



Civil Liberties Defense Center

Lauren C. Regan, Director & Attorney at Law
1430 Willamette St. #359

Eugene, OR 97401

Phone: 541-687-9180 Fax: 541.804.7391

Web: www.cldc.org

July 15, 2019
Ashland City Council
20 East Main Street
Ashland, OR 97520

Dear Council:

I am an Oregon attorney and the founder and Executive Director of the Civil Liberties Defense Center, a nonprofit organization made up of lawyers and activists defending civil liberties and educating progressive movements and the public at large regarding their rights and current legislative infringements upon those rights.

The Civil Liberties Defense Center has determined that proposed Ashland City Ordinance no. 3176 is unconstitutional. Ordinance no. 3176 attempts to make it “unlawful for a person to knowingly fail to provide the person’s name and date of birth to a peace officer having **probable cause** to believe that the person has **committed a violation.**” (emphasis added). The proposed ordinance’s purported goal of “making violations enforceable” is mere pretext for the criminalization of unhoused and poor community members by alleging they have committed a violation. By criminalizing individuals who refuse to divulge identifying information because a peace officer alleges probable cause to believe that the individual has so much as dropped a tissue, (i.e. “littering”), the proposed ordinance will propel otherwise law-abiding community members into the criminal justice system. As applied, proposed ordinance no. 3176 does little to increase enforceability of violations, instead clogging the criminal justice system with unnecessary traffic and imposing financial penalties against poor people who cannot pay. This is a waste of public resources on a policy that will do nothing to address the root of the issue, which is the abundance of unhoused people in Ashland.

Proposed ordinance no. 3176 offends the Eighth Amendment of the U.S. Constitution’s prohibition on cruel and unusual punishment. While a mere violation leads to a monetary fine only, an arrest and the collateral consequences of criminal conviction make it harder for people to exit homelessness and get back on their feet. Criminalization is the most expensive and least effective way to address homelessness. Using the criminal justice system to address homelessness misuses police resources to address a social problem.

Moreover, the proposed ordinance is unconstitutionally vague because it fails to provide explicit standards to peace officers as to what conduct validates a peace officer’s probable cause to believe that a violation has been committed.

There is no precise definition of what constitutes probable cause.¹ The United States Supreme Court has held that the existence of probable cause depends on whether, at the moment the warrant-less arrest was made, the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the arrestee had committed or was committing an offense.²

The Oregon Supreme Court has suggested that legislative failure to properly define a crime unconstitutionally delegates power to those charged with enforcing the law. Additionally, the United States Supreme Court has reaffirmed the constitutional objection to vague laws, noting first that “[v]ague laws may trap the innocent by not providing fair warning[;]” and second, that “if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.”³

For the above reasons, the Civil Liberties Defense Center urges the Ashland City Council not to enact Proposed Ordinance no. 3176.

Sincerely,
Civil Liberties Defense Center

/s/ Lauren C. Regan
Director & Attorney

¹ 44 Am. Jur. Proof of Facts 2d 229 (Originally published in 1986).

² *Beck v. State of Ohio*, 379 US 89, 91, 85 (1964).

³ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).