

**A Study of Deteriorating Conditions on the Downtown Mall
with
Recommended Solutions**

prepared by

**A Special Committee
of the
North Downtown Residents Association**

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I. BACKGROUND

Located in the heart of Charlottesville, the North Downtown neighborhood encompasses the area from South Street and the Downtown Mall to the 250 Bypass, and from McIntire Road in the west to Kelly Avenue in the east. The residents of this area are represented by the North Downtown Residents Association (NDRA).

Among the primary reasons residents are drawn to the North Downtown neighborhood are the close proximity and perceived safe walking access to the historic Downtown Mall. The Mall's ambiance, created by the dining, entertainment, music, arts and shopping venues in an indoor/outdoor, traffic-free setting, attracts both locals and visitors alike.

Within the past couple of years, the NDRA has received an increasing number of complaints from residents about problems in the neighborhood and on the Downtown Mall that make people feel uncomfortable and unsafe.

Within the neighborhood, there were reports of trespassing on private property. Residents found individuals sleeping on their porches and in their bushes, and they were then compelled to clean up feces, vomit and urine. North Downtown residents also saw public use of drugs and alcohol in parking lots and habitually intoxicated individuals in Lee Park. There were also reports of attempts to enter private property.

On the Downtown Mall, a number of residents expressed concern about panhandlers, some with dogs. Residents had also been the object of abusive language while walking on, or to and from, the Mall. There were a few reports of sexual activity including soliciting of prostitution in Lee Park and on the Mall.

When NDRA members fill out their applications to join the organization, their reasons for joining often include: personal safety—especially when walking in the neighborhood after dark—and concerns about transient individuals wandering through the neighborhood. Many members are seeking the opportunity to have a voice in the protection and growth of North Downtown as a “beautiful, one-of-a-kind” place.

During the fall and early months of 2011, members of the NDRA Board of Directors received an even more concentrated number of complaints from neighbors. Some of these complaints were lacking in specificity, appeared random in nature and were generally void of any measurable impact upon those doing the complaining. The NDRA Board determined that further *evidence-based* investigation and analysis were required so that problems could be quantified.

The Board appointed a Committee of five members to study the situations being reported, identify additional specific problems and recommend solutions. (See Appendix 1A: Membership and Organization—Special Committee of the North Downtown Residents Association. [p. 13])

Before establishing the Special Committee, the NDRA Board took action to deal with the problem of the homeless sleeping on residents' property. Lt. C. S. Sandridge was invited to one of our Board meetings to discuss policing problems with regard to the homeless. During that conversation, we learned about the Barment provision, whereby property owners can file notice with the Police Department giving the police enforcement powers on private property. Subsequently, a police patrol that sees anyone on a registered property can arrest that intruder without seeking the owner's permission to go onto the property. The NDRA Board posted this Barment provision on its website so North Downtown residents could become aware that they could do something to allay homeless intruders. Ever since this posting on its website, the NDRA has received almost no reports of the homeless sleeping on private property.

With this neighborhood problem taken care of, the NDRA Special Committee concentrated its efforts on investigating and solving the problems on the Mall.

The Committee's first step was to adopt a study process, or methodology, to ensure that, to the degree possible, the totality of the problem would be addressed and positive outcomes would result. The methodology agreed upon was not necessarily intended to be a fixed step by step procedure; rather, it was designed to serve as a dynamic and continuing process, wherein actions often overlapped or ran concurrently. It also served as a guide for achieving a somewhat general consensus, and, because of that, would maximize chances for a positive outcome. (See Appendix 1B: Study Process for Addressing Deteriorating Conditions on the Downtown Mall and Within the North Downtown Neighborhood. [p. 14])

The Committee agreed that if, in the course of the study, information came to light that required immediate attention, the Committee would not wait until the study's completion before taking appropriate action. Preliminary discovery in the problem identification portion of the study, coupled with the timeframe of the city's budget development process, fit this definition. The result was an NDRA Board resolution, written in support of a special budget request by the Charlottesville Police Department. The resolution was sent to Charlottesville City Council members, with copies furnished to the City Manager and the Police Chief. (See Appendix 1C: NDRA Resolution in Support of the Police Department Budget Request. [p. 15])

As the study progressed, the City Manager, City Council members and the Executive Director of TJACH and the Haven were kept informed of study findings and future actions of the Committee (See Appendix 1D: Meetings with City Leadership and Director of TJACH and the Haven. [p. 16])

II. PRESENTATION OF THE PROBLEM

The Downtown Mall is in trouble. In the past two years, the atmosphere has seriously deteriorated, due to numerous panhandlers as well as groups of idlers yelling obscenities, verbally assaulting passersby, fighting, and engaging in other disturbing behavior. This makes patrons feel uncomfortable or unsafe. Our NDRA Special Committee developed surveys to quantify the extent of these problems. Data from these surveys show clear evidence that this offensive atmosphere has been noticed by hundreds of Mall patrons and, as a result, has decreased or ended entirely their trips to the Mall.

All of our surveys used open-ended questions and thus responses were spontaneous—based on the image of the Mall that respondents had developed from their own experience and observation. There was no prompting from the wording in the questionnaire. Three surveys were conducted: an Area Residents survey, a Patrons survey and a survey of Downtown Business Association Charlottesville (DBAC) members. All surveys were designed to elicit respondents' views about conditions on the Mall. (The questionnaires used in these surveys can be found in Appendix 2A. [pp. 17-20])

The Area Residents survey: With the help of the City, a questionnaire was sent out with the April-May gas and water bills. We received over 2,300 responses. Of those, 430 reported that their trips to Mall had decreased in the past two years. Only 19 cited loss of job, lower income or the economy as reasons for the decline in their trips. A number gave personal reasons such as growing older, experiencing poor health, being out of town more, having a baby etc. as reasons for coming to the Mall less often. Putting those respondents aside, *we found that 14 percent (312) of the respondents had decreased their trips to the Mall due to conditions on the Mall.* When asked what conditions disturbed them, 48 percent mentioned feeling unsafe or uncomfortable, and 27 percent mentioned panhandling and the homeless.

