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STATE OF WASHINGTON
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No. 91827-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF LAKEWOOD,

Respondent/Cross-Petitioner

v.

ROBERT W. WILLIS,

Petitioner/Cross-Respondent.

REPLY TO THE CITY OF LAKWOOD'S
ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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6. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*,
657 F.3d 936 (9th Cir. 2011).4,5

A. Identity of Petitioner

Robert Willis, by and through counsel of record, David Iannotti, responds to City of Lakewood's Answer to Petition for Review as it grossly distorts the record and the issue on review.

B. Response

The City in its Answer argues that Mr. Willis never responded when The City presented its forum-based arguments before the Court of Appeals and thus the record is insufficient. Mr. Willis first raised the issue that his conduct was in a public forum in his RALJ appeal to Superior Court. See Appendix 1, Brief of Appellant at page 6 line 3-21, dated April 8, 2013. The City never contested that the location of Mr. Willis' conduct was in a public forum and even argued a public forum analysis for 1st Amendment issues to Superior Court. See Appendix 2, Respondent's RALJ Brief, dated May 2, 2013.

Superior Court applied a public forum analysis to the issue but never determined whether the ordinance was content neutral. See Appendix 3, Order on RALJ Appeal, dated June 7, 2013. The City of Lakewood drafted the order Superior Court Signed. *Id.* At no point did the City contest Mr. Willis' location as not being in a public forum. Mr. Willis filed a notice of discretionary review in regards to Superior Court

remaining silent on whether the ordinance was “Content Neutral.” The City filed a notice of cross appeal on the same issue, but again did not raise forum as an issue. Discretionary review was accepted on these issues. See Appendix 3, Ruling Granting Review, dated August 28, 2013.

Mr. Willis included in his brief to the Court of Appeals a forum analysis for completeness, but only argued the issues presented to the Court as to whether the language of the statute was content neutral. For the first time on Appeal, The City raised the issue as to whether Mr. Willis’ conduct was in a public forum to the Court of Appeals. Mr. Willis did not file a response brief because this was never an issue raised by the City at Superior Court or in its cross-appeal and Mr. Willis had already made a sufficient record where no additional authority was required.

The City also argues in its answer that this case does not have a sufficient factual record for the Supreme Court to hear this case. The issues presented in this case are supported by a sufficient record and case law. Officer Vahle testified that he “responded to that intersection, which was the northbound I-5 **exit to Gravelly Lake Drive.**” See Appendix 4, Excerpts of the Record of Proceedings, dated November 16, 2012, (RP) at p 22. When Officer Vahle arrived he “saw an individual who was on the northbound ramp of I-5 **at the intersection** facing southbound towards

traffic.” *Id.* (emphasis added). Officer Vahle then saw Mr. Willis “walk from the shoulder, across the fog line out to a car, so it was actually in the lane of travel, or in the exit.” *Id.* at 22-23. Mr. Willis was holding a cardboard sign that said something to the effect of “He was disabled and he needed help.” *Id.* at 24.

Up to the point where this issue was presented to the Court of Appeals, the City never contested that the intersection of Gravelly Lake Drive and I-5 was a public forum and even conceded it in its argument.

Mr. Willis concedes that there is an insufficient record to determine whether he is part of a protected class as far as the equal protection argument. However, the City prior to trial made a motion in limine to exclude “any arguments, suggestions or otherwise, as it relates to the constitutionality of the [ordinance] at issue.” RP at 4. Mr. Willis never made a record of his financial situation beyond the declarations made for indigency purposes.

The issue Mr. Willis is asking the Supreme Court to review is whether the Court of Appeals improperly determined that his conduct was not in a public forum and that the statute is neither content nor viewpoint neutral. The Washington Supreme Court has previously held: There is a second category of fora consisting of public property which the State has opened for use by the public as a place for

expressive activity. The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. As long as a state holds the facility open to the public as a place for expressive activity it is bound by the same standards as apply in a traditional public forum. *Internal Citations Ommitted.*

Sanders v. City of Seattle, 160 Wash. 2d 198, 210, 156 P.3d 874, 880 (2007); *citing Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981); *City of Madison Joint Sch. Dist. v. Wis. Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975). The intersection of highways and City streets are public forums where there is a long standing tradition of the exchange of ideas, be it advertisements, solicitations or information about the City to travelers. Unlike a rest-stop, which has the sole purpose of allowing travelers to relax, and post offices, which distribute mail, the sole purpose of an exit ramp from a highway is to bring people into the communities the highway connects. Streets are “held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Acorn v. City of Phoenix*, 798 F.2d 1260, 1264-66 (9th Cir. 1986) overruled on other issues by *Comite de Jornaleros de Redondo Beach v. City of Redondo*

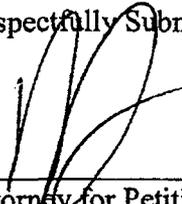
Beach, 657 F.3d 936 (9th Cir. 2011). The City who is in charge of determining whether it wants to make an area a public forum even conceded that this was a public forum in its initial arguments.

C. CONCLUSION

For the reasons indicated in Part B above and in Mr. Willis Petition for Discretionary Reivew, Mr. Willis respectfully requests the Washington Supreme Court grant his request for discretionary review pursuant to RAP 13.4, so Mr. Willis may argue his position in support of reversal of the Court of Appeals Opinion in this case finding LMC 09.4.020A constitutional.

DATED: June 29, 2015.

Respectfully Submitted,



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G. APPENDIX

Appendix 1, Brief of Appellant, dated April 8, 2013.

Appendix 2, Respondent's RALJ Brief, dated May 2, 2013.

Appendix 3, Order on RALJ Appeal, dated June 7, 2013.

Appendix 4, Excerpts of the Record of Proceedings, dated November 16,
2012.

APPENDIX 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CITY OF LAKEWOOD,

Respondent,

vs.

ROBERT WILLIS,

Appellant.

No. 12-1-04623-1
(LMC Case No. CR 32174)

RESPONDENT'S RALJ BRIEF

I. INTRODUCTION

The Respondent, City of Lakewood, requests that this Court affirm the judgment and sentence of the Lakewood Municipal Court which followed a jury trial, convicting Robert Willis for Begging in Restrictive Areas.

II. STATEMENT OF FACTS

This case arises out of an incident occurring on August 18, 2011. On that day, Lakewood Police Officer Vahle received a call dispatching him to the area of I-5 and Gravelly Lake Drive in Lakewood, Washington, regarding a civilian complaint concerning an individual aggressively begging and banging on their car. (RP 21, 22).



1 Officer Vahle proceeded to the I-5 exit to Gravelly Lake Drive and saw an individual
2 who was on the northbound ramp of I-5 facing southbound towards traffic. (RP 22).
3
4 Officer Vahle drove forward and activated his lights because that part of the roadway
5 does not contain a shoulder and he did not want to be rear ended by cars. (RP 22). He
6 observed the individual walk across the shoulder, cross the fog line out to a car and into
7 the exit lane. (RP 23).
8

9 Officer Vahle identified the defendant, Robert Willis, as the person who he saw at
10 the I-5 ramp. (RP 23). Mr. Willis had a cardboard sign with him. (RP 24).
11

12 Officer Vahle explained to Mr. Willis that it was illegal to beg for money in the
13 City of Lakewood in the manner in which he was doing it and issued Mr. Willis a
14 criminal citation. (RP 24). The sign Mr. Willis was carrying said he was disabled and
15 needed help. (RP 24). The sign did not suggest that he needed work or employment.
16 (RP 24). Officer Vahle testified that the location in question where the defendant was
17 holding his cardboard sign was used to enter and exit public highways. (RP 25). The
18 defendant was, by bodily gestures, signs and other means asking for money. (RP 25).
19
20

21 The defendant was charged by amended complaint with Begging in a Restricted
22 Area prohibited by Lakewood Municipal Code 9A.4.020A. 9A.4.020A provides as
23 follows:
24

25 **09A.4.020A - Restrictive Areas**

26
27 Begging shall be deemed a violation of this section of the municipal code
28 under the following conditions: (1) at on and off ramps leading to and
29 from state intersections from any City roadway or overpass; (2) at
intersections of major/principal arterials (or islands on the principal

1 arterials) in the City; (3) within twenty five (25) feet of an ATM machine,
2 or financial institution; (4) within fifteen (15) feet of any (a) occupied
3 handicapped parking space, (b) taxicab stand, or (c) bus stop, train station
4 or in any public parking lot or structure or walkway dedicated to such
5 parking lot or structure; (5) before sunrise or after sunset at any public
6 transportation facility or on any public transportation vehicle or (6) while
a person is under the influence of alcohol or controlled substances. (Ord.
532 § 1 (part), 2011.)

