



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: June 10, 2014

TO: Ordinance Committee

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: State Street Sidewalk Behavior And Panhandling Ordinances

RECOMMENDATION: That the Ordinance Committee:

- A. Review certain proposed changes to the State Street Sitting and Lying Down Ordinance and the Abusive Panhandling Ordinance; and
- B. Consider enacting an ordinance to prohibit public urination and defecation.

DISCUSSION:

Background

On April 22, 2014, the City Council voted unanimously (6-0, Francisco absent) to refer to the Ordinance Committee for further consideration and review issues raised in a memorandum from Councilmembers Hotchkiss and Rowse. (See April 3, 2014 Memorandum included as Attachment 1.) The memorandum raises the possibility of taking the following specific actions:

- Expanding the 7:00 a.m. to 9:00 p.m. hours of the current Sit/Lie prohibition
- Adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk
- Expanding the "active" panhandling prohibition near ATM's from 25 feet to 80 feet, subject to constitutional analysis by the City Attorney
- Expanding the "active" panhandling prohibition to other areas where there are captive audiences, such as busses and other public transportation vehicles
- Prohibiting urinating or defecating in public

The relevant existing Santa Barbara Municipal Code excerpts are included as Attachment 2 to this report.

The Council memorandum also suggested directing the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas

The Ordinance Committee should give direction on which of the above-referenced ideas it wishes to have researched further. The Ordinance Committee may also wish to add other suggestions after hearing from the public. The City Attorney will prepare draft ordinance amendments in conjunction with the research.

Legal Framework

The Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech (such as begging for alms or panhandling), provided that the regulations are content-neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

Content neutrality is critical. Accordingly, objections to panhandling or panhandlers may not be used to justify regulations:

“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Again, there must be “no evidence that the city adopted the ordinance because of a disagreement with the message” *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1044 (9th Cir. 2002).

Regulations must also be narrowly drawn or “tailored.” However, the courts are clear that:

“‘Narrow tailoring’ does not require the government to adopt the ‘least restrictive or least intrusive means of serving the statutory goal’ when the regulation does not completely foreclose any means of communication. The requirement that the regulation be ‘narrowly tailored’ will be met ‘so long as the . . . regulation promotes a substantial government interest that

would be achieved less effectively absent the regulation' and the regulation is not 'substantially broader than necessary to achieve the government's interest.'" *Honolulu Weekly, Inc. v. Harris*, 298 F.3d 1037, 1045 (9th Cir. 2002), citations omitted.

It is important that the Ordinance Committee consider and describe the significant governmental interests it wishes to further so that the regulations can be appropriately tailored to meet Santa Barbara's needs. The City has a significant governmental interest, for example, in traffic congestion, public safety, avoiding visual clutter, and crowd control. As the United States Supreme Court has put it:

"Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement." *Cox v. State of La.*, 379 U.S. 536, 554-55 (1965).

Ample alternative channels of communication must also be left open. This means that it will be necessary to do relatively precise mapping of the City's downtown core areas in order to determine whether expanded "place" regulations – like expanding the ATM panhandling prohibition from 25 to 80 feet – leave open ample alternative channels for communication.

With respect to sitting and lying down regulations, Eighth Amendment cruel and unusual punishment concerns may arise when insufficient shelter space is available and an ordinance criminalizes behavior such as sitting, lying, or sleeping at night while being involuntarily homeless. The Ordinance Committee should be cautious to take these concerns into account as it seeks legal guidance on potential ordinance expansion or other changes.

Next Steps

The Ordinance Committee direction will be used by the City Attorney to conduct detailed research into the legal feasibility of the various proposals. This will include downtown mapping prepared with the assistance of the Public Works and Community Development Departments. The City Attorney will report back to the Ordinance Committee with a comprehensive legal analysis and draft ordinance amendments.

- ATTACHMENT(S):**
1. April 3, 2014, memorandum from Councilmembers Hotchkiss and Rowse
 2. Santa Barbara Municipal Code excerpts

PREPARED BY: Ariel Pierre Calonne, City Attorney
SUBMITTED BY: Ariel Pierre Calonne, City Attorney
APPROVED BY: City Administrator's Office



City of Santa Barbara
Mayor & Council Office

Memorandum

DATE: April 3, 2014

TO: James L. Armstrong, City Administrator

FROM: Council Members Frank Hotchkiss and Randy Rowse

SUBJECT: Sit-Lie and Abusive Panhandling Ordinance Referral to Ordinance Committee

- Summary of Information to be Presented to the City Council

Receive a report on discussions with the downtown business community regarding specific proposals to update the Sit-Lie and Abusive Panhandling Ordinances. Consider enacting a new ordinance prohibiting urinating or defecating in public. Refer the matter to the Ordinance Committee for further consideration and review.