The Patrons survey: This survey was taken on-line. People who were customers of Mall businesses or who logged onto the City's website were invited to participate in this survey. This survey drew 321 respondents. *Eighty-six percent of them had unfavorable views of the Mall.* Of these, 34 percent mentioned feeling unsafe or uncomfortable and 35 percent mentioned panhandling and the homeless.

Thus, over 600 respondents to our surveys—over 600 eye-witnesses—were greatly troubled by the atmosphere on the Mall. Many spontaneously said that they “loved the Mall” and were very distressed by its deteriorating condition. Many thanked us for giving them the opportunity to express their views and said that they hoped the City would do something about it.

The DBAC survey: Forty-three members of DBAC responded to an on-line survey. When asked if they had concerns about the future of the Downtown Mall, 42 percent cited panhandling and the homeless, and 40 percent mentioned safety or an uncomfortable atmosphere. Fourteen (33 percent) reported that business had decreased in

the past two years. Of these, only 3 said that the decrease was due to economic reasons alone.

Detailed results of the surveys can be found in Appendices 2B, 2C and 2D. [pp. 21-25] Here is a small sample of typical responses.

Typical Verbatim Comments from Area Resident and Patron Surveys

My trips to the Mall have decreased dramatically! There has been an increase in the number of people panhandling and loitering. These groups have become larger, ruder, and more aggressive. My husband has been verbally threatened, and I don't like to take my young daughter around the foul language.

The beggars and the loud profanity and occasional scuffles between beggars/homeless is horrible and I don't want to hear the language. You're killing the golden goose (the Mall) by tolerating all this. Give me a break!

I no longer enjoy strolling as the people who are allowed to loiter all day, cuss, have pit bulls, and trash the Mall have taken away the enjoyment for me. I do not feel safe and cannot enjoy the library, park or walking my small dog on the Mall. There is one cop on occasion to help with matters when they occur.

I am disturbed about the ever present panhandling and the cluster of loitering youth whose aggressive behavior and foul language is a significant turnoff to my friends and guests. Mall cleanliness is another issue. We need to address these issues before we destroy our community center and gathering place.

If you want people to keep coming, you need more security. You need more of a police and/or security presence at all times. People in the county think the Mall is full of crime and talk about it in that context.

It is not well-maintained or policed. When I was a graduate student, I felt perfectly safe walking around the mall at night for drinks or dinner. I now warn students to stay away (and I do) since there is no police presence, and the homeless population has increased so much. Every time I go down there now, even in the morning, there are inebriated vagrants begging for money along the mall. There is also a lot of trash around and the pervasive smell of urine. When I visit with my kids, we go to dinner elsewhere.

Horrible police patrol. You can never find one anywhere. My girlfriend was verbally sexually abused at 9:15 pm a couple weeks ago down there. There needs to be a centralized place to go for help.

Am becoming increasingly frustrated by the prevalence of panhandlers on the Mall. I have been harassed numerous times by individuals asking for money, both while walking down the Mall and even while eating dinner in the restaurant's roped-off patio area. I fully support providing government assistance to individuals who need help, but I do not think it is right for these individuals to be allowed to harass patrons of the Downtown Mall.

It is not as safe as it used to be and we do not go to the mall nearly as often as we did prior to about 3-4 years ago. A lot of crime just off the mall makes walking to your car somewhat dangerous. Not enough, or not the proper lighting, on the streets around the mall. In general, not enough of a police presence. We were aggressively threatened by two drunk bench sitters one night because they just simple chose to do so. We were walking by, they stated insulting us for no reason and then followed us up the alley between city hall and the annex. They got within inches of us and were very threatening.

III. CORRECTIVE ACTIONS

Charlottesville is one of the leading cities in the country in its efforts to help the homeless. We have the Haven—a day shelter, open every day of the year to ensure that people experiencing homelessness have a safe place to stay. The Haven’s guests have access to a breakfast meal, showers, laundry, mailing address, computers, phones and storage. The Haven serves an average of 85 people every day. The Crossings, a recently constructed facility, includes 30 studio apartments for the homeless. PACEM provides a warm place to sleep during the winter months for up to 65 homeless individuals. The Salvation Army provides sleeping facilities year round for up to 75 people and offers free breakfasts. Lunches are served at downtown churches’ soup kitchens during the week and at the Salvation Army on weekends. The Salvation Army serves an evening meal every day. Many social services are available, provided by the City and nonprofit organizations. In addition, most of the homeless have some source of income. In the annual census of the homeless conducted by the Thomas Jefferson Planning District Commission (TJPDC), respondents reported the following means of financial support during the last 30 days: 22 percent had full-time employment, 21 percent part-time employment, and 22 percent did odd jobs or were day laborers. In addition, 60 percent received food stamps. *The homeless in Charlottesville do not need to panhandle in order to subsist.*

With all this help for the homeless, some citizens of Charlottesville are concerned that the City has overdone it, become a magnet attracting the homeless from far and wide. The Haven, in particular, is thought to have attracted extra numbers of homeless to Charlottesville, but our Committee could find no evidence to support that. The following charts (Figures 1 and 2) are based on data from the TJPDC annual census of the homeless and show that the opening of the Haven had no effect on the number of homeless in the City. In fact, Figure 1 shows a slight downward trend in the total number of homeless in Charlottesville from 2007 through 2012. Figure 2 shows the proportion of the homeless whose hometowns were in the local area (Charlottesville and the Thomas Jefferson Planning District). These proportions have remained steady throughout the past six years. Concomitantly, the proportions of homeless who came from outside the local area

