



CITY OF COMMERCE AGENDA REPORT

TO: Honorable Mayor and City Council **Item No.** _____

FROM: Noel Tapia, City Attorney

SUBJECT: Ordinance Addressing Aggressive Panhandling

MEETING DATE: November 7, 2017

Please allow this report to serve as an analysis regarding the implementation of a panhandling ordinance for the City of Commerce ("City").

RECOMMENDATION

Provide the City Attorney's Office with a directive on how to proceed to either:

1. Conduct any additional research based on any questions or concerns that the City Council may have, and report back to City Council; or
2. Draft a proposed ordinance based on City Council's general policy recommendations.

BACKGROUND

The City of Commerce Municipal Code ("Code") does not contain a comprehensive or updated provision addressing the public safety issues that arise with aggressive panhandling and solicitation. Currently the Code provides the following:

No person of the class commonly known as "tramps"¹ shall visit any house within the city for the purpose of soliciting food or clothing or alms, or shall, in any public place in the city, solicit alms or money from any person.²

The City currently faces many challenges to personal and public safety because of aggressive panhandling throughout the City, most specifically wherein persons stand in dangerous places begging for money, or become aggressive against members of the public when begging for money. City staff observes this type of activity throughout the City, but the biggest public safety issue arises when panhandlers are on City streets,

¹ "Tramps" is not defined in the Commerce Municipal Code, but its general definition is "[o]ne who travels aimlessly about on foot, doing odd jobs or begging for a living; a vagrant" at <https://www.thefreedictionary.com/tramp>.

² Commerce, CA, Municipal Code, § 9.04.090.

public intersections, other public right-of-ways meant for vehicular traffic, and near various businesses where direct, unwelcome contact is made with patrons. The Code currently does not have the necessary laws to be able to effectively regulate said activities.

ANALYSIS

Pursuant to the California Constitution, all California cities have the power to create local ordinances that are not in conflict with general laws.³ This “police power” enables local governments to adopt regulations designed to promote general prosperity, particularly in regards to the public health, morals, and safety for its residents.⁴

With this power, many cities have implemented ordinances addressing the problem of aggressive panhandling and solicitation. These ordinances generally face legal challenges at the state and federal court levels primarily because solicitation in general is considered protected speech under the First Amendment. Other constitutional challenges implicate due process, equal protection, and vagueness and overbreadth concerns.⁵

A. Panhandling and Solicitation - Time, Place, Manner Restrictions Allowed

Panhandling for money is a category under the umbrella of solicitation and therefore triggers a particular type of constitutional analysis.⁶ Panhandling ordinances which govern the public solicitation of funds, i.e. in-person requests for the immediate donation or payment of money, are allowed to impose various restrictions concerning the time, place and manner in which such constitutionally protected expression is regulated.⁷ Legislation will be upheld so long as it is 1) narrowly tailored, 2) serves a significant government interest, and 3) provides ample alternative means for communication.⁸

In *Doucette v. City of Santa Monica*, the court upheld the city ordinance prohibiting “abusive” solicitation and solicitation at:

Bus stops, public transportation vehicles or facilities, a vehicle on public streets or alleyways, public parking lots or structures, outdoor dining areas of restaurants or other dining establishments serving food for immediate consumption, within fifty feet of an automated teller machine or a queue of five or more persons waiting to gain admission to place or vehicle....”⁹

³ Cal. Const. art. XI, § 7.

⁴ *Munn v. Illinois* (1877) 94 U.S. 113, 125; *Chicago, B. & Q. Ry. Co. v. Illinois* (1906) 200 U.S. 561, 592.

⁵ “Enforcement of Aggressive Panhandling and Local Camping and Sleeping Ordinances,” League of California Cities, September 19, 2013, p. 9, at <https://www.cacities.org/UploadedFiles/LeagueInternet/63/632f0c5c-aea1-45a9-80f7-3ad21373582d.pdf>.

⁶ For purposes of this analysis, this report focuses on solicitation for money, i.e. panhandling. Other forms of solicitation require varying and often, more stringent, legal standard of review.

⁷ *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 352; *United States v. Kokinda* (1990) 497 U.S. 720, 725 (solicitation is protected by the First Amendment).

⁸ *Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1572-74.

⁹ *Doucette v. City of Santa Monica* (1997) 955 F. Supp. 1192, 1201.

The court held that the City of Santa Monica's interest in preventing harassment and intimidation justified the imposed regulation restricting panhandling throughout the city.¹⁰

B. Recommended General Provisions

In evaluating the law surrounding city ordinance restrictions on aggressive panhandling, the following general provisions have withstood constitutional scrutiny while addressing the widely shared problem of harassment and intimidation:

- Findings: This section would detail the City's purpose, intent, and reasoning for the need to implement its desired restrictions on aggressive panhandling and solicitation in general. For example, City staff observations either in the field or in receiving complaints concerning the public safety dangers posed by aggressive panhandling activities. Any information that would substantiate the City having a "significant government interest" to satisfy its constitutional burden would help withstand any legal challenge.
- Definitions: This section would include definitions of the following key words: "aggressive", "soliciting", "public place", "ask or beg", and "check cashing business," among others.
- Prohibited Acts: The prohibited acts would include provisions such as:
 - "No person shall solicit in an aggressive manner in any public place"¹¹;
 - "No person shall solicit, ask or beg within 15 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or any automated teller machine"¹²;
 - "No person shall solicit an operator or other occupant of a motor vehicle while such vehicle is located on any street or highway on-ramp or off ramp..."¹³;
- Penalties: If the City Council desires to reiterate penalties for violating provisions in the Municipal Code.

CONCLUSION

The City will need to amend its current laws regarding panhandling and solicitation to be able to regulate ameliorate the growing public safety implications caused by aggressive panhandling and solicitation, while not running afoul of state and federal constitutional protections.

¹⁰ *Id.* at 1205-08.

¹¹ San Francisco, CA, Municipal Code § 120-2.

¹² Los Angeles, CA, Municipal Code § 41.59.

¹³ San Francisco, § 120-2.

The City Attorney's office is available to answer any questions the Mayor or any members of the City Council have as to the contents of this report, and/or to provide additional, supplemental and/or other relevant information. Otherwise, based on the City Council's directive, the City Attorney's Office will be prepared to draft an ordinance.

ATTACHMENTS:

San Francisco Municipal Code § 120-2.

Los Angeles Municipal Code § 41.59.

Recommended/Prepared by: Norma Copado, Assistant City Attorney

Reviewed By and Approved as to Form: Noel Tapia, City Attorney

Respectfully submitted: Noel Tapia, City Attorney, Norma Copado, Assistant City Attorney