

## MEMORANDUM

To: Dublin City Council  
Dana McDaniel, City Manager  
Chief Heinz von Eckartsberg, Chief of Police

From: Jennifer Readler, Law Director  
Michelle Harrison

Date: November 17, 2016

Re: Panhandling

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### QUESTION PRESENTED

What options are available to the City in response to the recent increase in resident complaints regarding the presence of panhandlers in Dublin?

### BRIEF ANSWER

Section 72.080(B)(1) of the Dublin Code of Ordinances prohibits solicitation on highways. Solicitation, including individual panhandling, is a form of speech entitled to First Amendment protection. As such, the City is limited in the adoption of further restrictions on solicitation.

### APPLICABLE LAW AND ANALYSIS

#### A. CENTRAL OHIO PANHANDLING ORDINANCES

The City of Dublin currently regulates panhandling on highways. The Dublin Code of Ordinances section 72.080(B)(1) provides:

Except as provided in (B)(2) of this section, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

Dublin's panhandling provision is similar to, and in some instances the same as, code provisions in other Central Ohio cities. For example:

- The Columbus Code of Ordinances section 2171.06 (b) states:

No person shall stand on a freeway, street, highway or roadway for the purpose of soliciting employment, business, or contributions from the driver or occupants of any vehicle.

- The Grove City Code of Ordinances section 371.06 (b)(1) states:  
Except as provided in division (b)(2) of this section, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.
- The City of Reynoldsburg Code of Ordinances section 371.06 (b)(1) states:  
Except as provided in division (b)(2) of this section, no person shall stand on a street or roadway within the city for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.
- The City of Grandview Heights Code of Ordinances section 371.06(b)(1) states:  
Except as provided in subsection (b)(2) hereof, no person shall stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.
- The Ohio Revised Code also prohibits highway solicitation in R.C. 4511.51(b)(1).

Although the majority of cities in Ohio do not have ordinances directly regulating panhandling, or have limited regulations in their traffic code similar to Dublin, several cities in Ohio have promulgated aggressive panhandling ordinances.

#### The City of Columbus:

- The City of Columbus prohibits aggressively begging in Columbus Code section 2333.01. Aggressively begging is defined as begging “with the intent to intimidate another person in to giving money, goods, or other property of value” and intimidate is defined to mean “to engage in conduct which would make a reasonable person fearful or feel compelled.” Begging can take the form of asking by words, bodily gestures, signs or other means.
- The City of Columbus also bans solicitation, meaning “to ask in person and by words for an immediate grant of money, goods, or other property of value as a charity from another person(s) when the person making the request is not known to the person(s) who are the subject of the request,” after 8:00 p.m. and before 7:00 a.m. during any dates on which Daylight Savings Time is in effect; or after 7:00 p.m. and before 7:00 a.m. during any dates on which Daylight Savings Time is not in effect.
- Solicitation does not include passively standing or sitting with a sign or other indicator a donation is being sought without any vocal request other than a response to an inquiry by another person.
- A person is guilty of aggressive panhandling or improper solicitation after dark if he/she engages in the above activity on streets, the sidewalk, or other public place, whether publicly or privately owned, including public transport, bus stop area, and parks.

#### The City of Euclid

- The City of Euclid also prohibits soliciting in an aggressive manner in any public place. A public place is defined as “a place where a governmental entity has title, to which the public or substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground.”
- Solicitors are banned from touching others without consent, blocking or interfering with the safe or free passage of a pedestrian or vehicle, following people, using profane language during solicitation or after refusal to make a donation, panhandling people standing in line to enter a commercial establishment, soliciting within 20 feet of a bank or ATM without consent, soliciting from the operator or occupant of a motor vehicle while the vehicle is located on any street, soliciting by stating a false need, soliciting in any public transportation vehicle or at any bus stop or train station, soliciting in groups, and soliciting within six feet of an entrance of a building.
- Panhandling does not include the act of passively standing or sitting with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry by another person.

#### The City of Newark

- The City of Newark also prohibits aggressively begging, defined as begging with the intent to intimidate another person into giving money, goods, or other property of value to the one begging, while on the street, sidewalk, or other public place, whether publicly or privately owned, within the City limits.