Figure 1. Annual Census of the Homeless

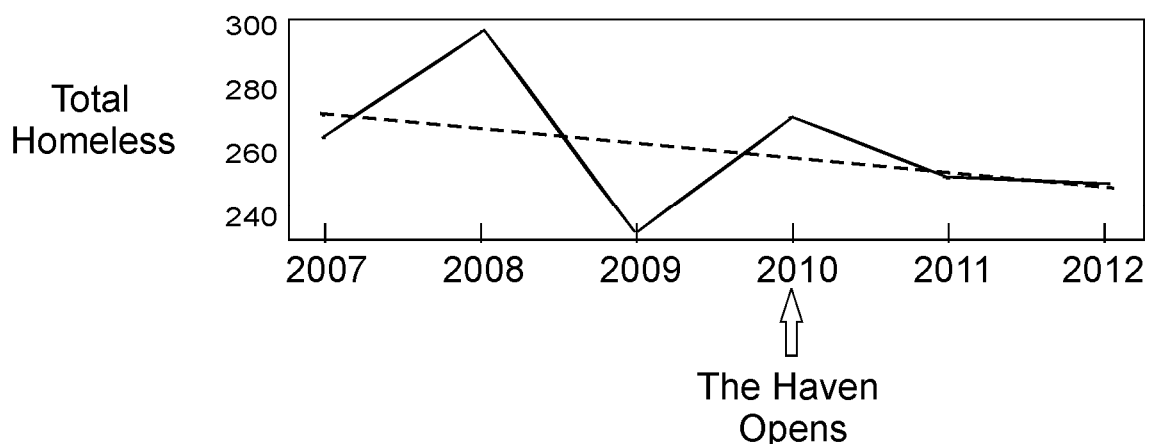
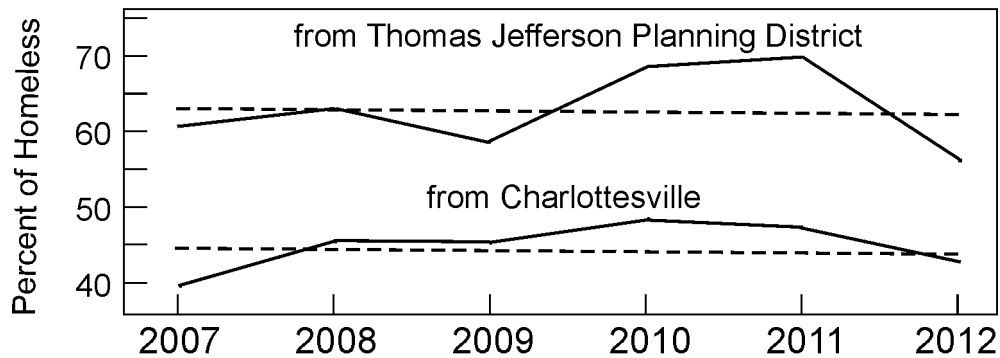


Figure 2. Hometowns of the Homeless



(from the rest of Virginia and from other states) have remained the same as well. Furthermore, an average of 23 percent of the homeless had out-of-state hometowns in the years prior to the opening of the Haven (2007 to 2009). In 2012, 19 percent came from out of state.

Most importantly, there is evidence that about half of the panhandlers on the Mall are not homeless. The staff of the Haven has taken informal counts of the panhandlers by going up and down the Mall on a number of different days and observing which panhandlers are clients of the Haven. They found that at least 50 percent were not clients. Furthermore, the TJPDC data show that, from 2007 through 2012, an average of only 7 percent of the homeless reported using panhandling as a source of financial support. Panhandling should not be equated with homelessness.

It should also be pointed out that the Haven provides a place for the homeless to stay during the day, thus reducing the number of homeless who might otherwise be in the library or on the Mall. Furthermore, its efforts have helped end homelessness for many. It uses hospitality to provide stabilization which helps the homeless help themselves. In the past two years, many Haven guests have left its care to resume their lives in permanent housing, become reunited with family, entered into treatment, or begun new jobs.

Proposed Ordinances

No society can maintain safety and public decency without laws. Our Committee has carefully examined our city and state ordinances and the ordinances of other cities. We have come up with a number of proposed amendments and new ordinances to deal with problems on the Mall. Relevant Supreme Court First Amendment cases were studied, and we believe that our proposals will withstand legal challenge.

Signs

Add a point 10 to the existing Soliciting ordinance Sec. 28-31.

(10) The Downtown architectural design control district: Signs made for the purpose of soliciting money must meet the requirements of Sec. 34-1041.

Discussion:

The design of the Downtown Mall—the ambience that makes it attractive and unique—is controlled by various regulations that are enforced by the BAR. One of these is Section 34-1041 of the city code regarding signs on the Downtown Mall. The BAR has been particularly careful in approving signs, and that oversight has kept the Mall from declining into a typical morass of ugly signage. Panhandlers are not above the law, and do not have the right to destroy the ambience of the Mall with their hand-lettered, cardboard signs.

Sitting or laying on the Mall

The following proposed new ordinance is modeled after one recently adopted by the Berkeley, California, City Council.

Prohibiting Sitting or Laying on the Downtown Mall.

No person shall sit or lay on the Downtown Mall or its walls, or on any object brought to said Mall.

A. Exceptions: This Section shall not apply to any person sitting or laying

- 1. Due to a medical emergency;*
- 2. On a wheelchair or other device that is needed for mobility;*
- 3. On a public bench that is permanently affixed to the sidewalk.*
- 4. While playing an instrument.*
- 5. While listening to an entertainer.*

B. This Section shall not be applied or enforced in a manner that violates the United States Constitution or the Virginia Constitution. Prior to enforcement of this section, the City shall develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or Virginia constitutions.

C. Necessity of Warning Prior to Citation. No person may be cited for a violation of this Section until a peace officer first warns said person that his or her conduct is unlawful and said person is given a chance to stop said conduct. One warning by a peace officer to a person who is violating this Section is sufficient for a 30-day period as to any subsequent violations of this Section by said person during said period.

D. Violation: Infraction or Misdemeanor: A first violation of this Section shall be charged only as an infraction subject to a \$25 fine. Subsequent violations may be charged as a misdemeanor.

