

Seattle Human Rights Commission Report

to the

Seattle City Council

on

Council Bill 116807:
Aggressive Solicitation

April 6, 2010

Table of Contents

I.	<u>Foundational Principles</u>	3
II.	<u>Background of this Report</u>	3
III.	<u>Analysis</u>	3
	A. <u>Due Process</u>	3
	B. <u>Provision of Services</u>	5
	C. <u>Insufficient Data and Support for Factual Findings</u>	5
IV.	<u>Suggested Solutions</u>	6
	<u>Appendix: Detailed Analysis of Fact Findings</u>	8

Below is a summary of the rationale for the Seattle Human Rights Commission's (SHRC) opposition to the proposed aggressive solicitation ordinance (C.B. 116807), which is one portion of the "Continuum of Response to Street Disorder" ("Response Plan"). Additionally, we offer some recommendations for the City going forward.

I. Foundational Principles

- Every individual is entitled to feel safe and be safe in his or her person, home, and community. This right includes the right of every individual to live, work, and visit in downtown Seattle.
- A vibrant downtown is important to the entire city by contributing to the economic vitality and social welfare of all residents over the long-term.
- Every individual is equally entitled to due process protections.
- A human rights "lens" requires a careful review of government actions to protect vulnerable or marginalized populations from inappropriate or disparate impacts.

II. Background of this Report

At our regularly-scheduled monthly meeting in December 2009, we discussed the separate components of the Response Plan with Councilmember Burgess. We co-hosted a community forum discussion of C.B. 116807 at Seattle University School of Law on March 9, 2010. During this process, we supplemented these discussions with our own analysis of the proposed ordinance and we received comment from a range of local organizations. On April 1, 2010, during our regularly-scheduled monthly meeting, the SHRC, voted 9-0 to oppose C.B. 116807, with 3 Commissioners abstaining.

III. Analysis

The ordinance has a two-track enforcement process. For those who have adequate resources (i.e., can afford a \$50 fine or can fight the charges in court), the civil infraction is the final step in the enforcement process and poses no long-term consequences. For those without adequate resources and money, however, the civil infraction is only the first step in a multi-step criminal process. These two tracks give rise to due process and disparate impact concerns.

A. Due Process

Contrary to proponents' claims that the ordinance offers the "lightest and most effective response," (i.e., a civil infraction) to aggressive solicitation, it places indigent offenders in greater danger of criminal outcomes and simultaneously limits their access to legal representation that would help protect them from those outcomes.

- Under the ordinance, an individual is liable for a civil infraction for aggressive solicitation. The individual must appear in court to object to the infraction or pay a \$50 fine within 15 days.
 - Human rights concerns:
 - Homeless and poor individuals are less likely to be able to appear in court.
 - Because there is no right to counsel for civil infractions, poor people who appear in court will not have a lawyer appointed to represent them to challenge the factual basis of the citation.
 - Under the ordinance, the civil hearing is the only time in the process when an individual can contest the validity of the citation.
- If the individual does not appear or pay the fine, he or she enters “track two” and is subject to a criminal charge of failure-to-appear.
 - Human rights concerns:
 - Vulnerable populations – including those experiencing homelessness, mental health needs, chemical dependency, or low-incomes – are disproportionately more likely not to appear in court or pay the fine and thus, are more likely to find themselves facing a failure-to-respond charge, which is a criminal misdemeanor.
 - A criminal record poses barriers for obtaining employment, housing, and access to other services, which will likely have disparate racial impacts.
- A misdemeanor is punishable by jail and/or fines. The ordinance grants the court additional powers to order individuals to undergo involuntary mental health and chemical dependency testing and treatment.
 - Human rights concerns:
 - These penalties are unrelated to the failure-to-appear criminal charge.
 - Involuntary testing and treatment under the ordinance could circumvent the standard civil commitment process.

The language of the ordinance reflects an assumption that certain individuals who receive citations will not pay the fine or appear in court. Whereas this assumption is well-founded, the greater penalty these individuals then face is problematic. The mechanisms of the ordinance – from civil citation, to criminal misdemeanor, to potential involuntary testing and treatment – are highly unusual and serve to create a consequence disproportionate to the offense committed. And as noted above, these consequences will likely be felt disproportionately by vulnerable populations. For these reasons, the ordinance does not comply with human rights standards.

B. Provision of Services

The sentencing portion of the ordinance poses human rights concerns. As noted above, the ordinance gives courts the power to compel certain individuals to undergo involuntary testing and treatment for mental illness or chemical dependency.

