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Of Counsel*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

AMERICAN CIVIL LIBERTIES UNION	)	
OF IDAHO, INC., an Idaho nonprofit corporation,	)	Case No. 1:13-cv-478
LARRY SHANKS, and TROY MINTON,	)	
	)	
Plaintiffs,	)	
	)	<b>VERIFIED COMPLAINT</b>
vs.	)	<b>FOR INJUNCTIVE AND</b>
	)	<b>DECLARATORY RELIEF</b>
CITY OF BOISE, an Idaho municipal corporation,	)	
	)	
Defendant.	)	
_____	)	

The plaintiffs complain against the defendant as follows:

1. A new City of Boise ordinance specifically restricts the words you can say and where you can say them, throughout the city. The ordinance, City of Boise Ordinance No. ORD-34-13, criminalizes some speech—the solicitation of money or things of value—but not any other speech or other forms of solicitation. It violates the freedom of speech.

**THE PLAINTIFFS**

2. Plaintiff AMERICAN CIVIL LIBERTIES UNION OF IDAHO, INC., (“ACLU”) is an Idaho nonprofit association whose mission is to advance civil liberties and civil rights in

Idaho. The ACLU relies on private donations of money and other things of value to carry out that mission. Its staff, board members, and volunteers often and frequently solicit donations from individuals, seeking immediate donations of money and other things of value. The ACLU's offices are in Boise, and the majority of its members, and of its donors who live in Idaho, live or work in the City of Boise. To comply with the City of Boise's new anti-solicitation ordinance would require the ACLU to significantly alter its solicitation activities and to plan both the substance and location of its speech.

3. Plaintiff LARRY SHANKS is a street musician who lives in the City of Boise. As a street musician, he is learning to play for donations on the sidewalks of Boise. He used to work and was married for about 22 years, but has developed painful disabilities that prevent him from working consistently on a schedule, and now receives Social Security Disability Benefits. He is a woodworker and used to have a wood shop until he lost nearly everything he had in his divorce. He has been trying to get his life back off the ground ever since, but is currently homeless and living in his camper. The new anti-solicitation ordinance will substantially restrict where he can perform, how he can perform, and what he says and does whenever he is performing his music in public places in Boise.

4. Plaintiff TROY MINTON is a Boise resident who solicits money on the streets and sidewalks of Boise to raise money to put gas in his truck so that he can travel to jobs he gets through temp agencies and also seek out other work. He is hoping to enroll in a local college and study Fire Science and Management to pursue his dream of a career in firefighting. Right now, he lives in his truck and has been unable to find any regular income other than food stamps. Almost all of the money he can raise goes to gas. He panhandles for cash and other donations in downtown Boise. He knows that he has solicited in zones where it will become illegal under the

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF – Page 2

new anti-solicitation ordinance, and he will be too worried to try to solicit downtown or in other places if the ordinance goes into effect.

5. As a direct and proximate cause of City of Boise Ordinance No. ORD-34-13 and the conduct of the defendant in enacting that ordinance, the plaintiffs will suffer harm if the ordinance ever takes effect or is ever enforced, including impairment of their rights to speak and communicate.

### **THE DEFENDANT**

6. Defendant CITY OF BOISE is a municipal corporation organized under the laws of the State of Idaho, and it has the capacity to be sued. The City is the legal and political governmental entity responsible for the actions of the Boise Police Department and its officials, agents, and employees. The City is sued in its own right and on the basis of the acts and omissions of its officials, agents, and employees.

### **JURISDICTION**

7. The plaintiffs bring this action to enjoin violations of the *First* and *Fourteenth Amendments* to the United States Constitution and of the freedom of speech guaranteed by the Idaho Constitution.

8. This Court has jurisdiction over the plaintiffs' 42 U.S.C. § 1983 claims under 28 U.S.C. §§ 1331 and 1343(a)(3). It has jurisdiction to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and F.R.C.P. 65. And it has jurisdiction under 28 U.S.C. § 1367(a) over all of the plaintiffs' state constitutional claims because those claims form the same case or controversy as their claims based on federal law.

9. Venue is proper in this Court and District under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction here and because the events and omissions giving rise to this action occurred in this District.

### **THE FACTS**

10. On September 17, 2013, the City of Boise adopted an ordinance, City of Boise Ordinance no. ORD-34-13 (“the ordinance”), that expressly regulates “words, bodily gestures, [and] signs.” A complete copy of the ordinance, as adopted, is attached to this complaint.