- Statement of Specific Action the Council will be asked to take

The municipal code currently prohibits sitting or lying down on public sidewalks and paseos along the first thirteen blocks of State Street during the hours between 7:00 a.m. and 9:00 p.m. We would propose expanding the hours of the prohibition and adding a prohibition on sitting, standing or lying down upon any planting, railing or statue placed or installed on a public sidewalk.

The municipal code currently prohibits abusive panhandling anywhere in the City. "Active" panhandling – meaning a verbal (oral) request seeking a donation of money or other item of value is prohibited in certain locations only. For example, active panhandling is currently prohibited within 25 feet of any ATM. We would propose increasing this area to approximately 80 feet, subject to analysis by staff of the impacts on the constitutionally-required alternative locations for solicitation speech. We would also propose expanding the ban on solicitation to busses and other public transportation vehicles.

Neither the municipal code nor state law directly prohibits urinating or defecating in public. While this behavior may be prosecuted under state law as a nuisance, this form of action constitutes a misdemeanor that falls to the District Attorney's Office for prosecution. We propose adding a prohibition on urinating or

defecating in public to the municipal code in order to facilitate enforcement against this nuisance behavior.

Finally, we would like Council to direct the City Attorney to undertake research and report back to the Ordinance Committee on the legal feasibility of adding to the municipal code the following considerations:

- A prohibition on groups of people congregating in a manner that blocks the free movement of pedestrian traffic on our downtown sidewalks;
- A prohibition on the use of public benches and street furniture for the storage, sale or display of merchandise or personal items;
- A prohibition on active panhandling within a prescribed distance of a queue of persons waiting to gain admission to a place of business and outdoor dining areas.
- A requirement for appropriate signage to inform the public of these regulations

We believe all of these issues should be referred to the Ordinance Committee for further consideration and review. We also believe the Ordinance Committee should hear from our Police Department on current enforcement issues that might be further addressed.

- Statement of the Reasons Why it is Appropriate and Within the Jurisdiction of the Council to Consider this Subject Matter and to Take the Requested Action

Improving the quality of life for all Santa Barbara residents is a crucial function of the City Council. We believe our modest proposals will do just that.

cc: Mayor and Council
Cam Sanchez, Police Chief
Ariel Calonne, City Attorney

Chapter 9.97

**SITTING OR LYING ON SIDEWALKS AND PASEOS ALONG CERTAIN
DOWNTOWN PORTIONS OF STATE STREET**

Section:**9.97.010 Sitting or Lying on Public Sidewalks in Certain Downtown Areas of State Street.****9.97.010 Sitting or Lying on Public Sidewalks in Certain Downtown Areas of State Street.**

A. **Prohibition.** No person shall sit or lie down upon a public sidewalk or public paseo or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and 9:00 p.m. along the first thirteen (13) blocks of State Street from Cabrillo Boulevard to and including the 1300 block of State Street.

For the purposes of this subsection (A), the terms "public sidewalk or public paseo" shall include those public pedestrian sidewalks or public paseos which serve as access to and from State Street and the City parking facilities adjacent to State Street within the designated blocks, which shall also specifically include the area known as "Storke Placita".

B. **Exceptions.** The prohibitions of Subsection A shall not apply to any person or persons:

1. who is sitting or lying down on a public sidewalk due to a medical emergency;
2. who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;
3. who is operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit issued pursuant to Chapter 9.95 of this Title or who is participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on public sidewalk pursuant to a street use or other applicable parade permit issued by the City in accordance with this Code.

Nothing in any of these exceptions shall be construed to permit any conduct which is otherwise prohibited by this Code.

C. **Scope.** Nothing herein shall be deemed to apply the requirements of subsection (A) to the following:

1. a person who is sitting on a chair, wall, or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner for such purposes or;
2. a person who is sitting on a public sidewalk within a bus stop zone while waiting for public transportation.

D. **Prior Warning.** No person shall be prosecuted for a violation of this Chapter unless the person engages in conduct prohibited by this Chapter after having been notified by a law enforcement officer that the conduct violates this Chapter.
(Ord. 5009, 1997.)

Chapter 9.98

PEDESTRIANS BLOCKING PUBLIC SIDEWALKS

Sections:**9.98.010 Unlawful.****9.98.020 Parade Viewing Excepted.****9.98.030 Penalty for Violation.****9.98.010 Unlawful.**

No person shall stand or sit in or upon any street, sidewalk or crosswalk in the City in any manner so as to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians. (Ord. 3162 §1, 1966.)

9.98.020 Parade Viewing Excepted.

This chapter shall not apply to persons engaged in viewing a parade duly and regularly permitted by the City.
(Ord. 3162 §2, 1966.)

9.98.030 Penalty for Violation.

Any person who violates the provisions of this chapter is deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding five hundred dollars (\$500.00) or imprisonment for a term of not exceeding six (6) months, or by both such fine and imprisonment. (Ord. 3162 §3, 1966.)

