
REPORT OF: **Madison Police Department**

TITLE: **Recommendations: Legislative File No. 24148 - Amending Section 12.325(1) to remove the street-use permit exception to the prohibition against soliciting from the highway.**

DATED: **November 29, 2011**

MGO 12.325 (SOLICITATION ON HIGHWAY PROHIBITED), which was adopted in 1992, provides an enforcement tool to ensure the safety and well being of pedestrians, vehicle drivers and solicitors while occupying roadways, medians or adjacent sidewalks within the city, by prohibiting conduct which creates significant traffic and pedestrian safety hazards. The purpose and intent of the ordinance is to protect against physical injury and motor vehicle accidents and ensure the safe and orderly flow of traffic through roadways and streets in the City of Madison.

MGO 12.325 states “no person shall be upon or go upon the highway for the purpose of soliciting...charitable or other contributions of any kind from the occupant of any vehicle” The ordinance was amended on 11/9/10 to include the exception “unless such person shall have obtained a Street Use Permit pursuant to MGO Sec. 10.056 or as authorization under these ordinances.”

Additionally Wis. Stats. Sec. 346.29(2) states “no person shall stand or loiter on any roadway other than in a safety zone if such act interferes with the lawful movement of traffic.”

Discussion

The practice of persons soliciting on the highway, regardless of the cause, is unsafe for both the person engaging in such solicitation and for others on or about the highway. These activities constitute a serious impediment to the safe and orderly flow of traffic in the City of Madison.

Solicitation by pedestrians of vehicle drivers may cause a significant increase in safety hazards within the City. Pedestrians engaging in such solicitation from occupants of vehicles distract drivers from their primary duty to watch traffic and be alert for potential hazards in the roadways and to observe all traffic control signs. This may result in the delay and obstruction of the public’s free flow of travel, as well as potential congestion and blockage of the roadway. Such soliciting may also cause pedestrians on highways to enter traffic lanes creating additional hazards.

To further illustrate the danger one need look no further than incidents of Emergency Personnel who have been injured or killed on the roads rendering aid, while wearing reflective vests and with emergency vehicles present flashing lights to warn motorists to slow down. Even at reduced speeds of 15-20 mph, a 3,000-pound vehicle can be fatal to a pedestrian. It's dangerous, even in the median, because there is no place to go.

Due to these public safety issues, as well as citizen complaints, MPD has focused enforcement efforts on this very issue. We have been encouraging officers to contact and cite those soliciting on and along highways. They have issued dozens of citations and in some cases made physical arrests. Our efforts have also included media releases, as well as information about this in District Newsletters. The exemption currently allowed by ordinance conflicts with the work our officers have done to address this problem. It is our belief that the City should not make a distinction between non-profit charitable and personal soliciting as it creates a double standard regarding similar conduct.

Summary

There are significant government interests in promoting vehicular safety and the free flow of vehicular and pedestrian traffic. The solicitation of and panhandling for funds within or adjacent to the intersections and traffic lanes of streets and highways within the City presents a clear danger to the health, safety and welfare of the persons soliciting or panhandling for funds and to the passengers and operators of vehicles using those roadways. The time necessary to complete a transaction involving solicitation or panhandling may cause the driver of a motor vehicle to delay proceeding in accordance with traffic signals or cause a solicitor or panhandler in a right-of-way while traffic is stopped temporarily to remain in the roadway after traffic resumes movement. It may also endanger the health, safety and general welfare of the public by causing distraction of motorists, unsafe pedestrian movement within traffic lanes, sudden stoppage or slow-down of traffic, rapid lane changing, and other dangerous traffic movement which could result in increased vehicular accidents and motorist or pedestrian injuries and fatalities.

Solicitation and panhandling on the highway are inherently dangerous activities which compromise both vehicular and pedestrian safety and create dangers such as driver distraction and the potential of the solicitor or panhandler causing an accident or being the victim of an accident. Individuals and organizations have ample alternative channels of communication and locations to solicit fundraising. Although this may seem overly restrictive on non-profit organizations engaged in fundraising activities, the purpose of the ordinance is public safety. The safety of the volunteers and of the motorists must override the monetary benefit to the organizations or cause for the fundraising.

The Madison Police Department supports this amendment because people on foot should not be interacting with moving traffic, no matter how important the cause or the charity. Fundraising for charitable causes can and should be conducted in a safe place, away from the roadway and away from moving traffic.