CITY of NOVI CITY COUNCIL

Agenda Item E
February 3, 2014

SUBJECT: Approval of Ordinance No. 14-23.30 to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in Public Places," in order to revise existing regulations relating to begging and to provide a specific prohibition against aggressive begging, as defined. **SECOND READING**

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

The Federal Sixth Circuit Court of Appeals upheld a ruling from the Western District of Michigan finding the State of Michigan's prohibition on begging, MCL 750.167(1)(h), to be unconstitutionally-broad prohibition on First Amendment speech rights. The language in the State statue is similar to the City of Novi's Code of Ordinances. As a result, the City of Novi needs to amend its ordinance to reflect the ruling of the Sixth Circuit Court.

The Court made clear that it was striking down the State statue because it was a complete and outright ban against a form of speech. It also specifically stated that "Michigan's interest in preventing fraud can be better served by a statue that, instead of directly prohibiting begging, is more narrowly tailored to specific conduct, such as fraud, that Michigan seeks to prohibit."

RECOMMENDED ACTION: Approval of Ordinance No. 14-23.30 to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in Public Places," in order to revise existing regulations relating to begging and to provide a specific prohibition against aggressive begging, as defined. **SECOND READING**

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road Suite 200 ~ Farmington Hills, Michigan 48331-5627
Phone: 248.489.4100 | Fax: 248.489.1726

Thomas R. Schultz
tschultz@jrsjlaw.com

www.jrsjlaw.com

1/2/2014
To: Mayor and City Council members
For your early review/questions; being teed up for City Council consideration later this month.
Clay

December 30, 2013

Mayor Robert Gatt
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

City Council
City of Novi
45175 West Ten
Novi, MI 48375-

RE: Draft Amendment to the Begging Ordinance

Dear Mayor and Council Members:

This past summer (August 2013), the federal Sixth Circuit Court of Appeals upheld a ruling from the Western District of Michigan finding the State of Michigan's prohibition on begging, MCL 750.167(1)(h), to be an unconstitutionally-broad prohibition on First Amendment speech rights. *Speet v Schuette*, 726 F3d 867 (6th Cir 2013). The language in the state statute is very similar to the language in the Novi's Code of Ordinances, found in Chapter 22, under "Offenses." As a result, the City needs to amend its ordinance to reflect the ruling of the Sixth Circuit—the federal court one step below the U.S. Supreme Court for the State of Michigan.

After the ruling in *Speet,* the City received correspondence from the ACLU, which apparently prosecuted the suit in the federal district and appellate courts. The letter pointed out the similarity between the City's ordinance and the state statute, and suggested that the City repeal its ordinance. We sent correspondence to the City Council that included a copy of the ACLU's letter and a copy of the Sixth Circuit's opinion, and indicated that we would look at the language and propose an ordinance amendment.

We have researched a number of other recent cases, and various ordinances from around the state and around the country. We have also taken note of the fact that the ACLU had targeted the City of Royal Oak for its enforcement activities a few years ago. What came from that discussion with Royal Oak was a more narrowly-tailored ordinance against what the City called "aggressive begging." The ACLU went on record as stating that, in its view, the revised ordinance withstood review under the First Amendment. (We have attached a couple of articles referring to the ACLU's reaction to the Royal Oak ordinance for your information.)

The Sixth Circuit opinion at issue found the state statute to be unconstitutional "on its face"—i.e., that it was an unconstitutionally broad prohibition on First Amendment rights merely by its existence, regardless of how it might be applied by the state. At the end of its opinion, however, the Court of Appeals did specifically acknowledge the State's interest in limiting

begging for purposes of preventing fraud and duress. The Court made clear that it was striking down the state statute because it was a ***complete and outright ban*** against a form of speech. It also specifically stated 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 specific conduct, such as fraud, that Michigan seeks to prohibit."

The attached ***draft*** ordinance amendment is modeled after Royal Oak's aggressive begging ordinance. It uses much of the actual language from the Royal Oak ordinance. However, it does add a couple of additional limitations, including a limitation on begging/soliciting within 20 feet of an ATM or the entrance to a bank, which is a common provision in begging ordinances around the country (including other so-called aggressive begging ordinances). It also adds the concept of knowingly making a false or misleading representation, which is intended to pick up the fraud aspect of the *Speet* opinion.