11. The ordinance has a component, to be codified at BCC § 6-01-07(B)(1), that makes solicitation in an “aggressive manner” illegal.

12. But the ordinance also has other components, to be codified at BCC §§ 6-01-07(B)(2)–(11), that make solicitation speech of any kind, even if not in an “aggressive manner,” illegal in particular places.

13. The conduct of solicitation, standing alone, is not restricted by those components of the ordinance.

14. Rather, the ordinance expressly defines the “solicitation” that it restricts to include speech itself.

15. Specifically, the ordinance defines “solicitation” to mean “to request, ask or beg, whether by words, bodily gestures, signs, or other means, for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation.”

16. Among the places where all solicitation is illegal are some places that are in an “open public area.”

17. The open public areas where all solicitation is illegal include some parts of the public streets, sidewalks, and parks in Boise.

18. Public streets, sidewalks, and parks have long been held, by the U.S. Supreme Court and other federal courts, to be the quintessential traditional public forums for speech.

19. The ordinance expands and builds upon an official City campaign to discourage people from requesting immediate donations of money in public places in Boise, and to discourage people from giving money who make those requests.

20. The campaign, called “Have a Heart, Give Smart,” specifically discourages panhandling and expressly encourages people who wish to give money to instead give it to other speakers—namely, particular charities—requesting funds.

21. When City of Boise Police Chief Masterson first introduced the solicitation ordinance proposal, at a City Council work session meeting on May 21, 2013, he told the Council that the proposal builds on the “Have a Heart, Give Smart” campaign.

22. When Chief Masterson explained a slightly revised ordinance proposal to the City Council before a public hearing about it on July 30, 2013, he again told the Council that the proposal expands upon the “Have a Heart, Give Smart” campaign.

23. The City’s own May 20, 2013, press release, introducing the initial ordinance proposal to the public, also acknowledged that the proposal expands upon the “Have a Heart, Give Smart” campaign.

24. A City spokesman also acknowledged to the press when the ordinance proposal was first advanced that the City is “trying to divert all those funds that would go to panhandling,” or words to that effect.

25. In addition to its explanations that the ordinance builds upon a campaign to discourage direct donations, the City also purports to have two other interests in the ordinance: preventing traffic safety hazards and protecting public safety.

26. Yet, the City and its Police Department already have a variety of ordinances and state statutes available to protect the public's safety and promote traffic flow, to any extent those interests are threatened by the conduct of solicitation.

27. Among those existing provisions, the City already has an ordinance making aggressive solicitation and obstruction of pedestrian or vehicular traffic illegal, still currently found at BCC § 6-01-07. (That code section will be replaced with provisions of the new solicitation ordinance when it takes effect on January 2, 2014.)

28. Police Chief Masterson told the City Council on July 30, 2013, however, the City's existing aggressive solicitation ordinance was too difficult to enforce and that "our aggressive solicitation code is so limited it is not used at all."

29. Chief Masterson's statement was false.

30. According to the Boise Police Department's own records, since January 2011, 8 arrests have been made and 12 charges or tickets have been issued under the City's existing aggressive solicitation ordinance. The Boise Police Department wrote and served an aggressive solicitation citation, under the existing ordinance, as recently as August 29, 2013.

31. The City also has a number of other ordinances that it can and has used to try to deter or punish unsafe conduct incidental to solicitation, including an ordinance that makes obstructing streets and sidewalks illegal, Boise City Code § 9-10-01, a variety of pedestrian offenses for unsafe conduct, Idaho Code §§ 49-701 through 49-708, and state offenses for stopping a vehicle

unsafely, Idaho Code §§ 49-659 and 49-650. It can also cite or arrest for disturbing the peace under Idaho Code § 18-6509(1).

32. The City nevertheless adopted the new solicitation ordinance and it will take effect on January 2, 2014, if the City is not enjoined by this Court before then.

33. The ACLU warned the City, before it adopted the ordinance, that the ordinance was unconstitutional because it violated the freedom of speech.

34. However, just days before the City adopted the ordinance, councilman David Eberle told the press, concerning the ordinance and in these or similar words, that “[w]e’ll see what the courts say,” and that “[y]ou don’t make progress in this world without a lawsuit or two.”