Discussion:

If one looks at the pictures in Appendix 3A [pp. 26-31], one can see why such an ordinance is necessary. The pictures depict conditions on the Mall that can be seen quite frequently. Those who sit or lay on the ground are very damaging to the image of the Mall. They also often obstruct free passage. The city of Berkeley was faced with many of the problems that we face, and its Council voted 6 - 3 to approve this ordinance, because many downtown merchants and entertainment centers were losing business and customers.

Our Committee also believes that all law-abiding people should be able to sit on benches on the Mall. Indeed, we believe there should be *more benches* so that there are enough for all. One of the things many area residents and patrons mentioned in our surveys was the need for more places to sit on the Mall.

Verbal abuse

A serious problem on the Mall involves verbal assaults on passersby. In our surveys, numerous respondents, especially women, cited instances in which they had been the objects of lewd or intimidating comments. To cite just one example: a male vagrant shouted at a woman with the words: “Hey, bitch, lay down.” This intolerable behavior must be dealt with if we expect people to keep coming to the Mall.

The problem is that any ordinance outlawing such verbal behavior must not infringe on free speech rights. The wording of such a law or ordinance will be a challenge to craft, given the Supreme Court’s interpretation of free speech and its resultant rulings. However, after studying numerous decisions in court cases involving verbal assault, we have come up with wording for a new law which, we believe, would be upheld in both State and Federal Courts if challenged.

The existing Virginia code (Section 18.2-416) states that:

“If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.”

Thus, abusive speech is forbidden only “under circumstances reasonably calculated to provoke a breach of the peace.” This Virginia law was written to conform with Supreme Court rulings which have established that the only circumstance under which abusive speech directed at another person would not be constitutionally protected is if the words were “fighting words”—literally words that could be expected to result in a fight.

After studying the “fighting words” cases that have come before the Supreme Court and State Appellate Courts, we have found legal grounds to drop the “reasonably calculated

to provoke a breach of the peace” part of Section 18.2-416 and substitute another criterion—that the abusive words not contain any information or ideas of social value. This criterion was established by the Supreme Court at the same time that it established the fighting-words doctrine but it has seldom been used in subsequent cases. We suggest the following:

If any person shall, in the presence or hearing of another, curse or abuse such other person with language containing no information or ideas of social value, he or she shall be guilty of a class 3 misdemeanor.

Definition of abusive language: words that are obscene, profane, threatening, intimidating, demeaning or otherwise inflict harm.

Discussion:

A brief that supports the constitutionality of this approach can be found in Appendix 3B [p. 32].

It may be that the City Council could pass this as an ordinance, but since it differs quite a bit from the State code, the Council would probably have to seek to amend Section 18.2 of the State code.

Other Offensive Behavior on the Mall

In our surveys, many respondents referred to drunkenness and urination as well as fighting and loud, obscene language among groups of people. City ordinances already exist that deal with fighting (Section 17-10), urination and defecation (Section 17-13), profane cursing and drunkenness (Section 17-12).

Littering

The city already has an ordinance against littering. We would suggest that “cigarette butts” be added to the list of prohibited items. Thus the ordinance would read:

Sec. 26-1. Littering

It shall be unlawful for any person to dump or otherwise dispose of trash, garbage, refuse, **cigarette butts**, litter, a companion animal for the purpose of disposal, or other unsightly matter on public property, including a public street, right-of-way, property adjacent to such street or right-of-way, or on private property without the written consent of the owner thereof or his agent.

Discussion:

It may seem trivial and a waste of police efforts to go after litterers on the Mall. We should be ever mindful, however, of James Q. Wilson’s theory of broken windows. The theory is that, in urban areas, if you let trivial matters, such as breaking windows, go unheeded, then more vandalism will ensue which, in turn, leads to more crime. If people who litter the Mall are not cited by the police, this not only means that the Mall looks unsightly, but also sends the message that anything goes.

Policing and Punishment

Police Presence

If all of the new or amended ordinances we have proposed were enacted, they, along with existing ordinances, would go a long way toward dealing with the behavioral problems on the Mall. *But to have any effect, the ordinances have to be enforced. There must be a greater police presence on the Mall.* The size of that presence and the duties of individual officers are best determined by the City Police Chief. We strongly recommend that there be one or more *permanent* kiosks where peace officers would be stationed throughout the day and evening. This known, stationary position is particularly necessary to provide Mall patrons with a place to immediately report a verbal assault, loud obscene language, fights, aggressive panhandling, etc.. The individual manning the kiosk could call for backup, and even if the backup could not get there in time to deal with the incident, at least a record of the event would be established.

We also recommend that the peace officers assigned to patrol the Mall extend their beat to include Lee Park. In recent years, a number of North Downtown residents have commented on the discomfort they have felt when going through the Park which is often inhabited by drunken homeless people. Recently, area residents are reporting an even greater number of drunken and unruly people in Lee Park. Some residents feel that the recent crackdown on disruptive behavior at Center Place, and the removal of benches there, has simply displaced the problems and, in part, shifted them to Lee Park.

The problems on the Mall cannot be solved in a piecemeal, spotty fashion. They can only be solved with a systematic and comprehensive approach.

The North Downtown Residents Association does not wish to see a “rob Peter to pay Paul” approach to having a greater police presence on the Mall. We would not want police personnel pulled from other neighborhoods, from schools, or other duties in order to meet the crisis on the Mall. The City is simply going to have to increase the number of positions in the police department with additional funds—an investment in our treasured public place.

Since the patrol personnel cannot be everywhere at once to witness violations, it is *imperative that cameras be installed along the Mall.* They would not necessarily be monitored at all times, but they can and would provide a visual record of incidents. To understand how important they are to the process of restoring safety and tranquility to the Mall, let us take as an example a woman who is verbally assaulted. In order to arrest and convict the assaulter, the woman would have to know his name and address. It is not likely she is going to go up to him and ask for this information. But if she could go to the police kiosk and report the incident and where and when it occurred, the tape from the camera focused on the site of the assault at the time it occurred could be retrieved and used by the woman to identify the assailant. He could then be found and cited.