- The ordinance does not provide criteria for determining which services to order or for evaluating whether the imposed treatment(s) will be appropriate, adequate, and sufficiently funded.
 - Human rights concern:
 - If an individual is compelled to undergo treatment, it is important that the ordered treatment be appropriate for the condition, adequate to address the problem, and sufficiently funded.
- Testing and/or treatment are options only after an individual is found guilty of a crime – failure-to-appear – that may be wholly unrelated to the civil citation.
 - Human rights concerns:
 - The structure of the ordinance can burden already poor and ill individuals with a criminal record.
 - It is not appropriate to compel city residents into treatment when the crime and the underlying offensive behavior are unrelated.
 - Current sentencing guidelines allow courts to order treatment when there is a correlation between the crime and the guilty individual's illness or chemical dependency.

Human services are essential and so we support the Response Plan provisions that improve coordination and expansion of street outreach services, and increase housing capacity and treatment services. However, we do not believe that individuals should find themselves ordered into involuntary testing and treatment because they have failed to respond to a civil citation. We believe that these consequences unfairly target vulnerable individuals, and therefore the proposed ordinance does not comply with human rights standards.

C. Insufficient Data and Support for Factual Findings

The substance of C.B. 116807 is grounded in a foundation of stipulated facts (i.e., Section 1 Findings). These facts are themselves rooted in survey and research data, which are referenced in the proposed ordinance as Attachments A-D. Following a close inspection of these data and the factual statements that they are offered to support, we are concerned that the data are insufficient to support the substance of the proposed ordinance.

The following two bullet points summarize our concerns; a detailed analysis begins on page 8.

- A 2009 survey indicated that 66% of persons sampled were “concerned” with aggressive panhandlers (i.e., Attachment A). The significance of that figure can be appropriately understood only within the context of the entire data set.
 - No data exist in Attachment A supporting the factual finding that “fewer than half believe the City is adequately addressing the problem [of aggressive solicitation].”
 - Those data concern “panhandling,” not aggressive panhandling. Importantly, C.B. 116807 specifies that it does not address non-aggressive panhandling (solicitation).
 - The same data indicate that residents of the central business district rated the City’s response to their concern about aggressive panhandling as one the City’s largest improvements between 2007 and 2009.
 - The same data indicate that 73% of persons sampled believed “downtown is a safe place to live.”
- Data regarding residents’ fears for personal safety in downtown (i.e., Attachment B) are conflated with data concerning aggressive solicitation.
 - No data exist in either survey to support the factual claim made that “aggressive solicitation is a serious public safety problem in Seattle.”
 - The data presented in Attachment C are insufficient to support the factual claim made that “the problem of aggressive solicitation has increased substantially within the last year.”
 - No data exist in Attachment D to reasonably support the factual claim made that “aggressive solicitation threatens the economic vitality of Seattle.”

IV. Suggested Solutions

There are critical and complex issues facing Seattle residents, and they require the City to be sure that its proposed solution holds the promise of solving the targeted problems. Given that the ordinance raises human rights and due process concerns and given that there are significant concerns regarding the sufficiency of the data used to support the proposed ordinance, the SHRC recommends that the City Council either oppose C.B. 116807 at this time or postpone its vote on the ordinance.

Under either scenario, the SHRC recommends that the City and community groups engage in the following activities:

- Undertake a thorough assessment of the nature and scope of the problems contributing to a lack of safety and feelings of discomfort experienced by Seattle residents, employees, and visitors in downtown Seattle.
- Develop a process and convene stakeholders to help devise creative and collaborative solutions that address the root causes of the identified problems as provided in the detailed survey data.
- Evaluate the impacts of implementing the four other components of the Response Plan before expanding the civil and criminal codes to include C.B. 116807.

This type of approach will ensure that the City's actions are effective and multilateral, with the support of service providers and public interest organizations at the outset.

Conclusion

The SHRC appreciates the opportunity to provide its views on the ordinance. We hope and intend that our comments assist the City in ensuring that we all move in the direction of better meeting the human rights of all members of our community.

Appendix: Detailed Analysis of Fact Findings

Below are the detailed analyses of several claims that are found in “Section 1. Findings.” of C.B. 116807 and the problems that are associated with those claims. The claims are presented below in the order in which they appear in Section 1 of the proposed ordinance, and not necessarily in the order of their importance.