## **CLAIMS FOR RELIEF**

### **1. Freedom of Speech under the U.S. Constitution (42 U.S.C. § 1983)**

35. The City’s ordinance and its threatened actions to enforce the ordinance violate the freedom of speech guaranteed by the *First Amendment* and *Fourteenth Amendment* of the United States Constitution.

36. Under 42 U.S.C. § 1983, the plaintiffs are entitled to injunctive relief prohibiting the City from violating their rights, privileges, and immunities—and those of others not before the Court as well—under federal law.

### **2. Freedom of Speech under the U.S. Constitution (Declaratory Judgment)**

37. Separately and in addition, because the ordinance violates the freedom of speech guaranteed by the *First Amendment* and *Fourteenth Amendment* of the United States Constitution, the plaintiffs are also entitled under 28 U.S.C. §§ 2201–2202 to a declaratory judgment declaring that City of Boise Ordinance no. ORD-34-13 and Boise City Code § 6-07-01

are unconstitutional or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

### **3. Freedom of Speech under the Idaho Constitution**

38. The City's ordinance and its threatened actions to enforce the ordinance violate the freedom of speech guaranteed by Article I, Section 9, and other provisions of the Idaho Constitution.

39. The plaintiffs are entitled to injunctive relief prohibiting the City from violating their rights, privileges, and immunities—and those of others not before the Court as well—under state law.

40. Separately and in addition, because the ordinance violates the freedom of speech guaranteed by the Idaho Constitution, the plaintiffs are also entitled to a declaratory judgment declaring that City of Boise Ordinance no. ORD-34-13 and Boise City Code § 6-07-01 are unconstitutional under the Idaho Constitution or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

### **4. Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (42 U.S.C. § 1983)**

41. The City's ordinance and its threatened actions to enforce the ordinance violate the freedom of speech guaranteed by the Equal Protection Clause of the *Fourteenth Amendment* of the United States Constitution.

42. Under 42 U.S.C. § 1983, the plaintiffs are entitled to injunctive relief prohibiting the City from violating their rights, privileges, and immunities under federal law.



**5. Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution  
(Declaratory Judgment)**

43. Separately and in addition, because the ordinance violates the freedom of speech guaranteed by the Equal Protection Clause of the *Fourteenth Amendment* of the United States Constitution, the plaintiffs are also entitled under 28 U.S.C. §§ 2201–2202 to a declaratory judgment declaring that City of Boise Ordinance no. ORD-34-13 and Boise City Code § 6-07-01 are unconstitutional or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

**6. Vagueness  
(42 U.S.C. § 1983)**

44. The City’s ordinance is void for vagueness and so violates the *First Amendment* and *Fourteenth Amendment* of the United States Constitution.

45. Under 42 U.S.C. § 1983, the plaintiffs are entitled to injunctive relief prohibiting the City from violating their rights, privileges, and immunities under federal law.

**7. Vagueness  
(Declaratory Judgment)**

46. Separately and in addition, because the ordinance is void for vagueness and so violates the *First Amendment* and *Fourteenth Amendment* of the United States Constitution, the plaintiffs are also entitled under 28 U.S.C. §§ 2201–2202 to a declaratory judgment declaring that City of Boise Ordinance no. ORD-34-13 and Boise City Code § 6-07-01 are unconstitutional or, in the alternative, only to ever be interpreted in particular ways prescribed by this Court, so as to be constitutional.

**CONCLUSION**

The plaintiffs respectfully ask that this Court order the following relief and remedies:

1. Declare that City of Boise Ordinance No. ORD-34-13 and Title 6, Chapter 1, Section 7 (as it is scheduled to be re-enacted in the Boise City Code on January 2, 2014) are unconstitutional, void, without effect, and unenforceable.

2. Grant a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the defendant, as well as its officers, agents, employees, attorneys, and all persons who are in active concert or participation with it, from enforcing City of Boise Ordinance No. ORD-34-13, or from enforcing Title 6, Chapter 1, Section 7 (as it is scheduled to be re-enacted in the Boise City Code on January 2, 2014).

3. To ensure that the public has accurate notice of the requirements of the law and the Boise City Code, and to prevent chilling speech, grant a permanent injunction requiring the defendant, with its agents, employees, and attorneys to repeal and remove City of Boise Ordinance No. ORD-34-13 and Title 6, Chapter 1, Section 7 (as it is scheduled to be re-enacted in the Boise City Code on January 2, 2014, from the Boise City Code).

