

ORDINANCE NO. 4627

AN EMERGENCY ORDINANCE TO AMEND ORDINANCE NO. 4618 REGULATING PANHANDLING ACTIVITIES IN PUBLIC PLACES

RECITALS:

The City of Grand Junction has the authority and power pursuant to its Charter, ordinances and Colorado law, specifically C.R.S. §31-15-401, to restrain and punish loiterers and disorderly persons, to prevent and suppress disorderly conduct and disturbances and to maintain order in public places.

The City likewise has the authority and power pursuant to law to regulate the use of sidewalks, streets and parks.

Due to increased reports of aggressive panhandling, disturbances and vandalism associated with panhandling, and the opportunity for fraudulent practices by panhandlers to gain or obtain money and the fact that panhandling often creates a public safety risk on and along public roads and public places the City Council adopted Ordinance No. 4618 regulating certain panhandling activities.

Although input was requested from the American Civil Liberties Union of Colorado (ACLU) to help craft an ordinance that best balanced all interests, the ACLU instead requested that no ordinance regulating panhandling activities be adopted. After the adoption of Ordinance No. 4618, the ACLU filed a lawsuit (*Browne et al v. City of Grand Junction*, CA 14-cv-00809) challenging the ordinance.

In that lawsuit, the ACLU challenged the Ordinance as facially unconstitutional. Without any ruling on the merits of the lawsuit U.S. District Court Judge Brimmer issued a temporary restraining order restraining the enforcement of the final sentence of Section 9.05.050 of Ordinance No. 4618. No other provisions of the Ordinance were restrained; however, the Chief of Police, on advice of counsel, elected not to enforce the Ordinance pending further legal proceedings.

The City Council believes, based upon consideration of applicable case law, that Ordinance No. 4618 is constitutional on its face for, among others, the following reasons:

- (a) The City Council's interest in protecting the safety and convenience of persons using a public area is assuredly a valid government objective;
- (b) The regulations do not have to be the least restrictive or least intrusive means of serving the goals of public safety, peace and order;
- (c) The Ordinance is not based on disagreement with any message conveyed and makes no distinctions based upon the content of the message delivered; it distinguishes behavior based only upon the time, place manner in which the speakers transmit their message and not upon the message they carry.

Whether the solicitation is for personal necessities of life, for a charity, for a cause, to further any idea of whatsoever kind, only the manner, time and place is regulated;

- (d) The Ordinance leaves open ample alternative communication channels and does not entirely foreclose any means of communication;
- (e) The Ordinance does not burden substantially more speech than necessary to achieve the legitimate government interests of protecting people from aggressive or unwanted solicitation behaviors or from being stopped, accosted or approached in certain public places where they have substantial privacy interests such as near ATMs, where they are less able to avoid the speech such as at bus stops, outside dining areas or public parking areas in which they are captive audiences and/or where it is unsafe to solicit;
- (f) Public buses, public bus stops, public parking garages and lots and certain state highway and interstate right-of-way areas within the City of Grand Junction are not traditional public forums; activities at those locations may appropriately be limited to specific governmental purposes;
- (g) The U.S. Supreme Court upheld a law prohibiting someone knowingly approaching another person to pass out a leaflet within 100 feet of a health care facility; therefore, the Ordinance's prohibition of accosting, stopping or approaching someone within a 100-foot "bubble" protecting privacy interests and captive audiences is consistent with applicable U.S. Supreme Court precedent.

At the February 19, 2014 public hearing the City Council discussed revisiting Ordinance No. 4618 to determine whether the balancing of interests could or should be adjusted. In that spirit, and in an effort to be good stewards of the public funds and to minimize the time and other resources expended in litigation, the City Council deems it necessary to immediately modify the some of the regulations found in Ordinance No. 4618.

The City Council further determines that:

- (1) regulating panhandling through reasonable time, place and manner restrictions and prohibiting panhandling activities done in an aggressive, threatening or coercive manner, or in a manner that puts panhandlers, motorists, pedestrians and bystanders at risk, serves to protect property, public safety and benefits the health, safety and welfare of the entire community; and
- (2) captive audiences are less capable of resisting or avoiding unwanted panhandling activities and/or have fewer means available to avoid or resist such activities; and

- (3) persons conducting banking at automated teller machines in the public ways are entitled to a reasonable measure of privacy and security as they conduct their transactions; and,
- (4) modification of the regulations set forth in Ordinance No. 4618 serves the best interests of the community and is required for the immediate preservation of the health, safety and welfare of the community.

In a continued effort to effectively balance the interests of maintaining order in public places and protecting individual rights, to ensure that an ordinance protecting the peace, welfare, health and safety of the community can be immediately enforced, and to limit the spending of time and resources of the City in needless litigation, the City Council determines Ordinance No. 4618 shall be amended to further limit the perceived intrusion on solicitation activities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

9.05.010 Legislative Declaration.

- (a) The City Council does find and declare that it is the right of every person to be secure and protected from intimidation and physical harm resulting from activities associated with panhandling.
- (b) This Ordinance is not intended to interfere with the exercise of constitutionally protected rights of freedom of expression, speech and association; and the City Council does recognize the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to lawfully associate with others.
- (c) Citizens of the City are concerned as a result of behaviors by individual persons and groups of persons who aggressively panhandle, who accost captive audiences, and who create safety risks along and on public roads, which activities are not constitutionally protected and which present a clear and present danger to public order and safety.
- (d) This Ordinance is also intended to provide for safe and orderly panhandling during times and at places which protect the safety of the public while allowing for individual expression within the boundaries of the City.
- (e) This Ordinance is not intended to interfere with or limit the rights of property owners to license their premises for solicitation activities, but only to regulate activities on public property.
- (f) This Ordinance regulates the stopping, accosting or approaching someone for the purpose of soliciting him or her at certain times and places and in certain ways, without regard to the content of the message for which things of value may be solicited, and is not intended to be enforced in any manner that distinguishes conduct based on the content of the message delivered.

