



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 18, 2009
TO: Mayor and Councilmembers
FROM: City Attorney's Office
SUBJECT: Regulation Of Aggressive Panhandling

RECOMMENDATION:

That the City Council introduce and subsequently adopt, reading by title only, 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 Panhandling by Amending and Revising Santa Barbara Municipal Code Chapter 9.50.

DISCUSSION:

During its public hearings and deliberations in the Fall of 2008, the Council's "Subcommittee on Homelessness and Community Relations" identified a possible need for the City to revise the Santa Barbara Municipal Code restrictions on "Aggressive Solicitations" currently codified as SBMC Chapter 9.50 and originally enacted in 1992.

According to the public testimony received 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 also consistent with that of other similarly situated California communities, especially beach cities with a strong retail and tourism industry. The concerns expressed indicate that the City's existing "aggressive solicitations" ordinance (SBMC Chapter 9.50) is proving to be of limited usefulness in addressing the aggressive panhandling actions, which are now common, particularly in dealing with the increased number of panhandlers along State Street.

For the most part, as currently written, SBMC Chapter 9.50 only prohibits "solicitations" or panhandling under those circumstances where the panhandler appears to be virtually threatening the person being solicited with potential physical contact. Yet, in recent months, a more common occurrence seems to be the use of verbal hectoring or offensive language by some panhandling individuals. At times, this hectoring is done 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 for its intended purpose. Further, some of our more popular retail and visitor areas of the State Street, such as those blocks where sidewalk dining is popular, seem to be

experiencing a distinct increase in efforts to panhandle from individuals who are in a “captive” situation, i.e., from persons eating at an outdoor restaurant table or from people waiting to enter a movie theater. Finally, the City also seems to be seeing more instances of panhandlers monopolizing the use of public street furniture such as benches, planters, and fountains for long periods of time and, while doing so, verbally and aggressively panhandling 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 work with the Council Ordinance Committee 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 and the city of Santa Cruz. Attached is a proposed new version of SBMC Chapter 9.50 intended to adopt revised 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 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 versions of this proposed ordinance was considered at length by the Ordinance Committee on May 5, 2009 and on June 23, 2009. In particular, there was an extended Committee discussion of some of the First Amendment constitutional concerns raised by this proposed ordinance. As you may know, “soliciting” for charity or alms is generally deemed a manner of “speech” protected by the First Amendment. The same is true for what is commonly known as “panhandling.” In some forms, this “speech” is absolutely protected and, in others (such as when it is joined with certain types of conduct or actions), it is protected only within the context of permissible reasonable time, place, and manner restrictions, particularly for restrictions relating only to the “conduct” but not impacting the content of the “speech,” especially when the restrictions appear to leave open ample alternative opportunities for this type of First Amendment expression.

During the May 5th Committee hearing, the Council Ordinance 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 by the proposed ordinance under all circumstances and which is declared a misdemeanor. Based on the Committee’s review of June 23rd, the attached draft contains the sort of clearer definition the Committee was hoping for while still appropriately protecting constitutional concerns. Further, 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 panhandling without making verbal requests or without direct demands (such as by only holding a sign or by playing music 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.

On February 23, 2009, the City Council approved all 12 of the Council Subcommittee's recommended strategies – of which this proposed ordinance is but one – with the understanding that these strategies would proceed through the necessary public review process and, thereafter, be implemented to the extent possible on a generally concurrent schedule. In particular, however, the Subcommittee recommended initially and, in February of this year, the Council as a whole expressed a desire to link the implementation of a new City aggressive panhandling ordinance with a possible “alternative giving” campaign intended to allow the general public to give money directly to a City co-sponsored effort to assist the homeless through the use of public donation boxes, possibly along State Street sidewalks or within merchant and restaurant customer service areas. City staff is currently working with several local organizations to determine the feasibility of such a charitable giving campaign and how it could be effectively and promptly implemented.

However, in view of the pending implementation of this campaign and in light of the Council decision to directly link the City's adoption of a new panhandling ordinance with the start of this campaign, at the June 23rd consideration of this ordinance, the Ordinance Committee recommended that this ordinance be introduced and adopted immediately, but that it contain a provision delaying its effective date until a City co-sponsored alternative giving campaign has been established. Section Two of the attached draft ordinance provides for this contingent effective date.

ATTACHMENT: Draft Ordinance Dated as of August 18, 2009

SUBMITTED BY: Stephen P. Wiley, City Attorney

APPROVED BY: City Administrator's Office