4. Waive the requirement for the posting of a bond as security for entry of preliminary relief.

5. Award the plaintiffs the costs of this action and reasonable attorney's fees as allowed by law.

6. All other relief that the Court deems to be just and equitable.

DATED this 4th day of November, 2013.

**AMERICAN CIVIL LIBERTIES UNION  
OF IDAHO FOUNDATION**

/s/ Richard Alan Eppink

Attorneys for Plaintiffs

**VERIFICATION**

I, Monica Hopkins, verify that I have read the allegations contained in this Verified Complaint and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.

Under 28 U.S.C. § 1746, I verify under penalties of perjury that the foregoing is true and correct.

EXECUTE on this 2nd day of November, 2013.

/s/ Monica Hopkins

## CITY OF BOISE

Ordinance NO. ORD-34-13

BY THE COUNCIL

CLEGG , EBERLE, JORDAN, MCLEAN,  
QUINTANA, AND THOMSON

**AN ORDINANCE REPEALING BOISE CITY CODE TITLE 6, CHAPTER 1, SECTION 7, ENTITLED AGGRESSIVE SOLICITATION; INTERFERENCE WITH PEDESTRIANS AND ENACTING A NEW ORDINANCE UNDER TITLE 6, CHAPTER 1, SECTION 7, ENTITLED PUBLIC SOLICITATION; PROVIDING DEFINITIONS FOR KEY TERMS; PROHIBITING SOLICITATION IN AN AGGRESSIVE MANNER AND PROHIBITING SOLICITATION IN ANY PUBLIC TRANSPORTATION VEHICLE, FROM PERSONS WAITING IN LINE, ON PRIVATE PROPERTY POSTED "SOLICITATION PROHIBITED," FROM ANY ROADWAY OR PARKWAY OR FROM A VEHICLE ON THE ROADWAY WHEN ENTERING THE ROADWAY IS NECESSARY TO ACCEPT THE DONATION, FROM PEDESTRIANS CROSSING THE ROADWAY, AND WITHIN PUBLIC PARKING GARAGES; PROHIBITING SOLICITATION WITHIN TWENTY FEET OF AN AUTOMATED TELLER MACHINE OR ENTRANCES TO FINANCIAL INSTITUTIONS, A SIDEWALK CAFÉ, MOBILE OR STREET VENDOR ON A PUBLIC SIDEWALK, PUBLIC RESTROOM FACILITIES AND PORTABLE TOILETS, BUS STOPS, TAXI STANDS, AND VALET STATIONS, AND PARKING PAY BOXES OR STATIONS; PROVIDING EXCEPTIONS FOR PASSIVE STANDING ON THE SIDEWALK OR LAWFULLY SITTING WITH A SIGN OR OTHER WRITTEN REQUEST FOR DONATIONS WITHOUT ORALLY ADDRESSING ANY SPECIFIC PERSON AND FOR OTHER FIRST AMENDMENT ACTIVITY, INCLUDING PICKETING, PROTESTING, OR STANDING, THAT MAY MAKE SIDEWALK PASSAGE LESS CONVENIENT; PROVIDING AN INFRACTION FOR A FIRST OFFENSE, OTHER THAN AGGRESSIVE SOLICITATION, IN ONE YEAR WITH AGGRESSIVE SOLICITATION AND ANY OTHER SECOND PUBLIC SOLICITATION OFFENSE BEING A MISDEMEANOR; ENACTING A NEW SECTION 22, IN TITLE 6, CHAPTER 1, ENTITLED SEVERABILITY CLAUSE; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE OF JANUARY 2, 2014.**

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:**

**Section 1.** That Title 6, Chapter 1, Section 7, Boise City Code, be, and the same is hereby repealed and re-enacted to read as follows:

**Section 6-01-07 PUBLIC SOLICITATION**

## CITY OF BOISE

**A. Definitions**

1. **Aggressive manner** means to:
  - a. Intentionally make any non-consensual physical contact with another person in the course of a solicitation; or
  - b. Approach or follow the person being solicited in a manner that is intended to cause a reasonable person to be intimidated into responding affirmatively to the solicitation for fear of imminent bodily harm to oneself or another, or damage to or loss of property; or
  - c. Continuing to solicit within five (5) feet of the person being solicited after the person has given or expressed a negative response, if continuing the solicitation is intended to cause a reasonable person to be intimidated into responding affirmatively to the solicitation for fear of imminent bodily harm to oneself or another, or damage to or loss of property; or
  - d. Intentionally obstruct the safe or free passage of the person being solicited, causing the person, including a person operating a vehicle, to move from his or her intended path to avoid reasonably imminent non-consensual physical contact with the person making the solicitation; or
  - e. Make any threatening statement or gesture immediately before or during the solicitation or after a refusal to make a donation intended to cause a reasonable person to be intimidated into responding affirmatively to the solicitation for fear of imminent bodily harm to oneself or another, or damage to or loss of property.
2. **Open public area** means any out-of-doors area to which the public or a substantial group of persons has access and a right to stay upon for business, entertainment, or other lawful purposes, including public streets, highways, sidewalks, the Greenbelt, Greenbelt areas, parkways, plazas, public parks, and any portion of private property subject to an easement for public pedestrian access, but excluding other private property, property owned and managed by Ada County, the state of Idaho, or the United States.
3. **Parkway** means a median divider or strip separating lanes on a roadway or separating the roadway from the sidewalk, whether hardscaped, landscaped, or planted.
4. **Plaza** means the Boise City Hall plaza, the Grove Plaza, and any other publicly owned gathering places and pathways into plazas within the City of Boise owned, operated by, leased to, or licensed to the City of Boise or the Capitol City Development Corporation or its successor in interest. This definition excludes public parks, property owned and managed by Ada County, the state of Idaho, or

## CITY OF BOISE

the United States.

5. **Public sidewalk** means that portion of a street between the curb lines, or the lateral lines of a publicly owned roadway or highway, and the adjacent property lines intended for use by pedestrians.
6. **Roadway** means that portion of a highway improved, designed or ordinarily used for vehicular travel or parking, exclusive of the berm, sidewalk, shoulder, and rights-of-way.
7. **Solicit** or **solicitation** means to request, ask or beg, whether by words, bodily gestures, signs, or other means, for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation.

**B. Prohibited Acts**

It shall be unlawful for a person to:

1. Solicit in an aggressive manner in an open public area.
2. Solicit in any public transportation vehicle, including a bus, trolley, tram, or train.
3. Solicit while in an open public area from any person while such person is waiting in line to be admitted to a commercial establishment.
4. Solicit while in an open public area being within twenty (20) feet of an automated teller machine or any entrance or exit to any bank, credit union, savings and loan, or check cashing business, during the hours of operation of such business. Such distance shall be measured from the nearest corner of such automated teller machine or entrance or exit to such facility.
5. Solicit while in an open public area within twenty (20) feet of any sidewalk café, or mobile or street vendor. Such distance shall be measured from the nearest point of the sidewalk café barrier or perimeter fence or from the nearest portion of the vendor's cart, stand, or vehicle.
6. Solicit inside or within twenty (20) feet of any entrance to or exit from any public toilet facility, including any temporary use site (port-a-potty). Such distance shall be measured from the door of the facility or port-a-potty.
7. Solicit on private property, including private property open to the public, if the owner, tenant or lawful occupant has informed the person not to solicit on the property, or has posted a sign(s) clearly indicating that solicitations are not allowed on the property, as follows:

## CITY OF BOISE

- a. Signs shall contain the words “Private Property” and “Solicitation Prohibited” in clearly legible block letters of at least one inch against a contrasting background mounted at between a maximum of five feet and a minimum of three feet, and
    - b. A minimum of one sign shall be placed at each vehicular access to the private property or at each pedestrian access if there is no vehicular access to the private property.
  8. Solicit on any roadway or parkway or from an occupant of a motor vehicle on a roadway whenever the person soliciting enters the roadway or would have to do so to accept the money or thing of value, whether vehicular traffic is present or not. Provided, however, that this paragraph shall not apply to services rendered in connection with an emergency related to such vehicle or to conduct that may be authorized pursuant to Idaho Code section 49-709(2).
  9. Solicit from a pedestrian whenever the pedestrian being solicited is or may be impeded from or delayed in crossing the roadway. Provided, however, that this paragraph shall not apply to services rendered in connection with an emergency or to conduct that may be authorized pursuant to Idaho Code section 49-709(2). A violation of this subsection is an infraction, the penalty for which is as provided by Idaho Infraction Rules for pedestrian infractions.
  10. Solicit within twenty (20) feet of any bus stop, taxi stand or valet drop off/pickup station or stand. Such distance shall be measured from the nearest corner of the bus, bus stop sign, bus shelter or bench, taxi, taxi stand sign, or valet station or stand on or appurtenant to the public sidewalk.
  11. Solicit within any public parking garage and within twenty (20) feet of any parking pay box or station serving more than two parking spaces. Such distance shall be measured from the nearest corner of the parking pay box or station on or appurtenant to the public sidewalk. This prohibition does not apply to parking meters for a single or two parking spaces.
- C. Exception.** This ordinance shall not be construed to prohibit solicitation that is limited to passively standing on the public sidewalk or plaza or sitting on a sidewalk bench or plaza bench with a sign or other written indication that one is seeking donations without orally addressing the request to any specific person. This ordinance does not prohibit lawful exercise of one's constitutional right to picket, protest, or stand on the sidewalk even when doing so makes passage less convenient for others having to walk around the person picketing, protesting, or standing.
- D. Penalties for Violation**
1. Initial Offense. Any person violating part 2, 3, 4, 5, 6, 7, 8, 9, 10 or 11 of subsection B of this section shall be guilty of an infraction, the penalty for which