Chapter 9.48

COMMERCIAL USE OF CITY STREETS

Section:

9.48.010 Commercial Use of City Streets.

9.48.010 Commercial Use of City Streets.

A. **GENERALLY.** It shall be unlawful for any person, whether acting as principal, agent, clerk, employee, or otherwise, to use any public street, public parking lot, or public sidewalk in the City for the purpose of selling, vending, offering for sale or soliciting or receiving orders for the sale of any goods, wares or merchandise.

B. **SALE OF NEWSPAPERS.** Notwithstanding subsection A hereof, nothing herein shall prohibit any person from selling or offering for sale newspapers, magazines and periodicals upon any of the public sidewalks of the City in the present customary and usual manner of selling and offering for sale of newspapers, magazines, and periodicals in the City.

C. **EXEMPTION FOR SIDEWALK SALES, FARMERS' MARKETS, AND SIDEWALK CAFE TABLES.** Notwithstanding subsection A hereof, an individual or an organization may, upon the issuance of a permit by the Director of Public Works in accordance with the requirements of this Chapter and the administrative regulations adopted pursuant hereto, use a public street or sidewalk in the City for the following limited purposes:

1. **Sidewalk Sales.** A retail business licensed to do business at a location within the City may conduct a sale of merchandise on a City sidewalk under the following conditions:

a. the sale occurs only on a public sidewalk immediately adjacent to the retail business; and

b. the retail business does not conduct such sidewalk sales for more than a total of ten (10) days for each calendar year provided, however, that those businesses within a two (2) block radius of a construction project which impacts pedestrian or vehicular access to the City block within which the business is located for a period exceeding fourteen (14) consecutive days may be allowed up to twenty (20) days for sidewalk sales during the year in which the construction project is undertaken.

2. **Farmers' Markets.** An individual or an organization may use a public street or City parking lot for the purpose of conducting a Certified Farmers' Market [as defined and provided for in Title 3, Chapter 3 of the California Code of Regulations] under the following conditions:

a. the merchandise offered for sale at the Farmers' Market is allowed to be sold at a Certified Farmers' Market; and

b. the use of the street or public parking lot is authorized by and pursuant to a written license agreement between the City and the Market sponsor, which license agreement limits the Market to a specified day or days of the week and to certain limited hours; and,

c. the vendors of merchandise at the Farmers' Market are authorized to conduct such sales by the organization sponsoring the Market and entering into the license agreement with the City.

3. **Limited Nonprofit Sidewalk Sales.** In connection and concurrent with a Parade or Event (as permitted and defined in Municipal Code Section 9.12.020), which Parade or Event is sponsored by a nonprofit entity (as evidenced by tax-exempt status under state and federal tax laws), a public sidewalk may be used for the limited merchandising of items or services under the following conditions:

a. the sidewalk sales may occur for a period not to exceed five (5) days in any calendar year, and the sales must be concurrent with the associated Parade or Event; and,

b. the location of any booth or table used by a sidewalk vendor under this subsection shall be at a specific location approved in advance by the City; and,

c. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization(s); and,

d. the persons conducting such sales are authorized in writing to do so by the nonprofit organization sponsoring the event; and,

e. for the purposes of this subsection, the word "concurrent" shall be defined as occurring within the same calendar week (Sunday through Saturday).

4. **Sidewalk Sales in Connection with a Reserved Park Event.** A public street or sidewalk immediately adjacent to a City park facility may be used for the limited merchandising of items under the following conditions:

a. the person or organization sponsoring the merchandising is a nonprofit entity, and it has reserved the adjacent park facility for an event pursuant to the requirements of Santa Barbara Municipal Code Chapter 15.05 and 15.16; and,

b. the sales occur only during the time the park is being used for the reserved event; and,

c. the persons conducting such sales are authorized in writing to do so by the nonprofit sponsoring the event; and

d. the net proceeds received by the nonprofit corporation from such sales are to be devoted exclusively for the benefit of the sponsoring nonprofit organization.

5. **Sidewalk Cafe Tables Under Chapter 9.95.** For the placement of sidewalk cafe tables in accordance with Santa Barbara Municipal Code Chapter 9.95.

D. **SIDEWALK MERCHANDISING REGULATIONS AND PERMITS.** The City Administrator, acting by and through the Director of Public Works, is hereby directed to prepare an appropriate administrative process (along with related administrative regulations) for the City's acceptance, review, and processing of applications for the issuance of sidewalk merchandising permits, as such permits are allowed by and consistent with the requirements of this Section. (Ord. 5350, 2005; Ord. 5236, 2002; Ord. 4843, 1993; Ord. 4751, 1992; Ord. 3880, 1976; Ord. 3852, 1976; prior Code §32.23.)

