

CITY OF MADISON, WISCONSIN

THIRD SUBSTITUTE ORDINANCE _____

PRESENTED June 12, 2012
REFERRED PSRC

Amending Section 24.12 of the Madison General Ordinances to prohibit panhandling in the State Street Mall/Capitol Concourse and to eliminate the panhandling restriction in front of nonresidential buildings.

LEGISTAR # 26604

Drafted by: Marci Paulsen

Date: September 11, 2012

SPONSOR: Mayor Soglin & Ald. Verveer

DRAFTER'S ANALYSIS: This third substitute ordinance creates definitions for the Mall/Concourse for purposes of this ordinance and what it means to procure a handout. This ordinance prohibits individuals from procuring or attempting to procure a handout in the Mall/Concourse area. This ordinance changes the prohibited distance for procuring a handout at an ATM from 50 feet to 25 feet. Due to recent court decisions, this ordinance removes the restriction of procuring a handout near buildings that contain nonresidential uses and the prohibition of procuring a handout while sitting on the sidewalk. Unlike prior versions, the third substitute does not address panhandling near licensed establishments. The sponsors may address that issue in another ordinance after further study.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 24.12 entitled "Menacing or Aggressive Panhandling Prohibited" of the Madison General Ordinances is amended to read as follows:

"24.12 MENACING OR AGGRESSIVE PANHANDLING PROHIBITED.

- (1) Purpose. The purpose of this ordinance is to ensure unimpeded pedestrian traffic flow, to maintain and protect the physical safety and well-being of pedestrians and to otherwise foster a safe and harassment-free climate in public places in the City of Madison. The ordinance also provides protections in the State Street Mall/Capitol Concourse area. The Mall/Concourse is a special and unique area of the City of Madison, constituting the connection between the University of Wisconsin and the State Capitol, and having numerous businesses, restaurants and entertainment venues. The Mall/Concourse is also a Transit Mall, with limited or no access to motor vehicles by the public. The City of Madison has a significant public and governmental interest in encouraging the public presence of residents and visitors in the Mall/Concourse, and their unimpeded use of public areas and private businesses in the area by insuring that residents and visitors are able to walk unobstructed on the State Street Mall/Capitol Concourse without being stopped and asked for a handout. Thousands of individuals walk in the Mall/Concourse area on a daily basis and the City has a significant interest in providing a safe, pleasant environment and encouraging visitors to frequent this area. The City has received regular complaints from businesses and residents of the Mall/Concourse on the deleterious effect of panhandling in the area. The city finds that a ban on panhandling in the Mall/Concourse will serve these important interests.
- (2) Definitions. As used in this section:

Approved as to form:

- (a) "Intersection" has the meaning designated in Wis. Stat. § 340.01(25).
- (e) "Known panhandler" means a person who within one year previous to the date of arrest for violation of this section has been convicted in a court of competent jurisdiction of any civil or criminal offense involving panhandling.

"Mall/Concourse" is defined to include the 100 through 800 blocks of the State Street Mall and the Capitol Concourse consisting of the first and 100 blocks of North and South Carroll Streets, the first blocks of East and West Washington Avenue, the first and 100 blocks of East and West Main Streets, the first and 100 blocks of North and South Pinckney Streets and the first and 100 blocks of East and West Mifflin Streets, the first block of Martin Luther King Jr. Blvd, the first block of Wisconsin Avenue, the first blocks of North and South Hamilton Streets, and the first block of King Street, as well as the additional areas of Elizabeth Link Peace Park and the Municipal Building Vending Area.

"Procure a handout" means to request from another person an immediate donation of money, goods or other gratuity, and includes but is not limited to seeking donations.

~~(b) "Public place" or "Place open to the public" is an area generally visible to public view and includes all places open to the public and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and all buildings open to the general public including those which serve food or drink, or provide entertainment, and the doorways or entrances in buildings or dwellings and the grounds enclosing them;~~

~~(d) A conversation or gesture or both shall be construed as "threatening" if a reasonably prudent individual would perceive such conduct as intending to result in the procurement of money or goods by threat or coercion.~~

~~(e) Behavior shall be construed as "aggressive" or "intimidating" if a reasonably prudent individual could be deterred from passing through or remaining in or near any thoroughfare, or place open to the public because of fear, concern or apprehension.~~

(3) ~~In or near any thoroughfare or place open to the public, no person either individually or as part of a group shall procure or attempt to procure a handout from another in a manner or under circumstances manifesting an express or implied threat or coercion. Among the circumstances which may be considered in determining whether such purpose or behavior is manifested are the following: that such person is a known panhandler; that such person repeatedly and in a threatening fashion, beckons to, stops, or attempts to stop passer(s)-by; that such person engages passer(s)-by in threatening conversation; or that such person utilizes threatening bodily gestures. A conversation or gesture or both shall be construed as threatening if a reasonably prudent individual would perceive such conduct as intending to result in the procurement of money, goods or other gratuity by threat or coercion. The violator's conduct must be such as to demonstrate a specific intent to induce, solicit, or procure from another goods or money by threat or coercion. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.~~

(4) ~~In or near any thoroughfare or place open to the public, no person either individually or as part of a group shall procure or attempt to procure a handout from another in an aggressive or intimidating manner. Among the circumstances which may be considered in determining whether such purpose or behavior is manifested are the following: that such person is a known panhandler; that such person continues to beckon to, accost or follow or ask passer(s)-by for a handout after the passer(s)-by has failed to respond or has told the person "no"; that such person engages in a course of conduct or commits any act which harasses or intimidates the passer(s)-by; or that such person utilizes or attempts to utilize bodily gestures or physical contact to impede the path of any passer(s)-by, including but not limited to unwanted touching or blocking the path or impeding the free movement of the passer(s)-by. Behavior shall be construed as aggressive or intimidating if a reasonably prudent individual could be deterred from passing through or remaining in or near any thoroughfare or place open to the public because of fear, concern or apprehension of said behavior. The violator's conduct must be such as to demonstrate a specific intent to induce, solicit, or procure from another~~

goods or money by aggressive or intimidating behavior. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

- (5) It shall be unlawful for any person to procure or attempt to procure a handout within ~~twenty-five (25)~~ twenty-five (5025) feet of an automatic teller machine (ATM) or within twenty-five (25) feet of any open sidewalk cafe.
- (6) It shall be unlawful for any person, after having been warned that such activity is prohibited, to procure or attempt to procure a handout within twenty-five (25) feet of an intersection ~~or within twelve (12) feet of any building that contains nonresidential uses or within twenty (20) feet of any building entrance that contains nonresidential uses.~~
- (7) It shall be unlawful for any person to procure or attempt to procure a handout within the Mall/Concourse area.
- (7) ~~It shall be unlawful for any person to sit or recline on a public sidewalk with an intent to procure or attempt to procure a handout.~~
- (8) Penalty. Any person violating this section shall be subject to a forfeiture of not less than ten dollars (\$10) nor more than five hundred dollars (\$500), notwithstanding any provision of this chapter setting a different penalty.
- (9) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.**</u>	<u>Deposit</u>
Menacing p Panhandling prohibited.	24.12	\$100, 1st \$200, 2nd \$300, 3rd and sub"