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shall be as specified in the Idaho Infraction Rules for pedestrian offenses.

2. Subsequent Offenses. Any person violating part 2, 3, 4, 5, 6, 7, 8, 9, 10 or 11 of subsection B of this section after receipt of a citation for conduct prohibited by part 2, 3, 4, 5, 6, 7, 8, 9, 10 or 11 of subsection B of this section at any time within the preceding 365 day period shall be guilty of a misdemeanor.
3. Any person violating part 1 of subsection B shall be guilty of a misdemeanor from the initial offense.

**Section 2.** That Title 6, Chapter 1, Section 22, Boise City Code, be, and the same is enacted to read as follows:

**Section 6-01-22 SEVERABILITY**

If any section, subsection, part, subpart, sentence, clause, phrase, or word of this Chapter and Title is for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of any other section, subsection, part, subpart, sentence, clause, phrase, or word of this Chapter and Title that can be given effect without the invalid portion, and to this end the provisions of this Title and Chapter are declared to be severable.

**Section 3.** That the summary of this ordinance, attached hereto as Exhibit A, is approved as to both form and content.

**Section 4.** That this ordinance shall be in full force and effect from January 2, 2014, following its passage, approval, and publication.

ADOPTED by the Council of Boise City, Idaho, on September 17, 2013.

APPROVED by the Mayor of the Boise City, Idaho, on September 17, 2013.

APPROVED:

David H. Bieter, Mayor



ATTEST:

Jade Riley, Ex-Officio City Clerk



**EXHIBIT "A"****STATEMENT OF BOISE CITY ATTORNEY  
AS TO ADEQUACY OF SUMMARY  
OF ORDINANCE NO. \_\_\_\_\_**

The undersigned, Ralph R. Blount, in his capacity as Assistant City Attorney of the City of Boise City, Idaho, hereby certifies that he is a legal advisor of the City and has reviewed a copy of the attached Summary of Ordinance No. \_\_\_\_\_ of the City of Boise City, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
Ralph R. Blount  
Assistant Boise City Attorney

**SUMMARY OF ORDINANCE NO. \_\_\_\_\_  
OF THE CITY OF BOISE CITY, IDAHO**

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Boise City, Idaho, adopted at its regular meeting of \_\_\_\_\_, 2013, that Ordinance No. \_\_\_\_\_ entitled:

**AN ORDINANCE REPEALING BOISE CITY CODE TITLE 6, CHAPTER 1, SECTION 7, ENTITLED AGGRESSIVE SOLICITATION; INTERFERENCE WITH PEDESTRIANS AND ENACTING A NEW ORDINANCE UNDER TITLE 6, CHAPTER 1, SECTION 7, ENTITLED PUBLIC SOLICITATION; PROVIDING DEFINITIONS FOR KEY TERMS; PROHIBITING SOLICITATION IN AN AGGRESSIVE MANNER AND PROHIBITING SOLICITATION IN ANY PUBLIC TRANSPORTATION VEHICLE, FROM PERSONS WAITING IN LINE, ON PRIVATE PROPERTY POSTED "SOLICITATION PROHIBITED," FROM ANY ROADWAY OR PARKWAY OR FROM A VEHICLE ON THE ROADWAY WHEN ENTERING THE ROADWAY IS NECESSARY TO ACCEPT THE DONATION, FROM PEDESTRIANS CROSSING THE ROADWAY, AND WITHIN PUBLIC PARKING GARAGES; PROHIBITING SOLICITATION WITHIN TWENTY FEET OF AN AUTOMATED TELLER MACHINE OR ENTRANCES TO FINANCIAL INSTITUTIONS, A SIDEWALK CAFÉ, MOBILE OR STREET VENDOR ON A PUBLIC SIDEWALK, PUBLIC RESTROOM FACILITIES AND PORTABLE TOILETS, BUS STOPS, TAXI STANDS, AND VALET STATIONS, AND PARKING PAY BOXES OR STATIONS; PROVIDING EXCEPTIONS**