7 The case proceeded to trial and Mr. Willis was convicted. (RP 50). He now appeals the
8 conviction.

9
10 Lakewood Municipal Code 9A.4.020A was adopted by the Lakewood City
11 Council pursuant to Ordinance 532 in 2011. The City articulated its purpose for
12 ordinance 532 when it "recognized the danger of collision or injury to motorists or
13 pedestrians that is created when distracted drivers attempt to make contribution to people
14 requesting assistance at highway on and off ramps leading to and from City roadways or
15 overpasses or at major/principal arterial intersection of City streets or islands located on
16 major arterials. Lakewood City Ordinance No 532 (ord. 532 § 1 (part), 2011). In
17 addition, the City Council further
18
19

20 "recognized that when begging or pan handling takes place, near
21 Automated Teller machines (ATMS), Financial institutions, and at public
22 transportation facilities, or near disabled person parking spaces, or when
23 following individuals for the purpose of soliciting, there is a risk of danger
24 or intimidation to members of the community and /or members of the
25 public who are attempting to conduct business, utilize public services or
26 who may be reasonably intimidated by a solicitor; *Id.* Further, the City
Council "seeks only to address public safety concerns created by begging
when the action is conducted at specific times, places, or in a specific
manner only." *Id.*

27 III. ISSUES ON APPEAL

28 There are three issues before the Court: (1) Whether enforcement of City of
29

1 Lakewood Municipal Code 9A.04.020A violated the Appellant's First Amendment Right
2 to Freedom of Speech; (2) Whether enforcement of Lakewood Municipal Code
3 09.04.020A violated the Appellant's Fourteenth Amendment right to Due Process for
4 vagueness; and (3) Whether enforcement of Lakewood Municipal Code 09.04.020A
5 violated the Appellant's Fourteenth Amendment right to equal protection because of his
6 poverty. The answer to all three questions is no.
7
8

9 **IV. PRESUMPTION OF CONSTITUTIONALITY**

10 A statute or ordinance should not be declared unconstitutional unless it appears
11 beyond a reasonable doubt to be so. *State v. Dixon*, 78 Wn.2d 796, 479 P.2d 931 (1971).
12 Where legislation tends to promote the health, safety, morals or welfare of the public, and
13 the legislation bears a reasonable and substantial relationship to that purpose, every
14 presumption will be indulged in favor of constitutionality. *State v. Melcher*, 33 Wn.App.
15 357, 655 P.2d 268 (1978). Because statutes are presumed constitutional, the burden of
16 proving a statute unconstitutional is on the party challenging its constitutionality. *Campos*
17 *v. Department of Labor & Indus.*, 75 Wn. App. 379, 384, 880 P.2d 543 (1994), review
18 denied, 126 Wn.2d 1004 (1995). The party challenging the constitutionality of a statute
19 carries the heavy burden of demonstrating its invalidity beyond a reasonable doubt.
20 *Bellevue v. State*, 92 Wn.2d 717, 600 P.2d 268 (1968). The Lakewood Municipal Code
21 related to aggressive begging and Begging in Restrictive areas promotes safety and the
22 welfare of the public. Every presumption should be made in favor of constitutionality.
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27
28 The appellant has not met his burden.
29



1 V. ARGUMENT

2 A. Lakewood Municipal Code 09.04.020A does not violate the defendant's
3 First Amendment right to free speech.

4
5 Article 1, section 5 of the Washington State Constitution and the First and
6 Fourteenth amendments to the United States Constitution protect freedom of speech. Free
7 speech can be regulated as to time, place, or manner. *Bering v. Share*, 106 Wn.2d 212,
8 234, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050 (1987).
9

10 The Appellant's conduct involves expression. The defendant was observed on the
11 I-5 on/off ramp exit to Gravelly Lake Drive in Lakewood walking across a shoulder, onto
12 the fog line and out to a car in its lane. (RP 23, 24). The Appellant was also observed
13 carrying a sign at the time and using bodily gestures, signs and other means to ask for
14 money. (RP 24, 25). Because of the expressive nature of his activities, and the
15 prohibition against engaging in the conduct in a restrictive area, the City's ordinance is
16 subject to time, place and manner review.
17

18
19 On several occasions, the United States Supreme Court has articulated the time,
20 place and manner analysis in which courts are required to engage when free speech
21 violations are alleged. In *United States v. O'Brien*, 391 U.S. 367, 377, 88 S. Ct. 1673, 20
22 L.Ed.2d 672, rev' denied, 393 U.S. 900, 89 S. Ct. 63, 21 L.Ed.2d 188 (1968) the Court
23 set out the following factors to be considered in determining whether government
24 restriction on free speech is constitutional: (1) whether the regulation is within the
25 constitutional power of the government, (2) whether the regulation furthers an important
26 or substantial government interest, (3) whether the governmental interest is unrelated to
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1 the suppression of free speech, and (4) whether the incidental restriction on alleged First
2 Amendment freedoms is no greater than essential to the furtherance of the governmental
3 interests. Later in 1983, the Court held that an ordinance is a reasonable time, place, and
4 manner regulation “[1] so long as the restrictions are content-neutral, [2] are narrowly
5 tailored to serve a significant government interest, and [3] leave open ample alternative
6 channels of communication.” *United States v. Grace*, 461 U.S. 171, 177, 103 S. Ct. 1702,
7 75 L. Ed. 2d 736 (1983); citing *Perry Educ. Assn. v. Perry Local Educator’s Assn.*, 460
8 U.S. 37, 45, 103 S. Ct. 1948, 74 L. Ed. 2d. 794 (1983).

9
10
11 The City’s municipal code meets all three requirements set out in both *O’Brien*
12 and in *Grace*. Adopting an ordinance that seeks to protect the public is within the
13 authority of the City. The restriction articulated in LMC 09A.4.020A furthers a
14 substantial government interest. The City’s interest in safety is unrelated to the
15 suppression of free speech. It is the location and time during which the speech is
16 expressed which is at issue. Finally, the incidental restriction on the speech is no greater
17 than necessary to ensure public safety. Further, the ordinance is content neutral, narrowly
18 tailored and leaves open ample alternative channels of communication.

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21
22 Content Neutral.

23
24 First, the ordinance must meet the content neutral standard. Generally, “whether
25 the statute is content neutral or content based is something that can be determined on the
26 face of it; if the statute describes speech by content then it is content based.” *Menotti*,
27 409 F.3d at 1129 (9th Cir. 2005) (quoting *City of Los Angeles v. Alameda Books, Inc.*, 535
28 U.S. 425, 448, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002). In order to be constitutional,
29

1 the court must find that the municipal code is content neutral. The primary consideration
2 to determine content neutrality is “whether the government has adopted a regulation of
3 speech because of disagreement with the message it conveys.” *Ward. v. Rock Against*
4 *Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 1989); *Community for*
5 *Creative Non-Violence, supra, at 295*. The government’s purpose is the controlling
6 consideration. *Id.* A regulation that serves purposes unrelated to the content of
7 expression is deemed neutral, even if it has an incidental effect on some speakers or
8 messages but not others. *Id* at 674.

