

AGENDA # _____

CITY OF MADISON, WISCONSIN

REPORT OF:	City Attorney	PRESENTED	<u>August 7, 2012</u>
		REFERRED	_____
TITLE:	Panhandling Ordinance Amendment Legistar File No. 26604	REREFERRED	_____

AUTHOR:	Michael P. May City Attorney	REPORTED BACK	_____

DATED:	July 30, 2012	ADOPTED	_____ POF _____
		RULES SUSPENDED	_____
		ID NUMBER	<u>Legistar 26604</u>

TO: THE MAYOR AND COMMON COUNCIL:

After reviewing this matter, the City Attorney recommends that the Common Council consider the original version of this ordinance amendment, not the substitute.

Panhandling is afforded some First Amendment protection by the courts. The legal issues that arise normally include the areas covered and the type of activity that constitutes panhandling.

Area Covered.

The only substantive changes in the ordinance are to expand the areas covered: it now reaches the entire Mall-Concourse area and any area within 150 feet of a licensed establishment.

Fort Lauderdale adopted a similar ordinance that banned panhandling in an area that was known to attract visitors from the area and tourists from out of town. The Court found that this approach was allowed. *Smith v. City of Fort Lauderdale*, 117 F. 3d 954 (11th Cir. 1999). We think this supports the ban on the Mall Concourse area.

With respect to other limitations on panhandling, the courts look to the problem being addressed by the limitation and whether the limit is reasonable. Thus, there may be different distances appropriate for different problems. The new limitation of 150 feet from a licensed establishment is meant to deal with the problem of panhandling leading directly to obtaining alcohol. While we think this may be at the outer edge of reasonableness to address this problem, we think the limit likely would withstand challenge.

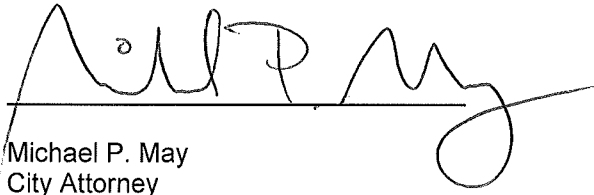
Conduct Covered.

The City Attorney had some concern about what was covered by the new language defining "procure a handout." Did it reach street musicians or performers who do not otherwise ask for a handout? The substitute was drafted in an attempt to clarify the issue, but it raised other legal issues by specifying certain types of speech that were outside the ordinance. After further discussions with Lead Prosecutor Assistant City Attorney Marci Paulsen, and Captain Carl Gloede of the MPD, we do not think the definition of "procure a handout" would reach such passive activity.

The ordinance has always used the phrase "procure a handout" to define panhandling, but never had a definition. The language in the ordinance defining "procure a handout" is not meant to change the current application of the ordinance; it is not intended to expand or reduce those currently covered. It simply adds a definition (used in many other cities' ordinances) that was lacking before.

Conclusion.

The form of the ordinance that the Council should consider is the original version, not the substitute. We believe the ordinance meets legal requirements. It is intended to make only two changes from the current ordinance by expanding limitations on panhandling to the Mall-Concourse area and to within 150 feet of a licensed establishment.



Michael P. May
City Attorney