**FOR PASSIVE STANDING ON THE SIDEWALK OR LAWFULLY SITTING WITH A SIGN OR OTHER WRITTEN REQUEST FOR DONATIONS WITHOUT ORALLY ADDRESSING ANY SPECIFIC PERSON AND FOR OTHER FIRST AMENDMENT ACTIVITY, INCLUDING PICKETING, PROTESTING, OR STANDING, THAT MAY MAKE SIDEWALK PASSAGE LESS CONVENIENT; PROVIDING AN INFRACTION FOR A FIRST OFFENSE, OTHER THAN AGGRESSIVE SOLICITATION, IN ONE YEAR WITH AGGRESSIVE SOLICITATION AND ANY OTHER SECOND PUBLIC SOLICITATION OFFENSE BEING A MISDEMEANOR; ENACTING A NEW SECTION 22, IN TITLE 6, CHAPTER 1, ENTITLED SEVERABILITY CLAUSE; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE OF JANUARY 2, 2014.**

This Ordinance repeals the existing Aggressive Solicitation; Interference with Pedestrians Ordinance in Boise City Code at Title 6, Chapter 01, Section 07 and re-enacts a new ordinance at Title 6, Chapter 01, Section 07 to be known as the Public Solicitation Ordinance. The ordinance provides definitions for “aggressive manner,” “open public area,” “parkway,” “plaza,” “public sidewalk,” “roadway,” and “solicit” or “solicitation.” Aggressive solicitation is specifically defined to include any solicitation accompanied by intentionally making any non-consensual physical contact with another person, following the person being solicited with intent to intimidate into giving, continuing to solicit within five feet of a person who has expressed a negative response to the solicitation with intent to intimidate into giving, obstructing the safe or free passage of the person being solicited, or make any threatening statement or gesture intended to intimidate the person into giving. “Solicit” or “solicitation” is defined to mean to request, ask or beg, whether by words, bodily gestures, signs, or other means, for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation. The Ordinance prohibits solicitation in an aggressive manner, in any public transportation vehicle, from persons waiting in line, on private property posted “solicitation prohibited,” from any roadway or parkway or from a vehicle on the roadway when entering the roadway is necessary to accept the donation, from pedestrians crossing the roadway, and within public parking garages. The Ordinance prohibits solicitation when within twenty feet of an automated teller machine or entrances to financial institutions, a sidewalk café, mobile or street vendor on a public sidewalk, public restroom facilities and portable toilets, bus stops, taxi stands, and valet stations, and parking pay boxes or stations (but not including parking meters serving no more than two spaces). The Ordinance provides exceptions for passive standing on the sidewalk or lawfully sitting with a sign or other written request for donations without orally addressing any specific person. The Ordinance does not apply to other first amendment activity, including picketing, protesting, or standing, that may make sidewalk passage less convenient. The Ordinance provides infraction penalties for initial violations, other than aggressive solicitation, and misdemeanor violations for aggressive solicitation and any other second public solicitation offense with one year. The Ordinance includes a severability clause. The Ordinance approves this summary of the ordinance and providing an effective date of January 2, 2014.

The effective date of the Ordinance is January 2, 2014, following its passage, approval, and publication. A copy of the full text of the Ordinance is available at City Hall, 150 North Capitol Boulevard, in Boise, Idaho, in the City Clerk's Office, 1st floor. Examination or copies

may be requested in writing or in person during regular business hours of the City Clerk, from 8:00 a.m. to 5:00 p.m. pursuant to the Open Records Act, Idaho Code Title 9, Chapter 3.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

City of Boise City, Idaho

ATTEST:

\_\_\_\_\_  
By: David H. Bieter  
MAYOR

\_\_\_\_\_  
By: Jade Riley  
EX-OFFICIO CITY CLERK

Attachment: ORD-34-13 Summary (ORD-34-13 : Public Solicitation Ordinance)