11 In the present case, the City of Lakewood adopted Ordinance 532 creating
12 Lakewood Municipal Code Section 09A.4.020 entitled *Begging in Restrictive Areas*. As
13 previously indicated, the Code section restricts begging in the City when it occurs at
14 specifically enumerated locations and/or during specific times of the day such as at on
15 and off ramps leading to and from the City roadway or overpass, at intersections of
16 major/principal arterials or islands on the principal arterials, within 25 feet of an ATM,
17 occupied disabled parking spot, and at bus, taxi or other transportation areas at a specific
18 time. The ordinance does not reflect disagreement with the speaker’s message or a
19 preference in any way. Instead, the City’s primary purpose is public safety.

23 The City articulated its purpose for adopting Ordinance 532 when it “recognized
24 the danger of collision or injury to motorists or pedestrians that is created when distracted
25 drivers attempt to make contribution to people requesting assistance at highway on and
26 off ramps leading to and from City roadways or overpasses or at major/principal arterial
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1 intersection of City streets or islands located on major arterials. Lakewood City
2 Ordinance No 532 (ord. 532 § 1 (part), 2011). In addition, the City Council further
3
4 "recognized that when begging or pan handling takes place, near
5 Automated Teller machines (ATMS), Financial institutions, and at public
6 transportation facilities, or near disabled person parking spaces, or when
7 following individuals for the purpose of soliciting, there is a risk of danger
8 or intimidation to members of the community and /or members of the
9 public who are attempting to conduct business, utilize public services or
10 who may be reasonably intimidated by a solicitor; *Id.* Further, the City
11 Council "seeks only to address public safety concerns created by begging
12 when the action is conducted at specific times, places, or in a specific
13 manner only." *Id.*

14 The Government's specific purpose is controlling in this instance. The
15 government's purpose does not consider the content of the message. The City Council's
16 only concern is public safety. Thus, as the court has previously held, a regulation that
17 serves purposes unrelated to the content of expression is deemed neutral, even if it has an
18 incidental effect on some speakers or messages but not others. Therefore, the Lakewood
19 Municipal Code's is content neutral and thus, constitutional. Its enforcement did not
20 violate the defendant's First Amendment right.

21 Narrowly Tailored.

22 The second criteria that must be met in the reasonable time, place or manner
23 analysis is that the code must be narrowly tailored to serve a significant government
24 interest. A narrowly tailored time, place, or manner restriction on speech is one that does
25 not "burden substantially more speech than is necessary" to achieve a substantial
26 government interest. *Ward*, 491 U.S. at 791. The chosen restriction "need not be the least
27 restrictive or least intrusive means" available to achieve the government's legitimate
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29

1 interests, *Ward*, 491 U.S. at 798, the existence of obvious, less burdensome alternatives is
2 "a relevant consideration in determining whether the 'fit' between ends and means is
3 reasonable," *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13, 113
4 S. Ct. 1505, 123 L. Ed. 2d 99 (1993); *see also Santa Monica Food Not Bombs*, 450 F.3d
5 at 1041. *Berger v. City of Seattle*, 2009 U.S. App. LEXIS 13609, 21-22 (9th Cir. Wash.
6 2009). In the present case, the Lakewood Municipal Code was narrowly tailored to time,
7 place and manner to achieve the specific purpose of public safety without creating more
8 restrictions than are necessary to accomplish the substantial governmental interest. The
9 ordinance does not burden more speech than necessary. The ordinance does not prohibit
10 all begging in the City of Lakewood. Instead, it restricts the activity in those few areas
11 (and in some instances at specific times) when public safety is compromised. Thus, the
12 ordinance is narrowly tailored to serve a significant government interest.

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17 In addition, although the City was not required to use the least restrictive
18 alternative to address the public safety concerns, there are alternatives to begging in
19 restrictive areas. Begging is not prohibited in areas not specifically outlined in the
20 ordinance. Thus, every other street in the City not previously identified by type, and
21 every other square foot of space not identified is an alternative. Further, time restrictions
22 for begging don't apply to those locations not outlined in the ordinance.

23
24
25 B. Lakewood Municipal Code 9.04.020A is not void for vagueness and thus
26 its enforcement did not violate the defendant's Fourteenth Amendment
27 right to due process.

28 When a statute is challenged on vagueness grounds, the issue is whether the two
29 requirements of due process are met: adequate notice to citizens and adequate standards

1 to prevent arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S.Ct.
2 1855, 75 L.Ed. 903 (1983). Strict specificity is not required, if persons of ordinary
3 intelligence can understand a penal statute notwithstanding some possible areas of
4 disagreement, it is not wanting of certainty. *Id.* at 358. If both requirements are met, the
5 defendant's argument must fail.

7
8 Notice.

9 When considering the first of two requirements, notice, the court considers
10 whether fair warning of the prohibited activity was provided. The Due Process Clause of
11 the Fourteenth Amendment requires [that citizens be afforded] fair warning is required
12 "so citizens 'may plan their activity accordingly and freely enjoy those activities which
13 are not expressly illegal.'" *State v. Sullivan*, 143 Wn. 2d 162, 181 (2001).

15 The Washington Supreme Court has found statutes to be unconstitutionally vague
16 for failure to provide fair warning only in "exceptional cases," *City of Seattle v. Eze*, 111
17 Wn.2d 22, 28, 759 P.2d 366 (1988), such as when important statutory terms were
18 extremely hazy and remained entirely undefined, see *State v. Williams*, 144 Wn.2d 197,
19 204-06, 26 P.3d 890 (2001) ("mental health"); *City of Bellevue v. Lorang*, 140 Wn.2d 19,
20 30, 992,)2d 496 (2000) ("legitimate communication"); *State v. Richmond*, 102 Wn.2d
21 242, 244 683, P.2d, 1093 (1984) ("lawful excuse"); *City of Seattle v. Pullman*, 82 Wn.2d
22 794, 798, 514 P.2d 1049 (1973) ("loitering"), or when prohibited conduct was defined by
23 reference to an ever-changing federal publication not readily available to the public, see
24 *State v. Dougall*, 89 Wn.2d 118, 121022, 570 P.2d 135 (1977); ("It is unreasonable to
25 expect an average person to continually research the Federal Register to determine what
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1 drugs are controlled substances... .”), or when an important term involved too many
2 variables and its application would be uncertain in any given case, *City of Seattle v. Rice*,
3 93 Wn. 2d 728, 731-32, 612 P.2d 792 (1980) (“lawful order”). *State v. Sullivan*, 143 Wn.
4 2d 162, 181 (2001). In contrast, the court has not found any statutes to be
5 unconstitutionally vague simply because of the presence of ambiguity and the need for
6 statutory construction. *State v. Evans*, 2013 Wash. Lexis 308 (Wash. Apr. 11, 2013).
7
8

9 In the present case, defendant asserts that the definition of begging pursuant to
10 RCW 9A.4.020(E) is unconstitutionally vague because it does not provide notice of
11 prohibited actions or an opportunity for standard enforcement. However, this argument is
12 flawed based upon the plain language of the ordinance. The plain language of the
13 ordinance defines begging as “asking for money or goods as charity, whether by words,
14 bodily gestures, signs or other means.”
15
16

17 Similarly, RCW 9A.4.020A prohibits begging at the following locations and at
18 the following times:
19

20 at on and off ramps leading to and from state intersections from any City
21 roadway or overpass; (2) at intersections of major/principal arterials (or
22 islands on the principal arterials) in the City; (3) within twenty five (25) feet
23 of an ATM machine, or financial institution; (4) within fifteen (15) feet of
24 any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus
25 stop, train station or in any public parking lot or structure or walkway
26 dedicated to such parking lot or structure; (5) before sunrise or after sunset at
27 any public transportation facility or on any public transportation vehicle or
28 (6) while a person is under the influence of alcohol or controlled substances.
29 (Ord. 532 § 1 (part), 2011.)