A visit to Atlanta would show the value of cameras. They not only have cameras, but signs notifying everyone that the cameras are there. These cameras have clearly acted as

a deterrent to crime and to unruly behavior. Atlanta's downtown streets are free of distasteful behavior, and citizens and visitors feel safe.

Police training

It has come to our attention that a few police officers patrolling the Mall are not aware of the ordinances that they should be enforcing. For example, patrolmen have allowed panhandling near ATM machines. Also, many Mall incidents can be quickly resolved with skilled conflict-resolution approaches. Peace officers who are, or are likely to be, assigned to the Mall should be given special instruction, perhaps even a short course, on pertinent ordinances and be shown how to deal with the types of situations that they might encounter.

Penalties

One of the most vexing problems in dealing with many of the kinds of misbehavior on the Mall is how to impose effective penalties on wrongdoers. It takes considerable time and money to send offenders to jail for rather minor misdemeanors. We suggest that most of the offenses be dealt with using citations (tickets) rather than arrests. One might ask how that could be effective, given the particular clientele we are dealing with—people who have no money to pay the ticket and would probably simply ignore it. The answer is that after an offender receives two or three tickets, he or she would then be arrested, tried and sentenced to community service (not jail). The offender would become aware that misdeeds do not go unpunished (as many are now) and will have contributed something to the community as a result of the required service.

We applaud the proposed interdiction program for habitual alcohol offenses and urge that it be put into effect immediately.

Outreach and Oversight

Outreach

We suggest creating a street outreach team of social services/mental health/law enforcement/homeless advocacy representatives to help direct people in need to appropriate shelter and services. The purpose of this team would be to engage those in need to insure contact and support from appropriate city and nonprofit agencies and resources.

A Permanent Oversight Committee

We recommend that a Mall oversight committee be established. The committee would consist of city employees (e.g., police, public works, social services), private citizens (e.g., NDRA representatives, Chamber of Commerce and DBAC members), and Haven staff. The committee would monitor issues of public safety, Mall maintenance and cleanliness, lighting and adherence to ordinances. The committee would also oversee a reporting system that enables issues requiring action to be made known to the appropriate city authority/department. The Clean and Safe Committee of Delray Beach, Florida, might serve as a model.

IV. CONCLUSION AND NEXT STEP

The Downtown Mall is Charlottesville's most important and vibrant meeting place. It is one of the city's primary tourist attractions, a principal economic engine and the entertainment center for city and county residents and visitors from around the world. Unfortunately, as was shown in Section II, the Mall is in trouble. Panhandling has become omnipresent, and unruly behavior has gone unchecked. Many area residents have reduced their visits to the Mall or stopped coming entirely, because they feel uncomfortable and unsafe. Restaurateurs and shop owners report a loss of business. Looming on the horizon is Stonefield, a mall that will not have panhandlers and misbehavior because it will be on private land and have its own police force. The situation on the Downtown Mall calls for immediate action to sustain, improve and protect our treasured asset.

We recommend that a work session be held as soon as possible. The session would include the City Council, the City Manager and selected city staff, and members of our NDRA Special Committee. We propose that this work session address the problems we have identified, with appropriate attention being given to the corrective actions contained in this study. We also recommend that the work session be held within 60 days of the receipt of this study.

Corrective actions requiring budgetary commitments should be approved and adopted within a time frame commensurate with the city's budget development process, thereby allowing implementation during the coming fiscal year. Actions approved by Council that do not require a budgetary commitment should be implemented immediately. Some actions, e.g., those requiring state input/approval, are matters for longer term implementation.

Our Committee's position on the issues and solutions addressed herein is not exclusive in nature. We recognize that the opinions and concerns of others are important in reaching a community solution to a community problem. We do, however, strongly hold that the collaborative and good faith effort we have undertaken justifies both your attention and your commitment to reaching appropriate solutions.

The North Downtown Residents Association and our Committee thank you for your interest in this important endeavor and for the time and effort you will afford it.

Appendix 1A

MEMBERSHIP AND ORGANIZATION—SPECIAL COMMITTEE OF THE NORTH DOWNTOWN RESIDENTS ASSOCIATION

MEMBER	AREA OF INTEREST AND ASSIGNED AREA OF STUDY
Jim Neale (Chair)	The Haven, PACEM and other TJACH Service Providers
Jessica Baker	North Downtown Residents' Issues and Complaints
Jon Bright	Court System, Commonwealth's Attorney and Charlottesville Police Department
Bernie Martin	The Downtown Business Association and the Charlottesville Regional Chamber of Commerce
David RePass	Survey Development, Data Analysis and Ordinance Proposals
All	Preparation of Study Report and Attendant Timeline for Action Plan Accomplishment

Appendix 1B

STUDY PROCESS FOR ADDRESSING DETERIORATING CONDITIONS ON THE DOWNTOWN MALL

I. PROBLEM IDENTIFICATION /ANALYSIS

- A. Gather information applicable to the problem.
- B. Collate and analyze information
- C. Try to anticipate questions that our analysis may produce.
- D. Avoid trivia and stick to the facts.
- E. Restate the problem clearly and succinctly without watering down the complexity of the issues we face. (Attempt to quantify)

II. WHY IS THIS IMPORTANT?

- A. Impacting the historic, economic and entertainment center of Charlottesville city living.
- B. Damaging the comity and attractiveness of the city's most important meeting place (the Downtown Mall).

III. WHAT CORRECTIVE ACTION CAN BE TAKEN TO AMELIORATE THE PROBLEM?

- A. Community at large.
- B. Agencies and groups serving the homeless.
- C. City officials.
- D. Public safety authorities.
- E. Business entities.
- F. Those contributing to the deteriorating conditions.

IV. RECOMMENDATIONS AND FEEDBACK

- A. Develop and recommend, from an analysis of III above, an action plan that will address and fix the problems.
- B. Include a timeline so progress in problem resolution can be measured.