CLAIM 1: <i>Aggressive solicitation is a serious public safety problem concerning Seattle residents.</i>

- WHERE FOUND: Section 1B, C.B. 116807.
- ORDINANCE TEXT: “A 2009 survey of residents of Downtown, South Lake Union, Belltown, Pioneer Square and International District/Chinatown found that **two-thirds of residents are concerned about aggressive solicitation** and fewer than half believe the City is adequately addressing the problem (See Attachment A).”

Data Offered in Support of Claim

- WHERE FOUND: Attachment A, Page 4.
- ATTACHMENT TEXT: “...respondents were asked about current levels of concern for ten specific issues... The issues we asked about were (in descending order of respondents’ overall levels of concern):
 - buying and selling of drugs (75%)
 - dangerous behavior from alcohol consumption (69%)
 - aggressive panhandlers (66%)
 - public urination (65%)
 - panhandling (63%)
 - public drunkenness (61%)
 - loitering by adults (58%)
 - downtown park safety (57%)
 - loitering by youth (54%)
 - excessive nighttime noise (53%).”

Problem(s) with Data/Claim

Whereas the survey does, in fact, indicate that 66% of persons surveyed were “concerned” about aggressive panhandlers, a critical question remains as to whether this single data point alone can support the passing of a new ordinance. The strength of this single data point is best assessed within the context of the entire data set. For example,

- The same survey indicated that 73% of respondents believe “downtown is a safe place to live.”
- The same survey indicated that the City’s response to the issue of aggressive panhandlers was one of the largest improvements in the central business district from 2007-2009.

- The same survey indicated that more survey respondents were concerned with the following issues than they were with aggressive panhandlers (66%):
 - “buying and selling of drugs” (75%)
 - “dangerous behavior from alcohol consumption” (69%)
- Only 1% less of respondents were concerned with “public urination” (65%) and only 3% less of respondents were concerned with “panhandling” (63%) than with aggressive panhandlers (66%).

When viewed in this context, one must ask what the justifiable rationale is for targeting only aggressive panhandlers. That is, the proposed ordinance purports to solve a unique problem (i.e., aggressive panhandling) on the basis of non-unique data (i.e., several problems are rated higher than aggressive panhandling and several more are rated closely with aggressive panhandling).

Separately, features of the survey itself and its executive summary found in Attachment A naturally lead to questions about the strength of the single data point that indicates 66% of residents surveyed were concerned about aggressive panhandling. These features are: forced-choice questions and the absence of a reported response rate in the executive summary of the solicited survey data.

- **Forced-Choice Questions.** These data were solicited by researchers with forced-choice categories, a tool commonly used in survey research. Two features of forced-choice survey questions are important to note here. First, forced choice questions, by their nature, act to restrict a respondent’s universe of response. Alternative choices are not considered or allowed. Here, for example, researchers believed these 10 categories were the most important categories to Seattle residents, but respondents may not have felt the same way. Importantly, the question asked here is: do these types of issues “concern” you. Most any person acting reasonably might be inclined to respond with a “yes” versus a “no” to the categories presented. In other words, who would not be “concerned” with public drunkenness? What is missing, however, is how *much* a person is concerned about these issues, particularly when assessed in *comparison* to an open universe of issues facing the City.
- **Response rate.** A survey’s response rate tells the viewer what percentage of people who were contacted and asked to complete the survey actually did so. Response rates provide critical information. People do not respond to survey requests for all kinds of reasons (e.g., do not know enough, do not care enough, are too busy). Stated differently, people often respond to surveys when their interest in the substance of the survey outweighs the reasons why they might wish to reject an invitation to complete the survey. If a response rate to a survey is quite low, the overall value of the survey may come into question. This is true particularly when the survey is asking about qualitative assessments of an object or issue. If, for example, 90% of persons surveyed say they like an object, “X,” one might conclude that X represents a good investment. Imagine, however, that only 10% of the people asked to complete that survey did so. This, then, would mean that of 100 people asked to complete a survey,

only 10 do so and 9 of the 10 feel strongly about X. But, what about the other 90 people? Did they not respond because they do not care enough about X to answer questions about it? Do they dislike X? Do they even know what X is?

In the case at hand, no response rate is presented. Therefore, these types of questions about the data remain.

Conclusion re Claim 1

- The problems listed above reveal an important, two-part question:
 - (a) Do these numbers truly represent the views of Seattle residents?
 - (b) Even assuming the answer to (a) is “yes,” what rationale supports uniquely selecting “aggressive panhandling” out of the list of problem areas noted by survey respondents (particularly when some problem areas were rated considerably higher than aggressive panhandling, and other similarly-rated areas, like public urination and non-aggressive panhandling, are not also targets of the proposed ordinance)?