26 When taken separately or together, the language is far from ambiguous. A person
27 of ordinary intelligence can determine what actions are prohibited. Begging itself is not
28 prohibited. The facts in the case at bar are not exceptional and the terms are not
29

1 undefined or based upon an ever changing publication. The fair warning provided allows
2 citizens to plan their activities accordingly so that they can freely enjoy activities not
3 prohibited. This means that the Girls Scouts, supporters of the March of Dimes, and
4 members of the Salvation Army need not worry about asking for charitable contributions.
5 However, it is equally apparent that all members of the public are prohibited from
6 begging at on and off ramps, and in other prohibited places and at prohibited times in the
7 City of Lakewood. The notice is sufficient to identify prohibited activity which can be
8 enforced without arbitrary action.
9

10
11 Enforcement is Not Arbitrary.

12 The alternative measure by which the court can decide the statute is vague is for
13 arbitrary enforcement. Due process requires criminal statutes to establish workable
14 standards that ensure the law will be enforced "in a non-arbitrary, nondiscriminatory
15 manner." *Id.* citing *City of Spokane v. Neff* 152 Wn.2d 85, 89, 93 P.3d 158 (2004). A
16 lack of objective standards allows "police officers, judges, and jury to subjectively decide
17 what conduct the statute proscribes...in any given case." *Evans* at 30, ___. Citing. *State v.*
18 *Maciolek*, 101 Wn.2d at 267 (1984).
19
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22 The Washington Supreme Court has found statutes unconstitutionally vague when
23 they have relied upon "inherently subjective terms" that are amenable to numerous
24 varying and arbitrary interpretations from one case to another. *Id.* at ___. Lakewood
25 Municipal Code 09A.4.020(E) does not contain ambiguous terms that will lead to
26 arbitrary enforcement.
27

28 The defendant was charge with and convicted of Begging in a Restrictive Area
29

1 pursuant to 9A.4.020A of the Lakewood Municipal Code. The code does not outlaw
2 begging but does restrict the time, place and manner in which the begging can take place.
3
4 The statute gives fair warning of the restrictions to citizens allowing them to plan their
5 day accordingly. Further there is no genuine argument that the municipal code does not
6 provide ascertainable standards of guilt to protect against arbitrary enforcement. There
7 are no subjective words that lend themselves to any other interpretations but the common
8 meaning of the words or those set out in the statutory definitions in 09A.4.020A. Thus,
9 the defendant's argument that the statute is constitutional for vagueness in violation of the
10 Fourteenth Amendment must fail.
11
12

13 C. Lakewood Municipal Code 09.04.020A does not violate the defendant's
14 right to Fourteenth Amendment protection.

15 The appellant argues that he is being treated differently from others who are
16 similarly situated based upon his financial status. His final argument fails as well.
17

18 Government actions which discriminate on the basis of a suspect classification, or
19 which infringe on constitutionally protected speech, are valid only if they serve a
20 compelling state interest. *Roulette v. City of Seattle* 850 F. Supp, 142, 149-150 (1994)
21 citing *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440, 87 L.Ed. 313,
22 105, S. Ct.3249 9 1985). At the outset of any equal protection analysis, we must identify
23 the appropriate standard of judicial scrutiny. If a statute creates an inherently suspect
24 classification such as one based on race, nationality, or alienage, the statute, when
25 challenged, will be subjected to strict scrutiny. *Graham v. Richardson*, 403 U.S. 365, 29
26 L. Ed. 2d 534, 91 S. Ct. 1848 (1971); *Nielsen v. Washington State Bar Ass'n*, 90 Wn.2d
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1 818, 820, 585 P.2d 1191 (1978). A statute which does not affect fundamental rights or
2 create a suspect classification, however, is generally subjected to minimal judicial
3 scrutiny and will not be invalidated unless it rests on grounds wholly irrelevant to the
4 achievement of a legitimate state objective. *McGowan v. Maryland*, 366 U.S. 420, 425-
5 26, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961); *Nielsen v. Washington State Bar Ass'n*, supra.
6
7 Where no suspect classification is under scrutiny, the Equal Protection Clause requires
8 that a government's action be rationally related to a permissible government objective.
9
10 See, e.g., *Massachusetts Board of Retirement v. Maine*, 427 U.S. 307, 49 L. Ed. 2d 520,
11 96 S. Ct. 2562 (1976). This test has traditionally proved deferential toward the
12 governmental entity. See, e.g., *Railway Express Agency v. New York*, 336 U.S. 106, 93 L.
13 Ed. 533, 69 S. Ct. 463 (1949).
14

15
16 To successfully assert a claim that his Fourteenth Amendment right to equal
17 protection has been violated, the Appellant must show that he is a member of a protected
18 class and that he has been treated differently from those who are similarly situated. The
19 defendant is currently asserting his class based upon his self-asserted poverty. However,
20 the defendant has not shown that he fits into the classification for purposes of equal
21 protection analysis.
22

23
24 In *Ybarra v. Los Altos Hills*, 503 F.2d 250, 253 (9th Cir. Cal. 1974), the court
25 discussed the conditions under which poverty becomes a suspect classification under the
26 equal protection clause. The individuals, or group of individuals, who constituted the
27 class discriminated against must share two distinguishing characteristics: (1) be unable to
28 pay for some desired benefit, and as a consequence they (2) sustain an absolute
29

1 deprivation of a meaningful opportunity to enjoy that benefit. *Ybarra* at 253. The
2 defendant has not identified the standard. Further, although he is free to raise issues of
3 constitutional magnitude for the first time on appeal, he did not choose to raise the issue
4 at the trial level or develop factual support at that level for the issue he now raises.
5 Although the defendant may be poor, he does not meet the standards required to be
6 considered a member of a suspect class for purposes of this Fourteenth Amendment equal
7 protection analysis.
8

9
10 Without any additional proof that he is a member of a suspect class, the Equal
11 Protection Clause requires that a government's action be measured by the rational
12 relationship test. This means the government's action must only be rationally related to a
13 permissible government objective, a test that is traditionally deferential toward
14 governmental entities. Here, the City's restriction on begging was not based upon the
15 message being offered but upon the time, place and manner of the begging. The City's
16 intent was to protect public safety by preventing vehicular collisions at on and off ramps
17 and around islands near major/principal arterials in and leading into the City of
18 Lakewood. Further, the City's purpose was to ensure the safety of individuals who
19 conduct banking transaction in the City and who use public transportation. It does not
20 discriminate on the basis of financial status.
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25 VI. CONCLUSION

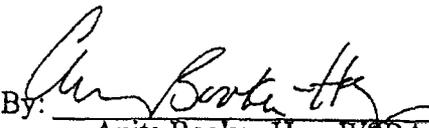
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27 The defendant had the heavy burden of establishing the ordinance was
28 unconstitutional beyond a reasonable doubt. He has not met any of the standards set out
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in case law and has failed to meet his burden. Accordingly, his conviction for Aggressive Begging in Restricted Areas should be affirmed.

DATED: May 2, 2013.

