



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** June 23, 2009

**TO:** Ordinance Committee

**FROM:** City Attorney's Office

**SUBJECT:** Proposed City Ordinance Regulating Abusive Panhandling

### **RECOMMENDATION:**

That the Ordinance Committee review and comment upon a draft ordinance to amend Chapter 9.50 of Title Nine of the Municipal Code regulating abusive panhandling within the City and forward the draft ordinance to the City Council with a recommendation for introduction and adoption of the ordinance in conjunction with the Council's further consideration of the other strategies recommended by the Council Subcommittee on Homelessness and Community Relations.

### **DISCUSSION:**

During its public hearings and deliberations in the Fall of 2008, the City Council's "Subcommittee on Homelessness and Community Relations" identified a need for the City to consider revising the Santa Barbara Municipal Code restrictions on "Aggressive Solicitations." The City's "aggressive solicitation" regulations are codified in Chapter 9.50 of the Municipal Code, as part of an ordinance enacted in 1992.

According to the public testimony heard by the Council Subcommittee during its hearings, there is public concern over an apparent change in the ways that certain individuals are panhandling in Santa Barbara, particularly along State Street and in the Waterfront. This experience is consistent with that of other similarly situated California communities, particularly those with a strong retail and tourism base. This concern indicates that the City's existing "aggressive solicitations" ordinance (SBMC Chapter 9.50), as enacted in 1992, is proving to be of limited usefulness in addressing some of the new panhandling concerns.

For the most part, as currently written, SBMC Chapter 9.50 only prohibits "solicitations" under circumstances where the solicitor or panhandler appears to be virtually threatening the person being solicited with potential physical contact or imminent harm. Yet, recently, a more common occurrence seems to be the use of hectoring or offensive language in panhandling situations. At times, this is in combination with other actions where the panhandler is also violating what most people would consider their "personal space" or blocking a person's ability to use the sidewalk. Moreover, some of our more

popular retail and visitor areas of the State Street, such as those where sidewalk dining is popular, seem to be experiencing an increase in efforts to solicit from individuals who are in a “captive” situation, i.e., such as panhandling from persons eating at an outdoor restaurant table or people waiting to enter a movie theater. Finally, we also seem to be seeing more instances of solicitors or panhandlers monopolizing the use of public street furniture such as benches, planters, and fountains for long periods of time and verbally soliciting from virtually every person who walks by.

As a result, with the Subcommittee’s recommendation to the Council, the City Council asked the City Attorney’s office to prepare a revised “abusive panhandling” ordinance along the lines recently enacted by some other California cities experiencing similar problems, such as the city of Santa Monica. Attached is a proposed version of SBMC Chapter 9.50 intended to adopt new and broader City regulations restricting the sort of conduct which has come to be called “abusive panhandling,” particularly when the conduct occurs within certain popular and, at times, crowded areas of the City such as parts of State Street, lower Milpas Street, or Cabrillo Boulevard. These proposed new regulations would be very similar to the approach taken by Santa Monica in enacting amendments to their Municipal Code in the fall of 2008 applicable to Santa Monica’s Third Street Mall area.

The previous version of this draft ordinance was considered at length by the Ordinance Committee on May 5, 2009. In particular, there was an extended discussion of some of the First Amendment constitutional concerns and questions raised by such an ordinance. As you know, “soliciting” or begging is deemed a manner of “speech” protected by the First Amendment. In some forms, this “speech” is absolutely protected and, in others (such as when it is coupled with certain types of inappropriate actions), it is protected only within the context of reasonable time, place, and manner restrictions, particularly for restrictions regulating only the “conduct” but not impacting the content of the “speech.”

During the May 5<sup>th</sup> Committee hearing, the Committee expressed a consensus that the draft ordinance should be revised to better define the concepts of “passive” and “active” panhandling and to expressly delineate those two concepts from what is defined as “abusive panhandling” – something which is prohibited under all circumstances. It is hoped that the attached draft contains the sort of precise definition the Committee is hoping for and that it achieves this while still protecting constitutional concerns.

As before, the attached draft ordinance attempts to be clear that the definition of the term “panhandling” does not include restrictions on a person who only seeks donations non-verbally and without addressing his or her solicitation to any specific person. Thus, this ordinance would provide that any person who is begging or soliciting without making verbal requests or without direct demands (such as by only holding a sign and without a statement directed at a particular person) would not be violating any City laws.

This ordinance also does not restrict someone who merely sits on a public bench and only holds a sign asking for alms or donations.

As you know, on February 23, 2009, the City Council approved all 12 of the Subcommittee's recommended strategies – of which this proposed ordinance is but one – with the understanding that all of the strategies would proceed to the needed public review process and, thereafter, be acted on and implemented concurrently by the Council. As a result, Staff is suggesting that this draft ordinance be reviewed, considered, and revised as deemed appropriate by the Ordinance Committee and then held for possible introduction and adoption by the full Council only when the Council is in a position to also take action on the related Subcommittee strategies. In the alternative, the Committee could recommend that this ordinance be introduced and adopted now but that its application be delayed until the Council has formally established an alternative giving campaign as an alternative to donations given in response to panhandling.

**ATTACHMENT:** Draft Ordinance Dated as of June 23, 2009

**SUBMITTED BY:** Stephen P. Wiley, City Attorney's Office

**APPROVED BY:** City Administrator's Office

*Ordinance Committee DRAFT  
June 23, 2009  
All New Language  
Not Showing Changes*

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING TITLE NINE OF THE SANTA BARBARA MUNICIPAL CODE TO ENACT A REVISED ORDINANCE PROHIBITING ABUSIVE PUBLIC PANHANDLING BY AMENDING AND REVISING SANTA BARBARA MUNICIPAL CODE CHAPTER 9.50

The Council of the City of Santa Barbara does ordain as follows:

SECTION ONE: Chapter 9.50 of Title Nine of the Santa Barbara Municipal Code is hereby amended in its entirety to read as follows:

**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 over certain aspects of panhandling 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 several hours while they are actively 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.

#### **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 circumstances specified in subparagraph B of section 9.50.030 hereof.

**9.50.030 Abusive Panhandling Prohibited; Specific Locations of 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 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 five or more persons waiting to gain admission to a place of business or to a vehicle, or waiting to purchase an item or admission ticket.

**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 South block to the 200 block North; or
3. **Cabrillo Boulevard.** Cabrillo Boulevard between Castillo Street and Milpas Street.

**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.