CLAIM 2: *Aggressive solicitation is a serious public safety problem that residents believe has not been adequately addressed.*

- WHERE FOUND: Section 1B.
- ORDINANCE TEXT: “A 2009 survey of residents of Downtown, South Lake Union, Belltown, Pioneer Square and International District/Chinatown found that ... **fewer than half believe the City is adequately addressing the problem** (See Attachment A).”

Data Offered in Support of Claim

- WHERE FOUND: Attachment A, Page 4.
- ATTACHMENT TEXT: “The CBD (i.e., Central Business District/Waterfront/West Edge) saw the most notable improvements in 2008. However, levels of concern there held steady between 2008 and 2009. From 2007 to 2009, the largest improvements are in the areas of aggressive panhandlers (57% to 32% extremely concerned), public drunkenness (43% to 20%) and loitering by youth (41 to 19%).”
- WHERE Attachment A, Page 5.
- ATTACHMENT TEXT: “Between 2008 and 2009, South Lake Union/Denny Triangle saw decreases in perceptions of how well addressed (were) the issues of panhandling (47% to 36%) and public drunkenness (68% to 57%).”

Significant Problem(s) with Data/Claim

- Data do not exist for the claim made.
 - **Data do not exist.** The language of the proposed ordinance states that “fewer than half believe the City is adequately addressing the problem (see Attachment A).” No such data can be found in Attachment A to support this claim. Instead, the data referenced seemingly come from a portion of the survey that assesses respondents’ feelings about the problem of panhandling, not *aggressive* panhandling.
 - **Data run counter to claim made.** The only data in Attachment A that are in direct relation to the claim made actually indicate that the City’s response to the concern about *aggressive* panhandling has been one of the largest improvements in the central business district between 2007 and 2009.

Conclusion re Claim 2

- The data found in Attachment A do not support the claim made.

CLAIM 3: *Aggressive solicitation is an increasingly serious public safety problem in Seattle.*

- WHERE FOUND: Section 1B.
- ORDINANCE TEXT: “A 2009 survey of residents of the entire city found that nearly **one-quarter of residents avoid Downtown because of fear for personal safety, an increase from 2007** (see Attachment B).”

Data Offered in Support of Claim

- WHERE FOUND: Attachment B, Page 9, Figure 5.
- ATTACHMENT TEXT (presented in Figure form):
 - In 2009, approximately 24% of residents surveyed indicated they avoid downtown for fear of crime or personal safety. In 2007, this percentage was approximately 23%. These data indicate a 1% increase in concern over two years.
 - In Rainier Valley, there appears to be a 7% increase in concern between 2007 and 2009 (i.e., from approximately 7% to 14%).
 - In Pioneer Square, there was a 5% drop in concern between 2007 and 2009 (i.e., from approximately 16% concerned to 11% concerned).

Significant Problem(s) with Data/Claim

- No causal relationship between these data and the specific problem of aggressive panhandling (solicitation) is presented in this Attachment, or can be established with the data contained in this Attachment.
- The language of this section of the proposed ordinance may overstate the survey results found in Figure 5 of the referenced attachment.
 - The “increase from 2007,” referenced in “Section 1. Findings” of the proposed ordinance, amounts to an approximately 1% increase.
 - Other neighborhoods in the City, however, present a more significant increase (i.e., 7%) but are not emphasized in the ordinance language.
 - A central part of downtown, Pioneer Square, has shown a decrease in fear perceptions between 2007 and 2009, a fact unmentioned in the language of the ordinance.
- No response rate for the survey is supplied (see above for implications).

Conclusion re Claim 3

- The City Council’s commitment to maintaining a thriving and vibrant downtown sector is vital. The data found in Attachment B, however, do not indicate a causal relationship between persons who avoid downtown for fear of crime or personal safety and aggressive panhandling. Whereas fear of downtown by some presents a very real problem for the City, a specific focus on aggressive panhandling is not uniquely supported by the data contained in this Attachment.

CLAIM 4: *The problem of aggressive solicitation has increased substantially within the last year.*

- WHERE FOUND: Section 1B.
- ORDINANCE TEXT: “Many recent communications from citizens to the City Council indicate that **citizens believe the problem of aggressive solicitation has increased substantially within the last year**... (see Attachment C).”

