

**REQUEST FOR COUNCIL ACTION**

MEETING DATE: 7/21/2014

**AGENDA SECTION:**

Hearings

**ORIGINATING DEPT:**

City Attorney

**ITEM DESCRIPTION:**

Aggressive Panhandling Ordinance

**PREPARED BY:**

Terry Adkins

At the June 16, 2014, Committee of the Whole meeting, I prepared a draft Aggressive Panhandling ordinance for the Mayor and Council's consideration. In summary, the draft Aggressive Panhandling ordinance prohibits behavior that goes beyond the First Amendment sanctioned activity and threatens, intimidates, or causes fear in the person being solicited. The Mayor and Council considered this draft at its June 23, 2014, and July 7, 2014, Committee of the Whole meetings. Ultimately, the Mayor and Council asked that this matter be brought before them as a public hearing.

I attach a copy of my draft ordinance, amended to include a notice requirement prior to any enforcement, as Attachment #1. The Worcester, Massachusetts version of an aggressive panhandling ordinance, upheld by the Federal First Circuit Court of Appeals on June 19, 2014, is attached as Attachment #2.

**COUNCIL ACTION REQUESTED:**

If the Council wishes to adopt an Aggressive Panhandling Ordinance, it should indicate which ordinance version it prefers along with any changes it desires to make to that version. It should further direct the City Attorney to give that ordinance its first reading.

## ATTACHMENT #1

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

AN ORDINANCE CREATING AND ENACTING CHAPTER  
85D OF THE ROCHESTER CODE OF ORDINANCES  
REGARDING AGGRESSIVE PANHANDLING.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Chapter 85D of the Rochester Code of Ordinances is hereby created and enacted to read as follows:

85D. AGGRESSIVE PANHANDLING

85D.01. Purpose. Subdivision 1. Panhandling is a growing social and public safety concern faced by cities of all sizes including Rochester. Many panhandlers passively ask for money or hold a sign. Federal and state courts have ruled such passive panhandling is protected speech under the First Amendment. This ordinance is not directed towards such protected speech. This ordinance is not intended to limit any person from exercising his or her constitutional right to solicit funds, picket, protest, or engage in other constitutionally protected activity.

Subd. 2. Other panhandlers are much more aggressive in seeking money or assistance by making loud and repeated demands, by touching or following the solicited person, or by panhandling in places that are particularly intimidating such as near an ATM machine, near a restroom, on a public bus, on a sidewalk café, or near a person's car. Under these circumstances, persons approached by panhandlers asking for money, objects, or other things of value are particularly vulnerable to real, apparent, or perceived coercion, fear, and intimidation when the request is accompanied by aggressive behavior or in a "captive audience" setting. This is considered Aggressive Panhandling. Federal and state courts have ruled Aggressive Panhandling to be outside the protection of the First Amendment. This ordinance is directed towards Aggressive Panhandling only.

Subd. 3. Aggressive panhandling is disturbing and disruptive to residents of and visitors to the City, and contributes to the loss of access to and enjoyment of public places out of a sense of fear, intimidation, and disorder. The purpose of this chapter is to protect the public safety, health, and welfare by balancing the rights of those who seek to panhandle with the rights of others to be free of intimidation, fear,

harassment or threats upon their personal safety as they travel upon the City streets and sidewalks. The City of Rochester has a duty to protect the rights of all people to exercise their First Amendment rights safely and without intimidation. The City of Rochester has a compelling governmental interest in imposing certain reasonable time, place, and manner regulations whenever potential First Amendment activities, such as panhandling, occur on streets, highways, sidewalks, plazas, and other public venues within the City.

