

# LEGAL AID SOCIETY OF MINNEAPOLIS

DOWNTOWN OFFICE  
430 FIRST AVENUE NORTH, SUITE 300  
MINNEAPOLIS, MN 55401-1780

Intake: 612-334-5970  
Phone: 612-332-1441  
Facsimile: 612-334-5755  
TDD: 612-332-4668

May 18, 2004

Dan Niziolek  
350 South 5<sup>th</sup> Street  
Room 307  
Minneapolis MN 55415

Re: Begging, Loitering Ordinance Changes

Dear Council Member Niziolek:

Thank you for the chance to comment on the City's proposed revisions to its begging and loitering ordinances.

## **Loitering**

We support the City's attempt to add more specificity to its loitering ordinance. "Legislation directed merely at loitering, especially where the term is not defined or the circumstances under which the statute would apply are not sufficiently set out, are unconstitutionally vague where they fail to prescribe any standards by which reasonable people can determine what conduct violates the law, and by which law enforcement officials can determine who is loitering." 77 Am. Jur. 2d Vagrancy, section 3.

**We request that you finish the job of removing vagueness by striking the phrase "or any other act prohibited by law."** Whereas the circumstances you provide may save the ordinance from unconstitutional vagueness as it applies to prostitution and illegal narcotics, the ordinance still appears unconstitutionally vague as it applies to other prohibited acts, for which no circumstances are given to guide residents or police officers. The word "solicit" does not narrow the ordinance enough, because "solicit" has a broad range of meanings including "try to obtain," "beg, entreat," and "tempt, entice."

Our impression is that loitering is sometimes used, at least by police officers, as a catch-all offense. For example, one police report for loitering by a person experiencing homelessness reads as follows:

Officers were dispatched to an assault in progress at the above location. The assault was unfounded. AP was found to have an open bottle of Kamchatka vodka. AP was issued an administrative citation for loitering with an open bottle and released. The bottle of open vodka was property inventoried. MP-04-067207, March 24, 2004.

No mention is made of narcotics, prostitution, or any other illegal act beyond the open bottle violation, for which the accused was separately charged.

May 18, 2004

Page 2

**We also question the use of geographic restrictions**, particularly where the area prescribed is fairly large – such as entire city neighborhood. We understand the need for “no contact” orders and for ordering a probationer to avoid a certain address, but we are less convinced by the need for and the constitutionality of wider bans. We particularly worry about the inclusion of “on-the-record” in the ordinance. If a probationer is to be banned from an area, surely that ban should be given to him or her in writing. How many people know the boundaries of a city neighborhood?

### **Begging**

The proposed “aggressive solicitation” ordinance is a big improvement over the begging ordinance recently found unconstitutional. There are several points, however, where it casts its net too broadly. The first is by including “approaching” pedestrians as an example of aggressive solicitation in the policy section. Simply approaching someone should not be viewed as aggressive or illegal absent some other conduct that is threatening or harmful. Approach is a very broad term; it simply means to “come nearer.” When anyone walks down a sidewalk, he or she comes nearer to other people. **The word “approach” should be stricken.**

### **We also recommend striking sections (2)(e) and (2)(f) of the prohibitions in the ordinance.**

Section (e), unlike the rest of the ordinance, is a vague catch-all that does not provide adequate guidance to residents or police officers. Different people will have widely different opinions about what type of approach is “likely to intimidate a reasonable person into responding affirmatively to the solicitation.” The other sections do a more than thorough job in prescribing intimidating behaviors.

Section (f) is odd in that it does not deal at all with the solicitor’s conduct toward the solicitee, but rather with the condition of the solicitor at the time. “Under the influence of” is also a very broad standard. Why is it more aggressive to ask for change after consuming a drink than before consuming one? Many chronic inebriates are extremely gentle, non-aggressive people. Why should it be illegal for them to ask for change, but not for others? Again, it is much more effective, fair, and constitutionally sound to keep the focus on the conduct toward the solicitee, rather than on the status or condition of the solicitor.

Thank you for considering these comments.

Sincerely,



Sam Magavern  
Public Policy Advocate

Direct Dial: (612) 746-3716  
E-mail: sam@midmlegal.org