

City Council Study Session September 28, 2020

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Introduction

Constitutional Issues

Review of Current Ordinances

Enforcement Issues

What have other municipalities done?



Constitutional Issues

- ▶ What is panhandling?
- ▶ For the purposes of this presentation, I would define panhandling as any solicitation, verbal or non-verbal, in person by a person to a person unknown by the solicitor for an immediate donation of something of value.



Constitutional Issues

- ▶ The U.S. Supreme Court has never directly addressed the issue of panhandling and, therefore, there is no decision directly stating that panhandling is or is not a protected act.
- ▶ However . .



Constitutional Issues

- ▶ The U.S. Supreme Court has repeatedly upheld that the right to engage in charitable solicitations is protected free speech and is, therefore, entitled to First Amendment protection.
- ▶ Citations available



Constitutional Issues

- ▶ What does first amendment protection mean?
- ▶ Any law/ordinance targeting the content of speech is subject to a strict scrutiny review by the courts.



Constitutional Issues

- ▶ So, what does a strict scrutiny review mean?
- ▶ In simplest terms, if a law/regulation/policy concerns a suspect class or if it concerns a fundamental right (free speech), then it is examined by the courts according to the strict scrutiny test.



Constitutional Issues

- ▶ What is the strict scrutiny test?
- ▶ The law must further a compelling government interest and there must be no other less-restrictive means to serve that purpose.
- ▶ Few laws can pass this test and the presumption is that they are fundamentally unconstitutional.



Constitutional Issues

How does this apply to the proposed ordinance?



Constitutional Issues

- ▶ Proposed ordinance 18.08.009G(4) targets the content of the protected speech by specifically focusing on the transfer of money or property between citizens on roadways and sidewalks.
- ▶ Strict scrutiny review would be applied by the reviewing court if a suit was filed.



Constitutional Issues

- ▶ The ordinance would not pass the strict scrutiny test as, though public safety is a compelling government interest, the ordinance is not narrowly tailored as it applies to all roadways and sidewalks.
- ▶ As it will be shown, other less-restrictive means to achieve the public safety goal exists.



Constitutional Issues

- ▶ Also, changing the language will not prevent a possible constitutional challenge.
- ▶ A recent U.S. Supreme Court case held that a law is content based not only because of the actual text, but also if the purpose of the law is driven by the content of the message.
- ▶ Citation available



Constitutional Issues

- ▶ What does purpose of the law mean?
- ▶ If the purpose of the law could be interpreted as an attempt to prevent the transfer of free speech (money, property, pamphlets, ideas, etc.) on roadways and sidewalks then the law is unconstitutional.



Current Ordinances

- ▶ Many of our current ordinances could be used to confront the concerns the proposed ordinance attempts to address.



Current Ordinances

- ▶ **Loitering 12.01.005**
- ▶ “It shall be unlawful to loiter in such manner as to disturb the peace, of any person, or to obstruct free
- ▶ passage of pedestrians or vehicles, or to obstruct, molest, or to interfere with any person lawfully in any
- ▶ public place, by conduct including making remarks which are personally abusive, addressed in a face-to-face manner to a specific individual and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient.”



Current Ordinances

- ▶ Loitering 12.01.005 (cont.)
- ▶ Could be used to address the aggressive panhandling regardless of location and is content neutral as it focuses on the behavior of the aggressor.



Current Ordinances

- ▶ **Prohibition Against Linger – 12.03.010**
- ▶ Unlawful to linger which means, “remaining outdoors in any location in which the
- ▶ individual does not have an ownership interest or leasehold interest or permission from the owner or
- ▶ lessee while (1) repeatedly stopping or attempting to stop or interfere with the free passage of others, (2)
- ▶ repeatedly engaging in or attempting to engage others in conversation . . . “
- ▶ See 12.03.0140B1,2



Current Ordinances

- ▶ **Prohibition Against Lingerin – 12.03.010 (cont.)**
- ▶ Part of our safe streets regulations
- ▶ Could be use to address the aggressive panhandling on private property and is content neutral as is focuses on the behavior of the aggressor.



Current Ordinances

▶ Demonstrating On or Near Streets 18.13.027

“It shall be unlawful for any person in or upon any street, or in or upon any premises abutting thereon to make any speech or harangue, or to demonstrate, sell, or offer for sale goods, wares, or merchandise, or to display any sign, device, information, or exhibition, in consequence of which there is caused or created such a gathering of persons on such sidewalk as to interfere with pedestrian traffic thereon, or to cause a stopping of vehicles that results in vehicular traffic interference.”



Current Ordinances

- ▶ **Demonstrating On or Near Streets 18.13.027 (cont.)**
- ▶ Could be used to address any conduct by an individual that blocks the flow of pedestrian and/or vehicular traffic on roadways and sidewalks and is content neutral as it focuses on the behavior of the individual.



Current Ordinances

- ▶ **Right of Way and Duties: Pedestrians**
- ▶ Article 8 of Section 18 covers many of the pedestrian concerns addressed in the proposed ordinance 18.08.009G1–3
- ▶ See City Code of Indep. Sec. 18.08.001– 009



Enforcement Issues

▶ Police Issues

- Practical issue. If the violation occurs in a roadway, or more likely at an intersections, traffic would have to be stopped/slowed for officer safety to issue citation or to make an arrest.
- Image issue. Do we want videos of our officers ticketing or arresting panhandlers?



Enforcement Issues

▶ Prosecutor/Court issues

- Most homeless/transient people have a difficulty getting to court.
- Most guilty pleas/findings result in fines issued as a penalty. Since time to pay is mandated by the state, there is no immediate deterrent.
- I cannot see myself or the court recommending jail time for these defendants (unless there is a component of violence in the allegation).



What have other municipalities done?

In general, most municipalities with panhandling ordinances have focused on the time, place, manner of the solicitation and/or on curtailing aggressive panhandling.



What have other municipalities done?

Time, place, manner restrictions are constitutionally reviewed according to a lesser intermediate scrutiny test as the content of the speech is not in question.

Aggressive panhandling passes the constitutional test (so far) as it focuses on the action of the aggressor. It is not what they are after(content) but how they are after it.



What have other municipalities done?

▶ Columbia

- See Columbia Code of Ordinances Sec. 16
- Addresses aggressive panhandling
- Places restrictions on panhandling regarding distances from public restrooms, ATMs, bus stops, etc.



What have other municipalities done?

▶ Kansas City

- See Kansas City Code of Ordinances Sec. 50
- Addresses aggressive panhandling
- Places restrictions on where panhandling can occur by specifying areas such as the Zona Rosa shopping district, Plaza shopping district, Westport shopping district, etc.



Finally . . .

I hope this presentation was as respectful and as helpful as I hoped it would be.

I am certainly open to questions at this time.

And, if you think of any questions after the meeting, contact me at:

mlangford@indepmo.org or 816 325 7222