The proposed ordinance is for discussion at first reading. Additional comments or questions in light of the somewhat unusual posture of this amendment are welcome.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Thomas R. Schultz

TRS:jah
Enclosures

5 comments

Royal Oak gets thumbs-up with new begging law

Print (http://blog.mlive.com/news/detroit_impact/print.html?entry=/2011/05/royal_oak_gets_thumbs-up_with.html)

AP (http://connect.mlive.com/user/mliveapuser/index.html) By The Associated Press (http://connect.mlive.com/user/mliveapuser/posts.html)
Follow on Twitter (http://twitter.com/AP)
on May 16, 2011 at 10:18 PM, updated May 16, 2011 at 10:24 PM

The American Civil Liberties Union is praising Royal Oak for changing a tough law targeting panhandlers.

The Detroit suburb known for its vibrant nightlife now is prohibiting only aggressive begging, not all begging. The ACLU had said the previous ordinance was unconstitutional.

Royal Oak panhandlers now are banned from blocking a path, touching someone without consent and soliciting at outdoor cafes unless they have the owner's consent.

In a statement Monday, the ACLU said it hopes other cities will follow Royal Oak's example. The group says at least 12 Oakland County communities completely ban all begging.

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Source: Downtown Publications

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Aggressive begging needs to be controlled

December 02, 2013

No one likes to be approached by a panhandler for a handout, but this past summer the U.S. Sixth Circuit Court of Appeals affirmed a lower court ruling in a Grand Rapids case which held that individuals peacefully begging is an entitled protected constitutional right under the First Amendment, as a means of free speech.

The federal courts agreed with the ACLU, which had taken on the case of two men arrested for begging, ruling that Michigan's anti-begging law, which had been on the books for more than 80 years, was unconstitutional. On October 29, 2013, the ACLU of Michigan sent out letters to 84 municipalities across the state notifying them that anti-begging ordinances on their books are unconstitutional, and should be repealed. Included in that mailing were several communities in Oakland County.

Of the municipalities, Birmingham repealed its anti-begging ordinance this past summer, and Royal Oak changed theirs in 2011, amending a portion of their city code that prohibited "loitering in a public place for the purpose of begging", to singling out forms of "aggressive begging."

Royal Oak's new ordinance prohibits certain specific aggressive behaviors such as touching the solicited person without their consent; blocking the path of the person being solicited, or the entrance to any building or vehicle; following behind, alongside or ahead as the person walks away from the solicitor after having been solicited; using abusive language, either during the solicitation, or following a refusal to donate, or making any statement, gesture or other communication that would cause a reasonable person to be fearful or feel compelled to make a donation; and soliciting at a sidewalk cafe without the permission of the owner of the cafe.

Dan Korobkin, attorney for the ACLU, asserts that "peacefully standing on the sidewalk asking for change" can't be made illegal, but "there's nothing wrong with making it illegal to trespass on private property, to assault people or harass them, or to commit fraud -- but those are all already against the law."

Korobkin asserts that the courts have ruled that conduct that is aggressive can be limited by law, "such as if someone asks for spare change, and you decline, and they kept following you down the street and asking you over and over again, harassing you, and if they're using language that would make a reasonable person feel coerced or intimidated."

He did emphasize that some foul language may be protected as free speech.

Korobkin's point is that it's not a crime to be poor. Granted. But's it's also not a right to personally intimidate others, allege it's begging, and use the refrain of "free speech." While many Oakland County communities are assessing their anti-begging ordinances in light of the letters they received from the ACLU, we urge them all to look at Royal Oak's revised ordinance and consider the aggressive begging provision.

While some communities may not have a current issue with begging, no one can anticipate when an opportunist seizes upon their municipality. Wise leaders prepare for the possibilities of the future, sparing their citizens from the intrusions of aggressive and intrusive behavior with the potential to harm the community in the same way an intrusive species can harm the environment.

[Draft 12.30.13]

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 14-23.30

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 22, "OFFENSES," ARTICLE I, "IN GENERAL," SECTION 22-7, "BEGGING IN PUBLIC PLACES," IN ORDER TO REVISE EXISTING REGULATIONS RELATING TO BEGGING AND TO PROVIDE A SPECIFIC PROHIBITION AGAINST AGGRESSIVE BEGGING, AS DEFINED.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in public places," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

22-7. Begging in public places.

(1) Except as otherwise provided in this code of ordinances, or as otherwise authorized by law, no person shall beg or solicit for the immediate payment of money or goods from another person under any of the following circumstances:

a. Within 20 feet of a bank or automated teller (ATM) machine.

b. By soliciting a patron at a sidewalk café without first having obtained the permission of the operator of the café.

c. By knowingly making a false and misleading representation in the course of a solicitation.

d. In a manner that constitutes aggressive begging, which shall mean the following:

(1) Touching the solicited person without that person's consent.