V. DISSEMINATE ACTION PLAN TO RESPONSIBLE GOVERNMENT AGENCIES AND INDIVIDUALS AND OTHER INTERESTED PARTIES

VI. PROVIDE FOLLOW-UP TO IDENTIFY PROGRESS AND, IF A LACK OF PROGRESS, APPLY INCENTIVES TO ACT

- A. Provide progress reports.
- B. Conduct an after-action review to document accomplishments or lack thereof.

Appendix 1C



WHEREAS, for more than 35 years the Charlottesville Downtown Mall; with its array of restaurants, shops, offices, art galleries, and entertainment centers has attracted ever increasing numbers of city residents, visitors and tourists from Virginia, our country, and around the world; and

WHEREAS, the Charlottesville Downtown Mall has provided sizable revenues to the City's General Fund through sales, meal, lodging, and real estate taxes; and

WHEREAS, the recent and increasing presence of individuals on the Mall who are not patrons, visitors, or tourists and whose presence creates a negative atmosphere and impairs the attractiveness of Charlottesville's most important meeting place; and

WHEREAS, the North Downtown Residents Association (NDRA) Board of Directors has received complaints about disorderly conduct, intimidation, foul language and aggressive behavior that make some people uncomfortable and feel unsafe; and

WHEREAS, the NDRA Board of Directors is aware of the Police Department's stated commitment to collaborate with neighborhoods to better understand the nature of local problems and to develop meaningful and cooperative strategies to solve these problems; and

WHEREAS, the NDRA Board of Directors recognizes that an expanded and more visible Police presence on the Mall will significantly ameliorate existing concerns and contribute to the comfort of Mall patrons and the continued viability of the Downtown Mall; and

NOW, THEREFORE, BE IT RESOLVED, that the NDRA Board of Directors strongly and unanimously supports the Police Department's budget request to resource 2 Kiosks, 4 additional Police Officers, and 4 Community Service Officers as necessary enhancements to the existing police presence on the Downtown Mall.

Appendix 1D

MEETINGS WITH CITY LEADERSHIP AND DIRECTOR OF TJACH AND THE HAVEN

MEETINGS WITH TJACH/HAVEN DIRECTOR AND CITY MANAGER TO DISCUSS COMMITTEE FORMATION, ORGANIZATION AND PURPOSE

December 23, 2011	TJACH/Haven Director, Kaki Dimock
January 19, 2012	City Manager, Maurice Jones

MEETINGS WITH TJACH/HAVEN DIRECTOR AND CITY MANAGER TO REVIEW COMMITTEE-PREPARED SURVEYS SENT TO 3 TARGET GROUPS

February 6, 2012	City Manager, Maurice Jones
March 12, 2012	TJACH/Haven Director, Kaki Dimock

MEETINGS WITH TJACK/HAVEN DIRECTOR AND CITY LEADERSHIP TO REVIEW SURVEY RESULTS AND PROVIDE UPDATES ON COMMITTEE PROGRESS

April 11, 2012	TJACH/Haven Director, Kaki Dimock
May 22, 2012	Mayor, Satyendra Sine Huja, and City Manager, Maurice Jones
May 25, 2012	TJACH/Haven Director, Kaki Dimock
June 15, 2012	Vice Mayor, Kristin Szakos, and Councilwoman, Dede Smith
June 18, 2012	Councilman, Dave Norris, and Councilwoman, Kathy Galvin
June 27, 2012	TJACH/Haven Director, Kaki Dimock
July 20, 2012	TJACH/Haven Director, Kaki Dimock

Appendix 2A

See the following questionnaires (pages 18-20).

Survey of Area Residents

1. In the past five years, have you visited the Downtown Mall frequently, often, sometimes, occasionally or never?

- Frequently (at least twice a month)
 Often (at least once a month)
 Sometimes (several times a year)
 Occasionally (a few times a year)
 Never

If you answered "Never" please tell us why. Then skip to Question 4.

2. What drew you to the Mall? (Check as many reasons as apply)

- Eating out
 Movies
 Paramount Theater
 Other theaters
 Ice rink
 Shopping
 Banking
 Just strolling
 Children's Museum
 Business (lawyer, insurance agent, etc.)
 Other _____

3. In the past year or two, have your trips to the Mall increased, decreased, or stayed about the same.

If you answered "decreased," could you give the reasons why?

4. Place of residence

- Charlottesville
 Albemarle

Survey of Patrons

Where are you from?

- City of Charlottesville
- Albemarle County
- Nelson County
- Green County
- Fluvanna County
- Elsewhere in Virginia
- Some other State in USA
- Foreign Country

We would like to know your impressions of the Downtown Mall.

What, in particular do you like about it?

Is there anything you dislike about it?

Survey of Downtown Businesses

1. How long have you been in business on the Mall?

- 1 year or less
- 2 to 3 years
- 3 to 5 years
- 5 to 10 years
- over 10 years

2. What is the nature of your business? restaurant, boutique shop, jewelry store, dry goods or what?

3. Have the number of patrons or clients coming to your business increased, decreased or stayed about the same in the past two years?

- Increased
- Stayed the same
- Decreased

4. If you answered "decreased" to question 3, why do you think that has happened?

5. Do you have concerns about the future of the Downtown Mall? What are they?

Appendix 2B

Results of Area Resident Survey

Questionnaire Mailed to Those Who Received City Water and Gas Bills

A survey was developed to identify and quantify the extent of problems on the Mall and, in particular, find out if area residents have decreased their trips to the Downtown Mall in the past two years and why. In an effort to gather as much information as possible from as many City and County residents as possible, we asked the City to enclosed the resident survey with city utility bills.

We received 2306 replies. Of those, 430 had decreased their Mall patronage. Nineteen of them cited the economy or having less money as the reason for reduced trips; 47 reported that they had gotten older and were not getting around as much, or had become ill or infirm; and 52 gave personal reasons such as being out of town more, not having as much time, having a baby, etc. Thus a total of 118 (19 + 47 + 52) cited reasons that were beyond the control of those who make Mall policy. This leaves 312 or *14% who had reduced their trips to the Mall due to conditions on the Mall.*

Following are the reasons given for the decline in usage. The responses are to an open-ended question and thus are spontaneous—based on the image of the Mall that respondents had developed from their own experience and observations. (See Table 1 on the next page for a detailed breakdown.)