CITY OF LAKEWOOD
Matthew S. Kaser, Acting City Attorney,

By: 
Anita Booker-Hay, WSBA # 23409
Assistant City Attorney



APPENDIX 2

April 08 2013 3:21 PM

KEVIN STOCK
COUNTY CLERK
NO: 12-1-04623-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

CITY OF LAKEWOOD,)
Plaintiff/Respondent) 12-1-04623-1
Vs.)
) BRIEF OF APPELLANT
)
ROBERT WILLIS,)
Defendant/Appellant)

A. STATEMENT OF CLAIMS OF ERROR

1. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of the Appellant, Mr. Willis’ First Amendment right to Freedom of Speech.
2. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of the Appellant, Mr. Willis’ 14th Amendment right to Due Process for vagueness.
3. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of Appellant, Mr. Willis’ 14th Amendment right to Equal Protection, because of his poverty.

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B. STATEMENT OF CASE

Defendant/Appellant Robert Willis was charged in Lakewood Municipal Court, Cause No.CR32174, with Begging in Restrictive Areas – LMC 9A.04.020A. See Exhibit 1, Amended Complaint dated September 9, 2011. On September 20, 2011, Mr. Willis entered a plea of not guilty and pretrial conditions were set. See Exhibit 2, Court Docket. On September 13, 2012, Mr. Willis was appointed the Public Defender. *Id.* The matter was set for Jury trial on October 16, 2012. *Id.*

The undisputed facts of this case are that Mr. Willis was standing at the N/B I-5 Exit to Gravelly Lake Drive SW in Lakewood, Washington. He was holding a cardboard sign toward traffic claiming something to the effect of “he was disabled and needed help”. The City alleged that this action put Mr. Willis in violation of Lakewood Municipal Code 09A.4.020A -

Restrictive Areas, which states:

Begging shall be deemed a violation of this section of the municipal code under the following conditions: (1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle or (6) while a person is under the influence of alcohol or controlled substances. (Ord. 532 § 1 (part), 2011.) **Emphasis added.**

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1 "Begging" is defined under LMC 09A.4.020 (E) – Definitions, as "asking for money or
2 goods as a charity, whether by words, bodily gestures, signs or other means." He was not
3 charged with Aggressive Begging LMC 09A.4.010. Exhibit 3, Chapter 9A.04 Aggressive
4 Begging of the Lakewood Municipal Code (LMC).

5 The jury trial was held on November 16, 2012, where the jury found Mr. Willis Guilty of
6 Begging in Restrictive Areas and the court proceeded to sentencing. See Exhibit 2.

7 Mr. Willis filed this timely appeal on December 5, 2012.

8 9 C. CLAIMS OF ERROR

10 1. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of 11 the Appellant, Mr. Willis' First Amendment right to Freedom of Speech.

12 13 A. Jurisdiction of the Court

14 The interpretation of a statute and the determination of whether a statute violates the
15 United States Constitution are issues of law that are reviewed de novo." *In re Parentage of*
16 *C.A.M.A.*, 154 Wash.2d 52, 57, 109 P.3d 405 (2005), *State v. J.M.*, 144 Wash.2d 472, 480, 28
17 P.3d 720 (2001). Constitutional challenges are questions of law and are also reviewed de novo.
18 *Weden v. San Juan County*, 135 Wash.2d 678, 693, 958 P.2d 273 (1998). Further, the
19 interpretation of legislative enactments, including municipal ordinances, presents a question of
20 law, which are reviewed de novo. *City of Spokane v. Rothwell*, 166 Wash.2d 872, 876, 215 P.3d
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1 162 (2009); *Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash.2d 514, 523, 219 P.3d 941 (2009)
2 (citing *State v. Chenoweth*, 160 Wash.2d 454, 462, 158 P.3d 595 (2007)).

3 Where the constitutionality of a municipal ordinance is challenged, the ordinance is
4 presumed constitutional and the burden is on the party challenging the ordinance to prove its
5 unconstitutionality beyond a reasonable doubt. *Tunstall v. Bergeson*, 141 Wash.2d 201, 220, 5
6 P.3d 691 (2000), *State v. Bahl*, 164 Wash.2d 739, 753, 193 P.3d 678 (2008), *Voters Educ.*
7 *Comm. v. Pub. Disclosure Comm'n*, 161 Wash.2d 470, 481, 166 P.3d 1174 (2007) (quoting *State*
8 *v. Hughes*, 154 Wash.2d 118, 132, 110 P.3d 192 (2005), overruled in part on other grounds by
9 *Washington v. Recuenco*, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006)).

10 However, in the context of free speech, the City “usually ‘bears the burden of justifying a
11 restriction on speech.’ ” *Voters Educ. Comm.*, 161 Wash.2d at 482, 166 P.3d 1174 (quoting *Ino*
12 *Ino, Inc. v. City of Bellevue*, 132 Wash.2d 103, 114, 937 P.2d 154, 943 P.2d 1358 (1997)).

13
14
15 **B. Begging is Protected free Speech**

16 The First Amendment generally prohibits government interference with speech or
17 expressive conduct. *State v. Halstien*, 122 Wash.2d 109, 121, 857 P.2d 270 (1993). The United
18 States Supreme Court held that “solicitation to pay or contribute money” is “within the
19 protections of the First Amendment.” *Schaumburg v. Citizens for Better Environment*, 444 U.S.
20 620, 633, 100 S.Ct. 826, 834 63 L.Ed.2d 73 (1980), *U.S. v. Kokinda*, 497 U.S. 720, 725, 110
21 S.Ct. 3115, 3118–19, 111 L.Ed.2d 571 (1990) (“Solicitation is a recognized form of speech
22

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1 protected by the First Amendment.”), *Roulette v. City of Seattle*, 850 F.Supp. 1442 (1994).
2 Begging constitutes communicative activity of some sort. *Loper v. New York City Police Dept.*,
3 999 F.2d 699, 704 (1993), *Riley v. National Federation of Blind, Inc.*, 487 U.S. 781, 108 S.Ct.
4 2667, 101 L.Ed.2d 669 (1988) (solicitation is protected First Amendment activity); *Secretary of*
5 *Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984)
6 (solicitation is protected First Amendment activity); *Blair v. Shanahan*, 775 F.Supp. 1315, 1322,
7 1324 (N.D.Cal.1991) (begging constitutes protected speech).

8
9 **C. Lakewood Municipal Code 09.4.020A – Restrictive Areas is subject to valid time,**
10 **place, and manner restrictions and whether it is narrowly tailored to serve a compelling**
11 **government interest.**

12 By placing a ban on begging, the City of Lakewood Ordinance LMC 9A.04.020A
13 prohibits constitutionally protected speech. LMC 09A.4.020A prohibits “Begging” in certain
14 designated public areas and is a violation of city code punishable as a misdemeanor with up to 90
15 days jail and/or \$1000 fine. LMC 09A.4.030. “Begging” is defined under LMC 09A.4.020 (E),
16 as “asking for money or goods as a charity, whether by words, bodily gestures, signs or other
17 means.” As stated previously, solicitation to pay or contribute money is within the protections of
18 the First Amendment. *Citizens for Better Environment*, 444 U.S. at 633, 100 S.Ct. at 834.

19 The constitution allows regulation of protected speech in certain circumstances. *Bering v.*
20 *Share*, 106 Wash.2d 212, 221–22, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050, 107
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1 S.Ct. 940, 93 L.Ed.2d 990 (1987), *City of Seattle v. Huff*, 111 Wash.2d 923, at 926, 767 P.2d 572,
2 Wash., (1989).

3 First, the extent of permissible regulation depends on whether the speech takes place in a
4 public or a private forum. *Huff*, 111 Wash.2d at 927, 767 P.2d 572. “[T]he First Amendment
5 affords more protection to speech in a public forum, a place traditionally devoted to assembly
6 and debate, and to channels of communication used by the public at large for assembly and
7 speech.” *City of Seattle v. Ivan*, 71 Wash.App. 145, at 152, 856 P.2d 1116, (1993). The list of
8 restricted areas in LMC 09A.4.020A are public places; “(1) at on and off ramps leading to and
9 from state intersections from any City roadway or overpass; (2) at intersections of
10 major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five
11 (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a)
12 occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any
13 public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before
14 sunrise or after sunset at any public transportation facility or on any public transportation
15 vehicle...”