#### **B. DUBLIN MAY REGULATE PANHANDLING EVEN THOUGH SOLICITATION IS SPEECH PROTECTED BY THE FIRST AMENDMENT.**

Solicitation, including individual panhandling, is a form of speech entitled to First Amendment protection. *United States v. Kokinda* (1990), 497 U.S. 720, 110 S.Ct. 3115, *Speet v. Schuette*, 6th Cir. No. 12-2213, 2013 WL 4081907 (Aug. 14, 2013), *State v. Dean*, 1st Dist. No. C-050971, 170 Ohio App.3d 292, 298, 2007-Ohio-91, 866 N.E.2d 1134, 1138, ¶ 1. First Amendment protection limits the degree to which a City may regulate such speech. An ordinance that simply bans an entire category of activity that the First Amendment protects may be considered overbroad and facially invalid. *See Speet v. Schuette*, 6th Cir. No. 12-2213, 2013 WL 4081907 (Aug. 14, 2013) (internal quotations omitted) (concluding that “Michigan's interest in preventing fraud can be better served by a statute that, instead of directly prohibiting begging, is more narrowly tailored to the specific conduct, such as fraud, that Michigan seeks to prohibit. Indeed, [b]ecause First Amendment freedoms need breathing space to survive, a state may regulate in the area only with narrow specificity.” [redacted]) Additionally, regulation that is content-based cannot be enforced unless the government can demonstrate that it “is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *State v. Dean*, citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955 (1983).

However, content-neutral regulations may impose time, place, and manner restrictions, as long as they “are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” *State v. Dean*, 1st Dist. No. C-050971, 170 Ohio App.3d 292, 299, 2007-Ohio-91, 866 N.E.2d 1134, 1139, ¶ 14. In *State v. Dean*, the court considered

Cincinnati's aggressive solicitation statute that prohibited vocal solicitation in certain areas within the city. The court stated the principal inquiry in deciding whether a regulation is content-neutral is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* at ¶ 17. The court ultimately held the municipal code regulation was content-neutral and served an important government interest. In making this conclusion, the court noted:

- The regulation did not impose an absolute ban on solicitation, but rather restricted the time, place and manner of vocal solicitation. Nonvocal solicitation was not prohibited and vocal solicitation could still occur during the day in areas not specifically identified by the ordinance.
- The regulation, taken on its face, was not concerned with the message implicitly or expressly communicated by a solicitor's request for money.
- The regulation was not justified by reference to the content of the speech, but rather by the act of solicitation itself.
- The city had an interest in ensuring that its citizens feel free to move about on the city's streets and sidewalks without experiencing interference or intimidation.
- The city had an interest in promoting the public welfare by providing safe and accessible areas of commerce, which in turn "generate the tax revenue necessary to support essential public services and the economic productivity that is required to maintain and improve property within the City of Cincinnati."
- The city had an interest in preventing crime and in facilitating "the prosecution of cases of aggressive and improper solicitation."

### **C. OPTIONS AVAILABLE TO DUBLIN**

Moving forward, Dublin has several options. Dublin may regulate panhandling if the regulation stays within constitutional limits. Dublin's current code provision is content-neutral because it imposes time, place, and manner restrictions. It only prohibits panhandling on the highway and the City has a significant government interest in maintaining safety by prohibiting pedestrians from standing on highways or streets and interfering with traffic.

Although the City has broader authority to regulate highways and streets due to its important government interest in safety, the City may not likewise impose a complete ban on panhandling on sidewalks and rights-of-way. Sidewalks and rights-of-way are afforded greater protection under the law.

Presently, Dublin only excludes panhandling on a highway. If Dublin wishes to take a more aggressive stance it can consider adopting an ordinance similar to the one in Columbus, also prohibiting aggressive panhandling and solicitation after dark. Although large cities have regulated these activities as time/place/manner restrictions, Dublin still runs the risk that such an ordinance may be challenged as a violation of the First Amendment.

The penalties for aggressive panhandling can be consistent with the existing consequences for violating the current panhandling ordinance. As provided in Dublin Code section 72.080 (G), individuals who violate the panhandling provision in section 72.080(B) and ask for contributions on areas designated as highways are guilty of a minor misdemeanor on their first offense. If, within

one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of divisions (A) to (D) of Code section 72.080 is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of divisions (A) to (D) of Code section 72.080 is guilty of a misdemeanor of the third degree.

If the panhandlers are on private property and not a highway, law enforcement officers can still act in conjunction with the property owner, issuing warnings or citations for criminal trespass instead. Dublin Code section 131.06 provides:

- (A) No person, without privilege to do so, shall do any of the following:
  - (1) Knowingly enter or remain on the land or premises of another;
  - (2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;
  - (3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;
  - (4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.
- (B) It is no defense to a charge under this section that the land or premises involved was owned, controlled or in custody of a public agency.
- (C) It is no defense to a charge under this section that the offender was authorized to enter or remain on the land or premises involved when such authorization was secured by deception.
- (D) (1) Whoever violates division (A) of this section is guilty of criminal trespass, a misdemeanor of the fourth degree.

## **CONCLUSION**

Section 72.080(B)(1) of the Dublin Code of Ordinances prohibits solicitation on highways. If Dublin wishes to take stronger action, it can also consider adopting an aggressive panhandling ordinance. After consulting with the Police Department, it does not appear that aggressive panhandling has historically been a problem in the City in the past. The City's ability to regulate passive panhandlers who are located in public places, such as sidewalks, and are not creating a safety concern or trespassing will remain limited.

If you have further questions, please let us know.