(g) This Ordinance amends Ordinance No. 4618 on an emergency basis to protect governmental resources from being expended in litigation, and because this Ordinance limits, rather than expands, governmental intrusion on private behavior, the City Council finds that the issues were fully and sufficiently vetted in the public hearing process involved in the passage of Ordinance No. 4618.

(h) Although this Ordinance eliminates a certain previously adopted restriction on solicitation of at-risk individuals, the interests of such individuals are still subject to the protections of the Ordinance addressing unwanted or aggressive solicitation behaviors.

9.05.020 Definitions.

As used in this Ordinance the following words are defined as follows:

Knowingly shall mean, with respect to the conduct or circumstances described in this Title 9, Chapter 5, that a person is aware that such person's conduct is of that nature or that the circumstances exist. With respect to a result of such conduct, *knowingly* means that a person is aware that such person's conduct is practically certain to cause the result.

Obscene shall mean a blatantly offensive description of a sexual act or solicitation to commit a sexual act, whether or not such sexual act is normal or perverted, actual or simulated, including but not limited to masturbation, cunnilingus, fellatio, anilingus or human excretory functions.

Obstruct shall mean to render impassible or to render passage unreasonably inconvenient or hazardous.

Panhandle /panhandling shall mean to knowingly approach, accost or stop another person in a public place and solicit that person without that person's consent, whether by spoken words, bodily gestures, written signs or other means, for money, employment or other thing of value.

9.05.030 Applicability, declaration of emergency and effective date.

City Council hereby declares that a special emergency exists and that this ordinance is necessary to ensure the preservation of the peace and the public health, safety and welfare by effectuating the Council's publicly articulated purposes as stated herein and before of adopting an ordinance for the regulation of panhandling activities in public places. In declaring a special emergency, and by and with the adoption of this ordinance, the City Council is conscientiously stewarding the public's funds by reducing, managing and minimizing legal claims. This Ordinance, immediately on its final passage, shall be recorded in the City book of ordinances kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk. The full text of the amending ordinance, in accordance with the Charter of the City of Grand Junction, is to be published in full.

This Ordinance shall apply to the City of Grand Junction. This Ordinance shall take effect immediately upon passage.

9.05.040 General panhandling and solicitation.

It shall be unlawful for any person to panhandle

- (a) One-half (1/2) hour after sunset to one-half (1/2) hour before sunrise;
- (b) If the person panhandling knowingly engages in conduct toward the person solicited that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety;
- (c) If the person panhandling directs fighting words to the person solicited that are likely to create an imminent breach of the peace;
- (d) If the person panhandling knowingly touches or grabs the person solicited;
- (e) If the person panhandling knowingly continues to request the person solicited for money or other thing of value after the person solicited has refused the panhandler's initial request;
- (f) In such a manner that the person panhandling obstructs a sidewalk, doorway, entryway, or other passage way in a public place used by pedestrians or obstructs the passage of the person solicited or requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person;
- (g) Within twenty (20) feet of an automatic teller machine or of a bus stop;
- (h) On a public bus;
- (i) In a public parking garage, parking lot or other parking facility;
- (j) When the person solicited is present within the patio or sidewalk serving area of a retail business establishment that serves food and/or drink, or waiting in line to enter a building, an event, a retail business establishment, or a theater.

9.05.050 Panhandling and solicitation on or near public streets and highways.

It shall be unlawful for any person to panhandle or to solicit employment, business contributions or sales of any kind, or to collect money for the same, directly from the occupant of any vehicle traveling upon any public street or highway when:

- (a) Such panhandling, solicitation or collection involves the person performing the activity to enter onto the traveled portion of a public street or highway to complete the transaction, including, without limitation, entering onto bike lanes, street gutters or vehicle parking areas; or

(b) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely complete the transaction.

9.05.060 Enforcement and penalties.

Violation of any provision of this Chapter shall constitute a misdemeanor and shall be punishable in accordance with the penalties provided in GJMC 1.04.090.

9.05.070 Severability.

This Ordinance is necessary to protect the public health, safety and welfare of the residents of the City. If any provision of this Ordinance is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

PASSED AND ADOPTED as an emergency ordinance of the City Council of the City of Grand Junction, Colorado this 2nd day of April, 2014.



Sam Susuras
President of the Council

ATTEST:




Stephanie Tuin
City Clerk



I HEREBY CERTIFY THAT a Public Hearing was held on the 2nd day of April, 2014, at which Ordinance No. 4626 was read, considered, adopted by emergency reading and ordered published in full within 3 days form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 9th day of April, 2014.



Stephanie Tuin, MMC
City Clerk

Published: April 5, 2014
Effective: April 5, 2014