17 The United States Supreme Court has held that even in a public forum, the government
18 may impose reasonable restrictions on the time, place, and manner of protected speech, provided
19 the restrictions are content-neutral, are narrowly tailored to serve a significant governmental
20 interest, and leave open ample alternative channels of communication. *Ward v. Rock Against*
21 *Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed.2d 661 (1989). The restriction ‘may

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1 not be based upon either the content or subject matter of speech.’ ” *Heffron*, 452 U.S. at 648, 101
2 S.Ct. at 2564 (quoting *Consolidated Edison Co. v. Public Serv. Comm’n*, 447 U.S. 530, 536, 100
3 S.Ct. 2326, 2336, 65 L.Ed.2d 319 (1980)).

4 In the present case, the language in LMC 9A.4.020A is not content neutral. In
5 determining whether a restriction is content-neutral or content-based, the Supreme Court has
6 held that “[g]overnment regulation of expressive activity is content neutral so long as it is ‘
7 justified without reference to the content of the regulated speech.’ ” *Ward v. Rock Against*
8 *Racism*, 491 U.S. at 791, 109 S.Ct. at 2753. LMC 9A.4.020A specifically is banning “begging”
9 which is a protected area of speech and does not ban other forms of speech in the listed areas.
10 Under this Ordinance, a person would be allowed to ask people to sign a petition, come to their
11 car wash, strike up a conversation about the weather, ask for directions or even protest
12 Lakewood’s discriminatory ordinances against poverty without violating the ordinance. The
13 language of the Ordinance is specifically targeted towards the content and type of speech in these
14 public places by banning “begging”, as opposed to limiting all forms of constitutional speech at
15 these locations.
16

17 Even if this court determines that the language is content neutral, it does not serve a
18 compelling state interest, nor is it narrowly tailored. The Washington State Constitution diverges
19 from the Supreme Court on the “significant state interest” element of the time, place, and manner
20 test, where “ restrictions on speech can be imposed consistent with Const. art. 1, § 5 only upon
21 showing a compelling state interest.” *Bering v. Share*, 106 Wash.2d at 234, 721 P.2d 918. To
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1 constitute a compelling interest, the purpose must be a fundamental one and the legislation must
2 bear a reasonable relation to the achievement of the purpose. *Adult Entertainment Center, Inc. v.*
3 *Pierce Cy.*, 57 Wash.App. 435, 439, 788 P.2d 1102, review denied, 115 Wash.2d 1006, 796 P.2d
4 725 (1990). See *Bates v. Little Rock*, 361 U.S. 516, 524-25, 80 S.Ct. 412, 417-18, 4 L.Ed.2d 480
5 (1960).

6 In the present case, the fundamental City interest stated by the City Council for enacting
7 this Ordinance is that there is a "danger of collision or injury to motorists or pedestrians that is
8 created when distracted drivers attempt to make contribution to people requesting assistance at
9 highway on and off ramps..." and "when begging or panhandling takes place, near Automated
10 Teller Machines (ATMS), Financial Institutions, and at public transportation facilities, or near
11 disabled person parking spaces, or when following individuals for the purpose of soliciting, there
12 is a risk of danger or intimidation to members of the community." Lakewood City Ordinance No.
13 532 (Ord. 532 § 1(part), 2011).

14 The Ordinance is clearly not content neutral nor is it "narrowly tailored to serve a
15 significant governmental interest". *Rock Against Racism*, 491 U.S. at 791, 109 S.Ct. at 2753.
16 The first section specifically targets begging at intersections to avoid traffic problems but does
17 not address other forms of speech that could create the same problems; ie. Signing petitions,
18 asking for directions, advertising car washes, etc.. So it is discriminatory and is not narrowly
19 tailored to serve a compelling government interest. The city could have prohibited all pedestrian
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1 traffic in these areas without any prohibitions on speech, or prohibited all types of speech and
2 contact between drivers and pedestrians in these areas.

3 The second section dealing with the danger of intimidation or risk of danger to members
4 of the community is already addressed by the Lakewood Municipal Code 09.4.010 which
5 specifically addresses the prohibition of aggressive begging. There is plenty of case law that
6 allows prohibitions against threatening speech and permits laws that prevent aggressive begging.
7 The City of Lakewood has a statute that specifically addresses danger to members of the
8 community by prohibiting aggressive begging. Again, LMC 09.4.020A is limiting protected
9 speech, it is discriminatory, and it does not serve a compelling government interest. There
10 already is an alternative ordinance that legitimately protects this interest.

11
12 **2. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of**
13 **the Appellant, Mr. Willis’ 14th Amendment right to Due Process for vagueness.**
14

15 In order to satisfy the Fourteenth Amendment guarantee of procedural due process, an
16 ordinance must set forth clear legal standards so that citizens may know how to conduct
17 themselves in conformity with the law, and law enforcement personnel may avoid enforcing the
18 law in an arbitrary and discriminatory manner. *Kolender v. Lawson*, 461 U.S. 352, 357–58, 103
19 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). Under this analysis, the factual setting of this case is
20 irrelevant and the court looks only to whether “ ‘... any conviction under the statute could be
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1 constitutionally upheld.’ ” *State v. Smith*, 111 Wash.2d 1, 17, 759 P.2d 372 (1988) (quoting *State*
2 *v. Maciolek*, 101 Wash.2d 259, 262–63, 676 P.2d 996 (1984)).

3 When an ordinance is challenged on vagueness grounds, the issue is whether the two
4 requirements of procedural due process are met: adequate notice to citizens and adequate
5 standards to prevent arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. at 358, 103 S.Ct.
6 1855. An ordinance violates due process principles if (1) it “ ‘does not define the criminal
7 offense with sufficient definiteness that ordinary people can understand what conduct is
8 proscribed,’ ” or (2) it “ ‘does not provide ascertainable standards of guilt to protect against
9 arbitrary enforcement.’ ” *State v. Williams*, 144 Wash.2d 197, 203, 26 P.3d 890 (2001) (internal
10 quotation marks omitted) (quoting *City of Bellevue v. Lorang*, 140 Wash.2d 19, 30, 992 P.2d 496
11 (2000)).

12 In the present case, “Begging” is defined under LMC 09A.4.020 (E), as “asking for
13 money or goods as a charity, whether by words, bodily gestures, signs or other means.” Based
14 on this language, anyone asking for “money or goods” as a charity in the designated areas is in
15 violation of this ordinance. This would include all Charities asking for contributions, such as
16 March of Dimes, Girl Scouts, and Salvation Army ringing the bells at Christmas time if they
17 were by a handicapped parking space or within 25 feet of an ATM. It would also include people
18 requesting donations in support of political campaigns or interest groups. Further, it would
19 prevent people stranded on the side of a road after accidents or vehicular problems from
20 requesting aid in these locations. An ordinance must set forth clear legal standards so that
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1 citizens may know how to conduct themselves in conformity with the law, and law enforcement
2 personnel may avoid enforcing the law in an arbitrary and discriminatory manner. This law
3 prohibits everyday conduct. So officers are either specifically discriminating by only applying
4 the law to people "begging" under the common use definition where people are asking for
5 money because of poverty or as the law is written it prohibits everyday conduct. LMC
6 9A.4.020A is vague and not clear in its application or its enforcement.

7
8 **3. Whether Lakewood Municipal Code 09.4.020A – Restrictive Areas is a violation of**
9 **Appellant, Mr. Willis' 14th Amendment right to Equal Protection, because of his**
10 **poverty.**

11 The remaining question is whether The City of Lakewood's Municipal Code 09.4.020A
12 violates Mr. Willis' equal protection rights in that, because of his poverty the Ordinance denies a
13 constitutional right enjoyed by others similarly situated.