85D.02. Definitions. Subdivision 1. The term “Aggressive Panhandling” shall mean Panhandling that occurs in any of the following situations or locations:

- A. The Panhandler intentionally touches or causes physical contact with the solicited person without the solicited person’s consent;
- B. The Panhandler repeats the solicitation when the solicited person has refused an immediate prior solicitation made at that location;
- C. The Panhandler blocks the path of the Solicited Person;
- D. The Panhandler follows behind, alongside, or ahead of the Solicited Person during or after the Panhandling Request with the intent to intimidate or continue the solicitation;
- E. The Panhandler speaks profane or abusive language, or uses an obscene gesture at the Solicited Person immediately before, during, or after the Panhandling event; or
- F. During the Panhandling event, the Panhandler makes any statement other than the solicitation or acts in any manner which would cause a reasonable person to feel harassed, intimidated, or compelled to make a donation.
- G. The Panhandler is within fifteen feet of an ATM or entrance to a financial institution.
- H. The Panhandler is within fifteen feet of a public restroom.
- I. The Panhandler is in a public transportation vehicle or public transportation facility, including a bus stop or taxi stand.
- J. The Panhandler is within 15 feet of a Sidewalk Café, Vending Cart, or outdoor dining area.

- K. The Panhandler approaches a vehicle which is traveling, parked, or stopped on a public street.
- L. The Panhandler approaches a person in line waiting to be admitted to a commercial or government establishment.

Subd. 2. The term “Automated Teller Machine” or “ATM” means a device linked to a financial institution’s account records, which is able to carry out transactions including, but not limited to, account transfers, deposits, cash withdrawals, and balance inquiries.

Subd. 3. The term “Panhandler” means a person who engages in Panhandling.

Subd. 3. The terms “Panhandling” or “Panhandling Event” means any solicitation made in person upon any street, public place, or park in which a person requests an immediate donation of money or other gratuity (by words, bodily gestures, or signs) when approaching or stopping another person. Panhandling or Panhandling Event includes the act of soliciting a donation by vocal appeal or by music, singing, or other street performance, as well as where the person being solicited receives an item of little or no monetary value in exchange for a donation under circumstances where a reasonable person would understand that the transaction is in substance a donation. Panhandling or Panhandling Event does not include the act of passively standing, sitting, or performing music, singing, or other street performance with a sign or other indication that a donation is being sought without any vocal request other than a response to an inquiry by another person.

Subd. 4. The term “Sidewalk Cafe” means any establishment licensed under chapter 73B.

Subd. 5. The term “Solicited Person” mean any person who receives a solicitation under circumstances that constitute Panhandling.

Subd. 6. The term “Vending Cart” means any establishment licensed under chapter 73D.

85D.04. Prohibition. No person shall engage in Aggressive Panhandling.

85D.05. Penalty. Subdivision 1. Any person who violates this chapter may be prosecuted for a misdemeanor offense subject to the notice requirement in subdivision 2.

Subd. 2. No person may be prosecuted under this chapter until the person has been informed by law enforcement, including a community

service officer, about: (A) the rules as to where panhandling can and cannot occur; (B) the penalty for violating those rules; and (C) the various charitable and social services available to the person.

Section 3. This Ordinance is effective as of the date of its publication.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

Ord10/85D ver2

Attachment: 85D ver2 (2312 : Aggressive Panhandling Ordinance)

## ATTACHMENT #2

## WORCESTER, MASSACHUSETTS AGGRESSIVE PANHANDLING ORDINANCE

**§ 16. Aggressive Begging, Soliciting and Panhandling – Ordained January 29, 2013 - 9839***(a) Declaration of Findings and Policy.*

The city of Worcester, acting by and through its City Council, hereby makes the following findings:

- (1) The City of Worcester has a duty to protect the rights of all people to exercise their First Amendment rights safely. The City of Worcester has a compelling governmental interest in imposing certain reasonable time, place and manner regulations whenever potential First Amendment activities such as begging, solicitation and panhandling occur on streets, highways, sidewalks, walkways, plazas, and other public venues within the City;
- (2) This ordinance is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in constitutionally protected activities. The provisions of this division are expressly established to most narrowly tailor any such restrictions to protect the First Amendment rights of all people within the City as well as the rights of non-participating people and their property, and to ensure the rights and safety of all people and/or property to the extent possible;
- (3) Persons approached by individuals asking for money, objects or other things of any value are particularly vulnerable to real, apparent or perceived coercion when such request is accompanied by or immediately followed or preceded with aggressive behavior such as:
  - (A) continuing to beg or solicit from a person after the person has given a negative response to such solicitation;
  - (B) touching another person or their property in the course of begging or soliciting without that person's consent;
  - (C) blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means;
  - (D) using violent or threatening gestures which are likely to provoke an immediate violent reaction from the person who is the subject of the solicitation or request for money;
  - (E) closely following behind, ahead or alongside a person who has been solicited or asked for money after that person has given a negative response to such solicitation;
  - (F) using profane, threatening, or abusive language, either during the solicitation or begging or following a refusal;
  - (G) begging or soliciting money from anyone who is waiting in line for tickets, entering a public building or riding on public transportation;
  - (H) begging or soliciting in a manner with conduct, words or gestures intended or likely to cause a reasonable person to fear imminent bodily harm, danger or damage to or loss of property or otherwise to be intimidated into giving money or any other thing of value; or
  - (I) begging or soliciting in a group of two or more persons in an intimidating fashion.
- (4) The City desires to respect a person's potential right to solicit, beg or panhandle while simultaneously protecting another's right to not be unduly coerced.
- (5) The City further finds that aggressive soliciting, begging or panhandling of persons within 20 feet of any outdoor seating area of any cafe, restaurant or other business, bank, automated teller machine, automated teller machine facility, check cashing business, mass transportation facility, mass transportation stop, or pay telephone also subjects people being solicited to improper and undue influence and/or fear and should not be allowed.
- (6) Persons approaching other individuals in an aggressive manner asking for money, objects or other things of any value after dark in public places inspire alarm and fear, which coupled with the inherent difficulty of establishing identity should not be allowed.

*(b) Purpose and Intent.*

The public purpose of this ordinance is to protect the rights of all peoples to exercise their First Amendment rights as well as the people and/or property of those who chose to be non-participating.

(c) *Definitions.*

As used in this section, the following words and terms shall have the meanings indicated. The meaning of all other terms and words not specifically defined shall be their generally accepted definition:

*"Beg," "begging" or "panhandling"* shall be synonymous and shall mean asking for money or objects of value, with the intention that the money or object be transferred at that time, and at that place.

*"Solicit" or "Soliciting"* shall include using the spoken, written, or printed word, bodily gestures, signs, or other means of communication with the purpose of obtaining an immediate donation of money or other thing of value the same as begging or panhandling and also include the offer to immediately exchange and/or sell any goods or services.

*"Aggressive manner"* shall mean:

- (1) approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value;
- (2) continuing to solicit from a person after the person has given a negative response to such soliciting;
- (3) intentionally touching or causing physical contact with another person or their property without that person's consent in the course of soliciting;
- (4) intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;
- (5) using violent or threatening language and/or gestures toward a person being solicited, or toward their property, which are likely to provoke an immediate violent reaction from the person being solicited;
- (6) following the person being solicited, with the intent of asking that person for money or other things of value;
- (7) soliciting money from anyone who is waiting in line for tickets, for entry to a building or for any other purpose;
- (8) soliciting in a manner with conduct, words or gestures intended or likely to cause a reasonable person to fear immediate bodily harm, danger or damage to or loss of property or otherwise be intimidated into giving money or any other thing of value;
- (9) begging in a group of two or more persons in an intimidating fashion;
- (10) soliciting any person within 20 feet of the entrance to, or parking area of, any bank, automated teller machine, automated teller machine facility, check cashing business, mass transportation facility, mass transportation stop, public restroom, pay telephone or theatre or place of public assembly, or of any outdoor seating area of any cafe, restaurant or other business;
- (11) soliciting any person in public after dark, which shall mean the time from one-half hour before sunset to one-half hour after sunrise.

*"Automated teller machine"* shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments which are made available to banking customers.

*"Automated Teller Machine Facility"* shall mean the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers during and after regular banking hours.

*"Public place"* shall mean a place to which the public has access, including, but not limited to: a place which a governmental entity has title, any street open to public use, bridge, sidewalk, walkway,

driveway, parking lot, plaza, transportation facility, school, park, or playground, and the doorways and entrances to building and dwellings.

“*Bank*” shall mean the same as defined in M.G.L. c. 167, § 1.

“*Check cashing business*” shall mean the same as that defined by M.G.L. c. 169A, § 1.

