janey

*Of Counsel*  
Richard I. Zuber\*\*  
Anna S. Itenberg  
Greg S. Russi  
Hollie L. Wieland

\*\* Fellow of the American  
Academy of Matrimonial Lawyers

*Glenwood Springs Office*  
201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

*Aspen Office\*\*\**  
323 W. Main Street, Suite 301  
Aspen, CO 81611

*Montrose Office \*\*\**  
1544 Oxbow Drive, Suite 224  
Montrose, CO 81402

Telephone: (970) 945-2261  
Facsimile: (970) 945-7336  
[www.mountainlawfirm.com](http://www.mountainlawfirm.com)

\*\*\*All correspondence should be sent to the  
Glenwood Springs office

March 7, 2017

TO: Mayor and Town Council, Town of Minturn

FROM: Karp Neu Hanlon, P.C.

RE: **Town Code Amendment – Loitering for the Purpose of Begging**

---

Council will consider an ordinance amending Town Code Section 10-8-100 (Loitering) at the regular meeting on Wednesday, March 15. This ordinance will remove the Town's prohibition on loitering for the purpose of begging from the Town Code, in compliance with recent court precedent.

A 2015 decision of the United States District Court struck down provisions of Grand Junction's anti-panhandling ordinance on First Amendment grounds. At the heart of the court's ruling in *Browne v. City of Grand Junction*, 136 F.Supp.36 1276 (D. Colo. 2015), is the long-standing principle that the government cannot regulate speech according to its content. "A government, including a municipal government vested with state authority, has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Facially content-based restrictions on speech can only be upheld if they are absolutely necessary to serve a compelling government interest and the means of suppression are the least restrictive possible. This standard has never been achieved in the regulation of speech.

Begging is a Constitutionally protected activity. It is considered "speech" by the courts because it conveys important messages concerning both the financial status of an individual and group, and the social issues implicated in economic inequalities and hardships. Therefore, any law purporting to limit an individual's right beg, and in doing so convey these messages, is Constitutionally invalid. Nevertheless, many if not most municipalities in Colorado and the rest of the country have prohibitions on begging in their codes, and it is only recently that courts have begun to clarify this principle. The Grand Junction case is at the center of that jurisprudence.

Since the Grand Junction case was decided, the ACLU of Colorado has been reaching out to municipalities around the state requesting cooperation in removing unconstitutional anti-begging



Page 2

laws from their codes. Minturn's Code is currently identical to many codes throughout the State in containing a prohibition on loitering for the purpose of begging, and the ACLU has sent the Town a letter (**Exhibit A**) requesting that the Town amend its Code to remove the unconstitutional portion of the ordinance.

At this time it appears that only subsection 10-8-100(b)(1) of the Town Code must be removed. Although loitering for other purposes, such as gambling and prostitution, will still be prohibited in Town, those provisions are not being challenged by the ACLU because the conduct they seek to prohibit is itself illegal, which differentiates them from begging. Staff recommends that Council approve of the ordinance amending the Town Code Section 10-8-100 at this time.