14 The City may not condition the exercise of a constitutional right upon financial ability or
15 deny a basic legal right because of one's poverty. *State v. Lewis*, 55 Wash.2d 665, 670, 349 P.2d
16 438 (1960). The question is "not whether all those within the classes defined by the state are
17 treated equally but, rather, whether the classification itself is permissible." *Collier v. City of*
18 *Tacoma*, 121 Wash.2d 737, 750, 854 P.2d 1046 (1993).

19 Content-based restrictions raise Fourteenth Amendment equal protection concerns
20 because such restrictions differentiate between types of speech. *Id at 745*. Due process of law is
21

1 not applicable unless one is being deprived of something to which he has a right. *Yantsin v.*
2 *Aberdeen*, 54 Wash.2d 787, 345 P.2d 178 (1959). The City is prohibited from engaging in unfair
3 discrimination. *Riggins v. Rhay*, 75 Wash.2d 271, 283-84, 450 P.2d 806 (1969).

4 In determining whether a restriction is content-neutral or content-based, the Supreme
5 Court has held that "[g]overnment regulation of expressive activity is content neutral so long as
6 it is 'justified without reference to the content of the regulated speech.' " *Ward v. Rock Against*
7 *Racism*, 491 U.S. at 791, 109 S.Ct. at 2753. The discrimination provisions of both the state and
8 federal constitutions generally seek to secure equality of treatment for all persons similarly
9 situated without favoritism. *Herriott v. Seattle*, 81 Wash.2d 48, 60, 500 P.2d 101 (1972).

10 In the present case, the Lakewood City Ordinance is specifically targeting begging as it
11 applies to poverty. For the very same reasons this law is vague, it is also being administered by
12 Lakewood in violation of the constitution for Equal Protections because it allows officers to
13 discriminate based on poverty.
14

15 D. CONCLUSION

16 By placing a ban on begging, the City of Lakewood Ordinance LMC 9A.04.020A
17 prohibits constitutionally protected speech. The language of the Ordinance is not content neutral
18 as it specifically targets "begging" which is a constitutional protected form of speech. Further,
19 the Ordinance is not "narrowly tailored to serve a significant governmental interest".

20 In addition, LMC 9A.04.020A does not set forth clear legal standards so that citizens may
21 know how to conduct themselves in conformity with the law, and law enforcement personnel
22

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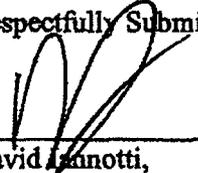
1 may avoid enforcing the law in an arbitrary and discriminatory manner. This ordinance violates
2 defendant's due process rights as it is vague.

3 Finally, as applied, LMC 9A.04.020A violates Mr. Willis' equal protection rights in that,
4 because of his poverty the Ordinance denies a constitutional right enjoyed by others similarly
5 situated.

6 Consequently, the LMC 9A.04.020A is unconstitutional and the conviction of the
7 Appellant, Mr. Willis must be vacated and dismissed.

8 SIGNED this 6 day of April, 2013, in Kent, Washington.

9 Respectfully Submitted,

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11 _____
12 David Lannotti,
13 WSBA #37542

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APPENDIX 3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF LAKEWOOD,

Respondent/Cross-
Petitioner,

v.

ROBERT W. WILLIS,

Petitioner/Cross-
Respondent.

No. 45034-8-II

RULING GRANTING REVIEW

FILED
COURT OF APPEALS
DIVISION II
2013 AUG 28 AM 11:22
STATE OF WASHINGTON
BY DEPUTY

Robert Willis seeks discretionary review of the superior court's decision affirming his conviction for the crime of Begging in Restrictive Areas. This court grants review.

In 2011, the City of Lakewood enacted Lakewood Municipal Code (LMC) 09A.4.020A, which provides:

Begging shall be deemed a violation of this section of the municipal code under the following conditions: (1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City; (3) within twenty five (25) feet of an ATM machine, or financial institution; (4) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle or (6) while a person is under the influence of alcohol or controlled substances.

Mot. for Disc. Rev., Exh. 3 at 2. "Begging" is defined at LMC 09A.4.020(E) as "asking for money or goods as a charity, whether by words, bodily gestures, signs or other

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means.” Mot. for Disc. Rev., Exh. 3 at 1. Violation of LMC 09A.4.020A is a misdemeanor, punishable by a fine of \$1,000 or a jail sentence of 90 days, or both. LMC 09A.4.030.

On August 18, 2011, Willis was standing at the exit ramp from northbound Interstate 5 to Gravelly Lake Drive SW in Lakewood. He was holding a cardboard sign saying “[h]e was disabled and he needed help.” Resp. to Mot. for Disc. Rev., Exh. A at 6 (excerpt of transcript of Willis Trial at 24). The City of Lakewood charged him with Begging in Restrictive Areas under LMA 09.A.020A. A Lakewood Municipal Court jury found him guilty. He appealed to superior court, arguing that LMC 09A.A.020A violates his First and Fourteenth Amendment rights. The superior court affirmed, ruling:

LMC 9A.4.020A does not violate any rights under the First Amendment because it is a reasonable time, place, and manner regulation. The restrictions are ~~content-neutral~~, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. Similarly, LMC 9A.4.020A does not violate the Fourteenth Amendment because its requirements are not neither vague nor (assuming a proper record could be made) because of his alleged poverty, thereby impairing his rights of Due Process and Equal Protection.

Mot. for Disc. Rev., Exh. 1 at 1-2 (strike-through in original).

Willis moves for discretionary review under RAP 2.3(d)(1), (2) and (3), which allow this court to grant review of a superior court decision reviewing a decision of court of limited jurisdiction:

- (1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or
- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court

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The City of Lakewood cross-moves that, in the event Willis's motion for discretionary review is granted, this court also grant review the superior court's failure to find that LMC 09A.4.020A is content-neutral.

Willis argues that the constitutionality of LMC 09A.4.020A under the first amendment is a significant question of law because begging is a constitutionally-protected activity and because he was doing so in a public forum. He contends that in such a situation, the government may only impose reasonable restrictions on the time, place and manner of that protected activity, and that those restrictions must be content-neutral, are narrowly tailored to serve a significant governmental interest and leave open ample alternative channels of communication. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). He contends that LMC 09A.4.020A is not content-neutral and is not narrowly tailored to serve a significant government interest. He also argues that the constitutionality of LMC 09A.4.020A under the Fourteenth Amendment is a significant question of law because it is vague and impairs his exercise of a constitutionally-protected activity based on his poverty.

The City responds that while Willis raises questions of constitutional law, he does not show that those questions are significant. It also responds that the superior court erred in not finding that LMC 09A.4.020A is content-neutral.

This court concludes that the questions of the constitutionality of LMC 09A.4.020A, raised by both Willis and the City, are significant. It also concludes that the City's authority to criminalize Begging in Restricted Areas is an issue of public interest that an appellate court should decide. Discretionary review of the superior court's

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decision upholding LMC 09A.4.020A is warranted under RAP 2.3(d)(2) and (3).

Accordingly, it is

ORDERED that Willis's motion for discretionary review and the City's cross-motion for discretionary review are granted. Willis will file his designation of clerk's papers and statement of arrangements within 30 days.

DATED this 28th day of August, 2013.

