



CITY OF COMMERCE AGENDA REPORT

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

FROM: Noel Tapia, City Attorney

SUBJECT: Ordinance Addressing Aggressive and Unsafe Forms of Panhandling

MEETING DATE: January 9, 2018

RECOMMENDATION

1. Second Reading and Adoption of Ordinance entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE ADDING CHAPTER 9.90 TO TITLE 9 OF THE COMMERCE MUNICIPAL CODE RELATING TO THE PROHIBITION AGAINST CERTAIN FORMS OF AGGRESSIVE AND UNSAFE PANHANDLING";

BACKGROUND

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

On November 7, 2017, the City Attorney's Office made a presentation concerning an analysis regarding the implementation of a panhandling ordinance for the City of Commerce ("City") and the City Attorney's Office was directed to draft an Ordinance pursuant to the general policy tenets discussed in said meeting, which is hereto attached. At the City Council meeting on December 5, 2017, the Ordinance was introduced for first reading by the City Council. The Ordinance is now presented to the City Council for consideration of its adoption.

ANALYSIS

Pursuant to the California Constitution, all California cities have the power to create local ordinances that are not in conflict with general laws.¹ 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.²

¹ Cal. Const. art. XI, § 7.

² *Munn v. Illinois* (1877) 94 U.S. 113, 125; *Chicago, B. & Q. Ry. Co. v. Illinois* (1906) 200 U.S. 561, 592.

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. The Code currently does not have the necessary laws to be able to effectively regulate said activities.

Accordingly, the purpose and intent of the attached Ordinance is to protect the safety and welfare of the general public and improve the quality of life of the City of Commerce by imposing reasonable time, place, and manner restrictions on aggressive, intrusive or unsafe panhandling, while respecting the constitutional rights of free speech for all citizens.

At the City Council meeting on November 7, 2017, it was raised whether a proposed ordinance would prevent organizations, such as Firefighters' fundraiser events in public right of ways, and whether any exemptions could be made in the ordinance. Because the governmental interest in implementing the proposed Ordinance is to promote public safety, making an exemption for certain organizations may potentially undermine said public safety justification. As a result, said exemption was not included in the attached Ordinance.

Notwithstanding, the City Attorney's Office was advised by the City's Planning staff that the Firefighters, and other organizations, have in the past been advised of proper conduct for these activities and secured a City temporary use permit, as well as an encroachment permit, for special events. Accordingly, any organization desiring to engage in fundraising activities in public places have the alternative option of securing said temporary use and encroachment permits, while still being required to adhere to the provisions of the attached Ordinance to ensure that any activity is conducted in a safe manner.

Alternatively, City Council has the option of directing staff to conduct additional research on any Ordinance provision that City Council may have concerns about.

At this time, the attached Ordinance addresses the public safety concerns currently observed by City staff, and provides the City with enforcement regulations to seek the cessation of certain aggressive and unsafe forms of panhandling, while still respecting the constitutional rights of free speech for all citizens.

ATTACHMENT: *Proposed Ordinance*

Recommended/Prepared by: Norma Copado, Assistant City Attorney
Reviewed By and Approved as to Form: Noel Tapia, City Attorney
Respectfully submitted: Edgar Cisneros, City Administrator