



## **Summary of Proposed Amendments to the Loitering Ordinance**

Minneapolis Code of Ordinances, Section 385.50 currently reads, “No person shall loiter on the streets or in a public place or in a place open to the public with intent to solicit for the purposes of prostitution, or any other act prohibited by law.” The proposed amendments are designed to:

1. to expressly acknowledge that the ordinance applies to drug-related offenses, as well as the interior of motor vehicles parked or stopped on a street;
2. to emphasize that the person must have the “intent to solicit criminal activity” by articulating some of the circumstances that may be considered in determining a person’s intent; and
3. to promote the use of reasonable and limited geographic restrictions.

### **Drug-Related Offenses and Motor Vehicles**

When the current loiter ordinance was enacted in 1960, street-level illegal narcotics activity was not as problematic as it is today. As a result, the ordinance did not expressly prohibit solicitation of illegal narcotic activity. Although illegal narcotic activities fall within the catchall language “any other act prohibited by law,” it seems appropriate that, like prostitution, it be expressly prohibited by the ordinance. It is therefore recommended that the loitering ordinance be amended to include language prohibiting solicitation of illegal narcotic activity.

Similarly the phrase “loiter on the streets” implicitly applies to persons who “loiter” while in a motor vehicle stopped or parked “on the streets.” Just as the ordinance implicitly applies to persons who wear roller skates or sit on a bicycle while they loiter on the street. The ordinance does not say “loiter while on foot on the street.” Nonetheless, to avoid arguments that the loitering ordinance does not apply to persons who are in a motor vehicle stopped or parked on the street, it is recommended that the loitering ordinance be amended to include the following underlined language prohibiting loitering while in a motor vehicle stopped or parked on the street.

### **Factual Circumstances Relevant to Intent**

The most difficult part of prosecuting loitering cases is proving beyond a reasonable doubt that the defendant had the intent “to solicit an act prohibited by law.” Unless the defendant directly solicits an undercover police officer, the evidence in loitering cases is limited to police officers’ observations of circumstantial conduct from which a jury is asked to infer, beyond a reasonable doubt, that the defendant intended to solicit an act prohibited by law. If the ordinance is amended to expressly articulate some of the typical circumstantial conduct, judges may be more inclined to grant a prosecutor’s request for a jury instruction describing this conduct. If a jury is instructed by a judge that the law allows them to consider this circumstantial conduct in determining a defendant’s intent, it will help focus the jurors’ deliberations which will presumably lead to more successful prosecutions. It is therefore recommended that the loitering ordinance be amended to include language related to the circumstantial conduct from which the defendant’s intent may be inferred.

### **Reasonable and Limited Geographic Restrictions**

Hennepin County drug court judges have upheld and routinely imposed reasonable and limited geographic restrictions on chronic offenders. In his order upholding geographic restrictions, Hennepin County Drug Court Judge Sommerville applied the principles set forth in State v. Friberg, 435 N.W.2d 509, 515 (Minn. 1989) and concluded that there existed the requisite nexus between a requested geographical restrictions and the purposes of probation when:

- (a) restricting the defendant from the requested geographical restriction zone would help with his rehabilitation and will promote public safety;
- (b) the defendant needed to be weaned from the drug world and the geographical restriction zones in question was an area where the drug trade was rampant;
- (c) the defendant had shown a propensity for committing crimes within the geographical restriction zone; and
- (d) the defendant had been arrested multiple times in these areas for drug related activity.

If the loitering ordinance expressly recognized the effectiveness of reasonable and limited geographic restrictions, it would aid the efforts of city prosecutors to persuade judges throughout Hennepin County to impose these restrictions on chronic misdemeanants when appropriate. It is therefore recommended that the loitering ordinance be amended to include language related to geographical restrictions.

Based on the above, we recommend that the City Council adopt the proposed amendments to Minneapolis Code of Ordinances, Section 385.50.