Chapter 9.50

PROHIBITION OF ABUSIVE PANHANDLING

Sections:

9.50.010	Purpose.	9.50.040	Use of Public Benches and Facilities on Certain Streets for Active Panhandling.
9.50.020	Definitions.	9.50.050	Penalty for Abusive Panhandling.
9.50.030	Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.		

9.50.010 Purpose.

In order to protect and promote the rights of the general public to be free from inappropriate conduct and from the potential physical confrontations sometimes associated with panhandling, the City Council finds that there is a need to adopt a City ordinance which imposes reasonable and specific time, place, and manner limitations on those forms of inappropriate and unlawful conduct which may be associated with aggressive panhandling. At the same time, the Council seeks to properly and duly recognize, as well as fully protect to the full extent possible, the First Amendment free speech rights of all concerned.

The Council also finds that balancing the need for public safety with the need to duly protect constitutional rights is especially critical in certain popular retail and visitor-serving areas of the City, such as Cabrillo Boulevard, lower Milpas Street, and certain blocks of State Street (those within the City Central Business District) since these areas are popular public gathering spaces and are often crowded with members of the public and visitors to the Santa Barbara area, and since these areas provide only limited public amenities, such as public seating and outdoor dining areas. The Council further finds that, because these areas of Santa Barbara often have thousands of visitors each day and because there is limited public seating and gathering areas available within these blocks of these streets, it is necessary and appropriate to provide panhandling regulations which prevent some persons from monopolizing the use of a public bench or a public seating area for active panhandling. There is therefore a necessity for the City Council to adopt City regulations which provide for the shared and reasonable use of these public facilities by all members of the public, especially the elderly and persons with special access needs.

Finally, the City Council believes that these City panhandling regulations will not prevent those persons who wish to properly solicit alms or charitable donations from appropriately using public benches and public seating facilities within these areas of the City for temporary respite purposes, nor will these panhandling regulations impact the content of any protected forms of expressive statements made by a panhandler or otherwise improperly restrict anyone's First Amendment rights. (Ord. 5499, 2009.)

9.50.020 Definitions.

The following words or phrases as used in this Chapter shall have the following meanings:

A. Panhandling.

1. Forms of Panhandling. Panhandling may occur in two forms as follows:

a. Active Panhandling. Any verbal request made by one person to another person seeking a direct response of an immediate donation of money or other item of value.

b. Passive Panhandling. The act of only passively displaying a sign or using any other non-verbal indication that a person is seeking donations without addressing a verbal request or solicitation to any specific person, other than in response to an inquiry from that person.

B. Donation. A gift of money or other item of value and including the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.

C. Abusive Panhandling. To do one or more of the following acts while engaging in panhandling or immediately thereafter:

1. Blocking or impeding the passage or the free movement of the person panhandled;
2. Following the person panhandled by proceeding behind, ahead or alongside of him or her after the person panhandled declines to make a donation;
3. Threatening, either by word or gesture, the person panhandled with physical harm or an assault;
4. Abusing the person being panhandled with words which are offensive and inherently likely to provoke an immediate violent reaction;
5. Touching the person being panhandled without that person's consent; or
6. Engaging in Active Panhandling in any of the prohibited places or under any of the circumstances specified in subparagraph B of section 9.50.030 hereof. (Ord. 5499, 2009.)

9.50.030 Abusive Panhandling Prohibited; Specific Locations Where Active Panhandling is Restricted.

A. Abusive Panhandling Prohibited. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Active Panhandling Restricted. Active Panhandling is prohibited when the person being panhandled is in any of the following locations:

1. Waiting at a bus stop;
2. In a vehicle on a public street or alleyway;
3. In a City parking lot or parking structure without regard to whether the person is in a vehicle or not;
4. Within an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;
5. Within twenty-five feet of an automated bank teller machine; or
6. In a queue of persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket. (Ord. 5499, 2009.)

9.50.040 Use of Public Benches and Facilities on Certain Streets for Active Panhandling.

Active Panhandling is prohibited while seated on or otherwise using a public bench or seating area (including any landscape planter or other public street furniture which can be sat upon) within the following areas of the City:

1. **State Street.** On either side of State Street from the 400 block to the 1200 block; or
2. **Milpas Street.** Either side of Milpas Street from the 00 block South to the 200 block North; or
3. **Cabrillo Boulevard.** Cabrillo Boulevard between Castillo Street and Milpas Street. (Ord. 5499, 2009.)

9.50.050 Penalty for Abusive Panhandling.

Any person who engages in abusive panhandling as defined herein shall be guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed one thousand dollars (\$1000) or be imprisoned for a period not to exceed six months, or both. Other violations of this chapter shall be prosecuted in accordance with the requirements of Santa Barbara Municipal Code Section 1.28.010. (Ord. 5499, 2009.)