(2) Blocking the path of the person being solicited, or the entrance to any building or vehicle.

(3) Engaging in repeated requests after a refusal by the person being solicited.

(4) Following behind, alongside or ahead of a person who walks away from the solicitor after having been solicited.

(5) Using abusive language, either during the solicitation or following the refusal to donate, and making any statement, gesture, or other communication that would cause a reasonable person to be fearful or feel compelled to make a donation.

(2) This provision is intended to protect persons from threatening, intimidating, or harassing behavior; to keep public places safe for use by all members of the community; and to maintain and preserve public places as places where all members of the community can interact in a peaceful manner. This provision is also intended to facilitate the free flow of pedestrian and vehicular traffic on streets and sidewalks within the City. It is not the City's intent to limit people from exercising their constitutional right to solicit funds or engage in other constitutionally-protected activities. Rather, this provision is intended 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 insure they will be free from duress and/or fraud to the extent possible.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

_____

Robert J. Gatt, Mayor

_____

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2014.

_____

Maryanne Cornelius, City Clerk

[Draft 12.30.13]

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 14-23.30

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THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in public places," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

22-7. Begging in public places.

~~It shall be unlawful for any person to be found begging in a public place. Begging is defined as soliciting money or goods in a public place without rendering or offering to render goods or services in return.~~

(1) Except as otherwise provided in this code of ordinances, or as otherwise authorized by law, no person shall beg or solicit for the immediate payment of money or goods from another person under any of the following circumstances:

a. Within 20 feet of a bank or automated teller (ATM) machine.

b. By soliciting a patron at a sidewalk café without first having obtained the permission of the operator of the café.

c. By knowingly making a false and misleading representation in the course of a solicitation.

d. In a manner that constitutes aggressive begging, which shall mean the following:

(1) Touching the solicited person without that person's consent.

(2) Blocking the path of the person being solicited, or the entrance to any building or vehicle.

(3) Engaging in repeated requests after a refusal by the person being solicited.

(4) Following behind, alongside or ahead of a person who walks away from the solicitor after having been solicited.

(5) Using abusive language, either during the solicitation or following the refusal to donate, and making any statement, gesture, or other communication that would cause a reasonable person to be fearful or feel compelled to make a donation.

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_____

Robert J. Gatt, Mayor

_____

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2014.

_____

Maryanne Cornelius, City Clerk

City Council meeting minutes excerpt

January 21, 2014

5. Approval of Ordinance No. 14-23.30 to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in Public Places," in order to revise existing regulations relating to begging and to provide a specific prohibition against aggressive begging, as defined. **FIRST READING**

City Manager Pearson said it is something our City Attorney and Police have developed. It is in light of the Supreme Court decision regarding this and follows a model that Royal Oak had adopted. The City Attorney and Police have suggested this aggressive begging ordinance to be site specific for a valid reason.

Member Mutch said he could not recall seeing anyone out begging in Novi. He asked about how many incidents have there been in the past. City Manager Pearson said the ordinance was never deployed but he thought it falls in the category of any ordinances that are preventative. He recommended it be there as a tool for law enforcement. Member Mutch wondered why it is being brought up if it has never been used.

Mayor Gatt said as a former police officer he would say it gives our law enforcement agency a tool to use if it became a problem. If there wasn't a law regulating it, then there would be no ability to address the issue.

Member Mutch appreciated their perspective, but he could see the utility if it had been used in the past.

Member Fischer said there are a lot of laws and ordinances that have never been used but he thought they have done a good job as an Administration dealing with pressure that has been put on the City to look at this in changing legal times.

CM 14-01-018 **Moved by Fischer, seconded by Wrobel; CARRIED UNANIMOUSLY:**

To approve Ordinance No. 14-23.30 to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article I, "In General," Section 22-7, "Begging in Public Places," in order to revise existing regulations relating to begging and to provide a specific prohibition against aggressive begging, as defined. FIRST READING

Member Wrobel said he will be supporting this because the City was basically forced into to this by the Circuit Court of Appeals decision and we might as well address it now. Hopefully, it won't be used in the future but would rather have on record if needed.

Roll call vote on CM 14-01-018

Yeas: Gatt Staudt, Casey, Fischer, Markham, Mutch, Wrobel
Nays: None