Data Offered in Support of Claim

- WHERE FOUND: Attachment C.
- ATTACHMENT TEXT: Approximately 24 letters, dated between October 2009 and February 2010, addressing several issues of concern regarding Seattle’s downtown area, including aggressive panhandling.

Problem(s) with Data/Claim

- Whereas the statements contained in the letters undoubtedly represent the personal opinions of their respective authors, such data would typically not be relied upon to support the factual claim that the problem of aggressive panhandling has increased over time in the downtown area.
- Statements found in several letters indicate that the correspondence found in Attachment C was the result of a coordinated request, or general solicitation, for such correspondence.
 - Wednesday, January 27, 2010 11:08 PM: “I’m writing this letter in regards to a forwarded email I received from one of my neighbors who serves on the Board of the Metropolitan Improvement District. The email describes how the Downtown Seattle Association is asking its (sic) residents to comment on how to help the DSA address aggressive solicitation and public safety downtown.”
 - Tuesday, January 26, 2010 4:38PM: “I support the Downtown Seattle Association’s efforts to increase regulations, penalties, and enforcement of aggressive street behavior.”

Conclusion re Claim 4

- Concern about the vitality of the downtown sector is real and appropriate. The data presented in Attachment C, however, likely do not support the factual claim that aggressive solicitation has substantially increased within the last year (e.g., contrast with data found in Attachment A, which indicated that the City’s response to the issue of aggressive panhandlers was one of the largest improvements in the central business district from 2007-2009).

Claim 5: *Aggressive solicitation threatens the economic vitality of Seattle.*

- WHERE FOUND: Section 1C.
- ORDINANCE TEXT: "...Seattle's Conventions & Visitors Bureau reports that many visitors from other large cities feel unsafe on Seattle's streets. When a large convention group decides to not return to Seattle because many of its members were victims of aggressive solicitation, **the economic impact to the city is in the millions of dollars** (see Attachment D)."

Data Offered in Support of Claim

- WHERE FOUND: Attachment D.
- ATTACHMENT TEXT: Comments from a mix of approximately 11 association members, Seattle guests and Seattle hotel general managers about some of their experiences in downtown Seattle.
- Under 5 of the 11 entries, a heading is listed above the comment that appears to indicate the economic impact that the referenced association brings to Seattle. Collectively, these associations appear to bring a total of \$45,867,500.00 to Seattle, an amount allegedly in jeopardy because of aggressive panhandling in downtown Seattle.

Significant Problem(s) with Data/Claim

- No data are found in Attachment D that support the implied claim that over 45 million dollars are at risk of being lost due to Seattle's aggressive panhandling problem.
 - The vast majority of the authors of the correspondence found in Attachment D are not the decision makers of the associations referenced. Instead, they are general members of an association, individual Seattle visitors, and booking agents that offer statements (both favorable and unfavorable) about the experiences had by past visitors to Seattle.
 - Included in this small set of correspondence are statements that explicitly indicate monies are not in jeopardy of being lost.
 - FAA – Aviation Medical Examiner (AME) Seminar, \$285,000:
 - "Oh well. We will definitely come back again."
 - Much of the content of the correspondence addresses issues other than, or in addition to, aggressive panhandling.
 - Sleep Societies, \$10, 825,000:
 - "...shocked at the number of panhandlers around the convention center" (note. not *aggressive* panhandlers)
 - "...frustrated and appalled by the number of skateboarders."
 - Emailed from a recent guest – July 23, 2009:
 - "...traffic was unreal, the highway construction was frustrating, the hotels were insanely over-priced..."
 - No reference is made to the fact that, by design, many annual conferences rotate among various cities each year. For example, the annual convention for the Associated Professional Sleep Societies, LLC, with an estimated \$10, 825,000 in

economic impact, rotates annually. This means that these specific dollars are not at risk of loss; they are non-recurring dollars by design.

Conclusion re Claim 5

- The impact of perceptions of public safety in downtown and feelings of pride in our downtown area are fundamentally important and should not be discounted. However, the implicit suggestion that millions of dollars are at stake *because* of aggressive panhandling is at best, an overstatement of the data contained herein. A hypothetical scenario (i.e., “when a large convention group decides not to return to Seattle because many of its members were victims of aggressive solicitation...”) should not be presented nor accepted as a factual finding by the City.

We believe that data must be sufficient and that empirical reasoning must be sound before the City moves to accept, as fact, many of the Findings made in C.B. 116807. We feel the importance of these Findings is magnified when viewed within the context of the due process and disparate impact concerns outlined above.