Eric B. Schmidt
Eric B. Schmidt
Court Commissioner

cc: David Iannotti
Matthew S. Kaser
Hon. Bryan E. Chushcoff

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Subject: D2 450348--Willis v. City of Lakewood--Perfection Notice
From: "Cleveland, Kim" <kim.cleveland@courts.wa.gov>
Date: Wed, Aug 28, 2013 12:28 pm
To: "david@sbmhlaw.com" <david@sbmhlaw.com>, "mkaser@cityoflakewood.us" <mkaser@cityoflakewood.us>
Cc: "Cleveland, Kim" <kim.cleveland@courts.wa.gov>
Attach: D2 450348--Willis v. City of Lakewood--Perfection Notice.pdf
Ruling Granting Review - Willis.pdf

To Counsel and Interested Parties:

Attached is a Perfection Notice filed today, 8/28/2013. (A Ruling Granting Review filed August 28, 2013!)

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent to coa2filings@courts.wa.gov, or, if counsel has a JIS USERID (can access SCOMIS/ACORDS), please use the newly established attorney portal at <http://www.courts.wa.gov/coa2efiling>. If you have difficulty accessing or using either method, please contact this office. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 if you have any questions or comments.

Thank you,

Kim
Case Manager

APPENDIX 4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

ROBERT WILLIS,)	
)	
Defendant/Petitioner,)	12-1-04623-1
)	
vs.)	ELECTRONIC RECORD
)	TRANSCRIPTION
CITY OF LAKEWOOD,)	
)	
Plaintiff/Respondent.)	
<hr/>		

THE HONORABLE JUDGE PRO TEM FAUBION

Attorney for the Petitioner:
Mr. Chris Sims

Attorney for the Respondent:
Mr. Matt Kaser

Lynne Campeau Transcription
1789 SW 345th PL
Federal Way, WA 98023
253-927-6585

1 MR. KASER: Not offering for the truth of the matter.

2 JUDGE PRO TEM FAUBION: Restate your question

3 again.

4 MR. KASER: It was what information did you have at
5 the time of the dispatch of your call.

6 JUDGE PRO TEM FAUBION: Your objection?

7 MR. SIMS: Hearsay, Your Honor.

8 JUDGE PRO TEM FAUBION: Overruled. You may
9 answer.

10 A: A citizen called 911 to complain of an individual aggressively begging and
11 banging on their car.

12 Q: What did you do?

13 A: I was in the area of Pacific Highway and Gravelly Lake, so I responded to
14 that intersection, which was the northbound I-5 exit to Gravelly Lake Drive.

15 Q: Can you walk the jury through what you observed at that time?

16 A: I was coming from the north. I-5 runs north/south, but in Lakewood it
17 actually runs east/west. So I was coming from the north – bless you –
18 southbound. And I saw an individual who was on the northbound ramp of
19 I-5 at the intersection facing southbound towards traffic. As I was driving
20 up I pulled over to the right and activated my lights, my two overhead
21 lights, because there is no shoulder, to not be rear ended by cars, and
22 parked my car, and then I saw that individual actually walk from the

1 shoulder, across the fog line out to a car, so it was actually in the lane of
2 travel, or in the exit lane.

3 Q: And just so we don't miss the issue here, you indicated that you
4 responded to the area of Gravelly Lake and Interstate 5. Is that located in
5 the corporate boundaries of the City of Lakewood?

6 A: Yes it is.

7 Q: All right. When you saw that individual, you saw that he actually entered
8 the lane of travel on foot?

9 A: Yes he did.

10 Q: What did you do then?

11 A: I got out of my vehicle and called him over to me.

12 Q: Did that individual respond?

13 A: Yes he did.

14 Q: Is that individual in the courtroom today?

15 A: Yes he is.

16 Q: Can you describe that individual for the benefit of our record?

17 A: The call described him as a white male, approximately 50 years of age,
18 but it is this individual that's sitting next to the defense attorney, the same
19 person.

20 MR. KASER: I'll ask that the record reflect that Officer
21 Vahle has identified the defendant.

22 JUDGE PRO TEM FAUBION: It will so reflect.

23 Q: So you called him over. What happened next?

1 A: He had a cardboard sign. I explained to him that it was illegal to beg for
2 money in the City of Lakewood in the manner that he was doing it, and I
3 issued him a criminal citation for doing that.

4 Q: Okay. Best of your recollection do you recall what the – not the criminal
5 citation – what the cardboard sign said?

6 A: He was disabled and he needed help.

7 Q: One of the things that we heard – at least pitched in opening statement
8 was that there may have been some suggestion that he needed work or
9 employment. Best of your recollection did you see any such language on
10 the sign?

11 A: No.

12 Q: Best of your recollection – did the defendant speak with you?

13 A: Yes he did.

14 Q: What did you guys discuss?

15 MR. SIMS: Objection, Your Honor.

16 JUDGE PRO TEM FAUBION: Sustained.

17 MR. SIMS: Hearsay.

18 JUDGE PRO TEM FAUBION: Sustained.

19 Q: What was the basis of your...

20 JUDGE PRO TEM FAUBION: Sustained.

21 MR. KASER: Can we approach?

22 JUDGE PRO TEM FAUBION: Certainly.

23 (Sidebar)

1 Q: Did you happen to have the opportunity to speak to the defendant?

2 A: Yes I did.

3 Q: What did you and the defendant say?

4 A: We just had a conversation about whether or not this behavior was legal
5 and when we disagreed about that, I issued him a criminal citation.

6 Q: Okay. Couple things here first of all. The location in question, is this
7 clearly in your view that was used to enter and exit public highways
8 (inaudible)?

9 A: Yes it was.

10 Q: (Inaudible) what you interpreted as (inaudible) was he asking for money
11 (inaudible) (inaudible) bodily gesture, signs or other means?

12 A: Yes he was.

13 MR. KASER: I have no further questions.

14 JUDGE PRO TEM FAUBION: Your witness.

15

16 CROSS-EXAMINATION

17 (BY MR. SIMS)

18 Q: I'm going to sit down since it's probably going to be easier to sit in this
19 courtroom. Officer Vahle?

20 A: Yes sir.

21 Q: Approximately how much training have you received in your career?

22 A: I went to the state academy which was 800 hours. Lakewood has a very
23 progressive training program where I'm pretty sure we get, just in firearms

1

2

3

4 I, Lynne Campeau, certify under penalty of perjury, of the laws of the State of
5 Washington, that the foregoing is true and correct to the best of my skill and
6 ability.

7

8

9

10 DATED this 17th day of March, 2013 in Federal Way, Washington.

11

12

13

14

A handwritten signature in black ink, appearing to read 'Lynne Campeau', is written over a solid horizontal line.

15

Lynne Campeau

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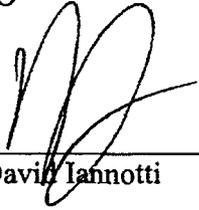
23

CERTIFICATE OF SERVICE

I certify that on the 29th day of June, 2015, I caused a true and correct copy of this Motion to be served on the following in the manner indicated below:

Matthew S. Kaser
6000 Main Street
Lakewood, WA 98499-5027

Via DELIVERY BY ELECTRONIC MAIL TO
mkaser@cityoflakewood.us

By: 
David Iannotti

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, June 29, 2015 4:28 PM
To: 'David'
Subject: RE: COL V ROBERT WILLIS 91827-9

Received 6/29/2015

Supreme Court Clerk's Office

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From: David [mailto:david@sbmhlaw.com]
Sent: Monday, June 29, 2015 4:21 PM
To: OFFICE RECEPTIONIST, CLERK; 'Matthew Kaser'
Cc: 'Cynthia Wright'
Subject: RE: COL V ROBERT WILLIS 91827-9

Please accept this attached for filing, Robert Willis' Reply to the City's Answer to Petition For Review in City of Lakewood v Robert W. Willis, 91827-9.

Thank you,

David Iannotti
Stewart MacNichols Harmell, LLC., P.S.
655 West Smith Street
Kent, WA 98032
Tel (253)859-8840
Fax (253)859-2213
Attorney at Law

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