Reasons for Not Coming to the Mall as Often

- 27% Panhandling and the Homeless
- 48% Feeling Unsafe or Uncomfortable
- 43% Parking
- 42% Miscellaneous

The percents are based on the 312 respondents who had reduced their trips due to conditions on the Mall. Percents add up to more than 100% since respondents could give more than one reason.

Table 1. Area Residents Survey

Reasons for Not Coming to the Mall as Often

(Number of comments made by 312 respondents who had reduced their trips to the Mall)

Panhandling and the Homeless

- 49 Panhandling, begging
- 19 Panhandling and homeless (both words explicitly used)
- 17 Homeless (the exact word used and nothing more)
- 4 The Haven

Feeling Unsafe or Uncomfortable

- 60 Don't feel comfortable, groups of loiterers, loud talk, cursing, drunks
- 20 Teenagers misbehaving
- 50 Safety (generally)
- 14 Garages unsafe
- 5 No visible police

Parking

- 54 Parking (generally)
- 22 Not enough parking spaces
- 30 Parking too expensive
- 18 Parking—too few spaces and too expensive (both mentioned)
- 9 Lack of convenient handicapped parking

Miscellaneous

- 22 Nothing I need there
- 22 Shops too expensive
- 19 Restaurants too expensive

- 7 Too many vendors
- 8 Too many restaurants blocking the Mall
- 6 Too congested, messy (generally)

- 8 Street performers, loud music, bad music
- 6 Need more places to sit
- 4 Secondhand smoke
- 3 Too many dogs
- 7 Don't like the Pavilion, miss the grassy slope

- 20 Other

Appendix 2C

Results of Patron Survey

Survey on City Website

Patrons of the Mall were given the opportunity to express their views in an online survey using Survey Monkey. The survey link was available on the City's website for approximately one month. Anyone logging onto the City site could click on the link and take the survey. Additionally, DBAC members sent e-mails to their customers with a link to the survey. The survey link was also posted on the DBAC and City Facebook pages. The survey attracted 321 respondents. Patrons were asked the open-ended question: "Is there anything you dislike about the Mall?" Only 14% had nothing unfavorable to say. (See Table 2 on the next page for a detailed breakdown.)

Patrons Unfavorable Views of the Mall

35%	Panhandling and Homeless People
34%	Feeling Unsafe or Uncomfortable
22%	Parking
35%	Appearance and condition of the Mall
17%	Types of Attractions
8%	Other

The percents are based on the 321 respondents who completed the survey. Percents add up to more than 100% since respondents could give more than one reason.

Table 2. Based on Patrons Survey

Unfavorable Views of the Mall

(Number of comments made by 321 respondents)

Panhandling and the Homeless

- 53 Panhandling, begging
- 28 Panhandling and homeless (both words explicitly used)
- 23 Homeless (the exact word used and nothing more)
- 8 Panhandler's dogs
- 4 The Haven

Feeling Unsafe or Uncomfortable

- 43 Don't feel comfortable, groups of loiterers, loud talk, cursing, drunks, intimidating
- 24 Unsupervised, rowdy teenagers
- 20 Safety (generally)
 - 6 Garages unsafe
- 15 No visible police

Parking

- 24 Parking (generally)
- 13 Not enough parking spaces
- 22 Parking too expensive
 - 9 Parking—too few spaces and too expensive (both mentioned)

Appearance and condition of the Mall

- 24 Incomplete Landmark hotel
- 22 Mid-mall road crossings
- 20 Dirty, litter, broken glass, garbage
- 18 Need more places to sit
- 10 Too many vendors
- 10 Too many restaurants blocking the Mall
- 9 Secondhand smoke

Types of Attractions

- 17 Shops too expensive
- 13 Shops too upscale, "boutique," cater to tourists, snobbish
- 13 Stores should stay open later
- 10 Restaurants too expensive

27 Other

46 Nothing Unfavorable

Appendix 2D

Results of DBAC Survey

Findings are based on all responses made to two questions:

“Has the number of patrons of clients coming to your business increased, decreased or stayed the same in the past two years. If you answered “decreased”, why do you think this has happened?”

“Do you have concerns about the future of the Downtown Mall? If so, what are they?”

43 questionnaires were filled out. Of those, 18 (42%) cited no problems at all or nothing having to do with panhandling, the homeless, the Haven, safety concerns, feeling uncomfortable, foul language, etc.

14 (33%) reported that business had decreased. Only 3 of them said that the decrease was due to economic reasons alone. (The 3 reasons were “economic malaise and instability, “fewer tourists,” and “increased competition.”)

Problems cited in response to the two questions were:

- 42% Panhandling and the Homeless
- 40% Safety or Uncomfortable atmosphere
- 21% Parking
- 65% Miscellaneous

Detailed Breakdown

Panhandling and the Homeless

- 10 Panhandling, begging
- 5 Panhandling and homeless (both words explicitly used)
- 3 Homeless (the exact word used and nothing more)
- 5 The Haven

Feeling Unsafe or Uncomfortable

- 4 Don't feel comfortable, groups of loiterers, loud talk, cursing, drunks
- 2 Teenagers misbehaving
- 7 Safety (generally)
- 4 No visible police

Parking

- 9 Parking, need more free parking, more lenient ticketing

Miscellaneous

- 9 Concerns about Stonefield
- 5 Dirty, litter, broken glass, cigarette butts, maintenance
- 4 Needs revitalization
- 3 Too many vendors
- 3 Vacancies
- 6 Other

Appendix 3A

See pictures on the next five pages











Appendix 3B

A CONSTITUTIONAL WAY TO RESTRICT VERBAL ASSAULT

Existing Virginia code: Section 18.2-416 titled Punishment for Using Abusive Language to Another:

“If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.”