(d) *Prohibited Activity.*

It shall be unlawful for any person to beg, panhandle or solicit any other person in an aggressive manner. Any police officer observing any person violating this provision may request or order such person to cease and desist in such behavior and may arrest such person if they fail to comply with such request or order.

(e) *Penalty*

Any person found guilty of violating this subsection (d) of this ordinance shall be punished by a fine not to exceed \$50.00 for each such day during which the violation is committed, continued or permitted, or, that the Court may impose such community service as it shall determine in lieu of a monetary fine.



**REQUEST FOR COUNCIL ACTION**

MEETING DATE: 7/21/2014

**AGENDA SECTION:**

Hearings

**ORIGINATING DEPT:**

City Attorney

**ITEM DESCRIPTION:**

Pedestrian Safety Ordinance

**PREPARED BY:**

Terry Adkins

The Mayor and Council have indicated their concern with persons standing or sitting on traffic islands or medians. The fear is that these persons are placing themselves at risk of injury by standing or sitting so very close to traffic. There is also the concern that motor vehicle drivers will become distracted by the sight of these persons standing or sitting in places not intended for pedestrians. The Mayor and Council have indicated an interest in considering an ordinance prohibiting all persons from standing or sitting on traffic islands or medians.

I am aware of such an ordinance passed by the Worcester, Massachusetts City Council and upheld by the Federal First Circuit Court of Appeals in terms of its constitutionality under the First Amendment. I have attached my version of the Worcester ordinance. Essentially, this ordinance would prohibit any and all persons from standing or sitting on traffic islands or medians no matter their reasons for being there. The only exception would be for persons crossing the street, entering or getting out of a car, and work to repair, clean or maintain the traffic island or median.

At the July 7th Committee of the Whole meeting, the Mayor and Council asked that this ordinance be brought back before them as a public hearing at the July 21st council meeting.

**COUNCIL ACTION REQUESTED:**

If the Council wishes to adopt a pedestrian safety ordinance as depicted in the attachment, it should direct the City Attorney to give the ordinance its first reading.

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

AN ORDINANCE CREATING AND ENACTING SECTION 73.13 TO THE ROCHESTER CODE OF ORDINANCES, RELATING TO OCCUPYING A TRAFFIC ISLAND, MEDIAN, OR ROADWAY OF ANY STREET OR HIGHWAY.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Section 73.13 of the Rochester Code of Ordinances is hereby created and enacted to read as follows:

73.13. Traffic Island, Median, or Roadway. Subdivision 1. Public rights-of-way and easements, including traffic islands, medians, and roadways, are held by the City in trust for the public use to ensure the health, safety, and welfare of City residents and those traveling upon the rights-of-way. The City also possesses the power to prevent and abate public nuisances within public rights-of-way. The purpose of this section is to prevent the use of traffic islands or medians so as to constitute a traffic hazard, a risk to individuals occupying the islands or medians, or a condition dangerous to public safety all of which threatens the public's health, welfare, and safety.

Subd. 2. No person shall, after having been given due notice warning by a police officer or community service officer, persist in walking or standing on any traffic island or median, or upon the roadway of any street or highway, except for the purpose of crossing the roadway at an intersection or designated crosswalk, for the purpose of entering or exiting a vehicle at the curb, or for the purpose of repairing, cleaning, or maintaining the traffic island or median. Any police officer or community service officer observing any person violating this section may request or order such person to remove themselves from such traffic island or median, or roadway, and may arrest such person if they fail to comply with such request or order.

Subd. 3. For purposes of this section, the term "traffic island or median" shall mean any area or space within a roadway which is set aside by the use of materials or paint for the purpose of separating or controlling the flow of traffic and which is not constructed or intended for use by vehicular traffic or by pedestrians, unless such area or space is marked or otherwise designated as a crosswalk.

Subd. 4. For purposes of this section, the term "roadway" shall mean that portion of a street or highway between the regularly established curb lines or that part improved and intended to be used for vehicular traffic.

Section 2. This ordinance shall be effective from and after publication.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

Ord10/73.13

Attachment: 73.13 (2375 : Pedestrian Safety Ordinance)