Thus, abusive speech can be forbidden “under circumstances reasonably calculated to provoke a breach of the peace.” This Virginia law was written to conform with Supreme Court rulings which have established that the only circumstance under which abusive speech directed at another person would not be constitutionally protected is if the words were “fighting words”—literally words that could be expected to result in a fight.

The “fighting words” doctrine was established in *Chaplinsky v. New Hampshire* (1942). In that case, the Supreme Court established two criteria for exempting speech from First Amendment protection. 1) the words had to be “fighting words”—words that by their very utterance inflict injury or tend to incite an immediate breach of the peace. “The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight,” and 2) that “such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”

In the 1942 *Chaplinsky* case, the Court upheld the conviction of the appellant under a New Hampshire law which barred a person from addressing any “offensive, derisive or annoying word to another person in a public place.” *Chaplinsky* had called a City Marshal a “God damned racketeer” and “a damned Fascist,” words that the Supreme Court felt were “fighting words.”

Since the 1942 decision, the Supreme Court has become more restrictive in deciding what words they feel constitute “fighting words.” A number of states and localities have attempted to limit speech by incorporating the fighting-words doctrine into their laws, only to have arrests and convictions based on these laws overturned by the Supreme Court. In some cases, the Court felt that the laws were overbroad—too vague as to what language was being restricted. For example, several states outlawed “opprobrious” language, a term the Court felt was too vague to be enforceable. A St. Paul, Minnesota, ordinance outlawing speech that would arouse anger or alarm in certain named groups, such as blacks or women, was struck down by the Supreme Court because the government was prescribing which groups should be protected from contrary opinions. A New York statute making it a misdemeanor to “publicly mutilate, deface, defile or

trample upon, or cast contempt upon the American Flag either in words or act” was struck down because it contained the clause “either in words or act.” The government cannot restrict words that are critical of the country or the government.

The above cases have established some guidelines regarding what the Supreme Court will NOT accept as falling under the doctrine of “fighting words,” but there is no legal consensus about the meaning and application of which types of words constitute “fighting words.” State appeals courts are all over the place in trying to judge the constitutionality of state and local laws restricting abusive language.

In a Minnesota case in September, 1999, a man was convicted of disorderly conduct for yelling profanities at police officers; he called one police officer a “white racist motherf---r,” and he said to another officer that he hoped his mother would die. He appealed his conviction on the basis that his First Amendment free speech rights had been violated. The Minnesota Appeals Court ruled that part of his speech amounted to fighting words and therefore was not protected speech, but other words were protected. The Court said that “while calling the officer a ‘racist white motherf----r’ may be protected, wishing death upon another officer’s mother is not.”

In *City of Hamilton v. Johnson* (December 1999), an Ohio appeals court rejected the First Amendment defense of a man who was convicted of cursing at police officers. Two police officers had come to Johnson’s house and informed him they were impounding his car. He called one of them a “f----- jackass” and told them both “I’m not signing s---.” The court determined that Johnson’s profane language, which was specifically directed to the officers, rose to the level of fighting words.

In a November, 2010 case, the Virginia Appeals court reversed the conviction of a Lynchburg man who had cursed at police officers in an incident that happened in June, 1999 (*Marttila v. City of Lynchburg*). When three police officers approached Marttila, after they had discovered he had recently lied to them about ownership of a car, he called the officers “f----- pigs,” “f----- jokes” and told them they “should be at a f----- doughnut shop.” He was cited and convicted for violating the Lynchburg ordinance which prohibits the “use of any violent abusive language” to another person that is “calculated to provide a breach of the peace.” In reversing Marttila’s conviction, the Virginia appeals court quoted from a 1987 Supreme Court decision in *City of Houston v. Hill*: “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” The court went on to say that Marttila made no threatening gestures and only “expressed contempt for the officers in a general sense” so that his speech did not amount to fighting words.

Finally, in an Idaho case in September, 2001, a man name Suiter was convicted of disturbing the peace by using an “obscene four-letter word” to express his exasperation after getting no help from a sheriff’s deputy. (He had come to the sheriff’s office to inquire about another person’s check fraud case and was told by the deputy that he could not help him without verification that Suiter was authorized to act on the behalf of the accused.) The Idaho appeals court upheld the conviction on the grounds that “Such a

personally provocative epithet, delivered in the manner and setting here, cannot be reasonably interpreted as the communication of information or opinion safeguarded by the Constitution.” Note that the Idaho court did not apply the fighting-words doctrine, but rather invoked the second criteria announced in the Chaplinsky case—the concept that protected speech is informational—an exposition of ideas that have "social value as a step to truth."

Thus, we have four state cases in which the words used and circumstances of their use were very similar. All involved curses, obscenities or degrading language directed at police officers. Yet no pattern can be found in the decisions. In one case (Ohio), abusive language was considered to be “fighting words,” in another case (Virginia) similar language was not considered to be “fighting words,” in another case (Minnesota) there was a split decision—some words were considered to be “fighting words” and others were not, and in one case (Idaho) the court ruled that the use of a four-letter word was not protected speech under the second Chaplinsky criteria.

Rule of Law demands that the law be clear, that people know exactly what conduct will violate the law, and that the law be enforced consistently. The fighting-words doctrine does not meet the demands of Rule of Law. It should be abandoned and prohibitions against verbal abuse should rest instead on the second criterion of the Chaplinsky case, that is: a civilized society must assure order and morality by protecting its citizens from verbal abuse, and that utterances that are not an essential part of an exposition of ideas and have no social value as steps to truth are not constitutionally protected .

In light of these conclusions, we suggest the following City of Charlottesville ordinance be enacted:

If any person shall, in the presence or hearing of another, curse or abuse such other person with language containing no information or ideas of social value, he or she shall be guilty of a class 3 misdemeanor.

Definition of abusive language: words that are obscene, profane, threatening, intimidating, demeaning or otherwise inflict harm.