

PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

DATE: August 24, 2009

CALLED TO ORDER: 5:34 p.m.

ADJOURNED: 7:15 p.m.

ATTENDANCE

Attending Members

Ryan Vaughn, Chair
Bob Cockrum
Benjamin Hunter
Mary Moriarty Adams
Marilyn Pfisterer
Christine Scales

Absent Members

Vernon Brown
William Oliver

AGENDA

PROPOSAL NO. 237, 2009 - amends the Code to restrict solicitation at intersections
"Do Pass" Vote: 5-1

PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

The Public Safety and Criminal Justice Committee of the City-County Council met on Monday, August 24, 2009. Chair Ryan Vaughn called the meeting to order at 5:34 p.m. with the following members present: Bob Cockrum, Benjamin Hunter, Mary Moriarty Adams and Marilyn Pfisterer. Christine Scales arrived shortly thereafter. Absent were Vernon Brown and William Oliver. Also in attendance were Councillors Paul Bateman, Barbara Malone, Michael McQuillen, and Joanne Sanders.

PROPOSAL NO. 237, 2009 - amends the Code to restrict solicitation at intersections

Chair Vaughn said this proposal in its original form passed out of Committee to the full Council with a "Do Pass" recommendation. He said at the full Council meeting, the proposal was amended and sent back to the Committee for further consideration.

[Clerk's note: Councillor Scales arrived at 5:38 p.m.]

Councillor McQuillen said that public safety is one of the primary concerns of the Council and the administration. He said panhandling sometimes takes a back seat to high profile crimes and occurrences that happen around the county. However, this does not mean that public safety problems caused by panhandling should be ignored. Councillor McQuillen said that he has been contacted by numerous city residents who are concerned about this issue. He said that he is offering a change to the existing law that will make it illegal for panhandlers to stand in medians within 50 feet of traffic signals, as well as those who are promoting going-out-of-business sales, teenage carwashes, kids selling cookies, firemen collecting for the Muscular Dystrophy Association (MDA), and anyone else who is potentially distracting motorists. He said this measure is about fairness, as someone standing in the median or is close to a traffic signal is creating a public safety nuisance despite their age, race or income level. Councillor McQuillen said one of the arguments may be that this proposal discriminates against the homeless, but this is not the case. He said that panhandlers and homeless are not the same thing. He said arrests for aggressive panhandling are already up for 2009, and it is good that the hard-working police officers have been able to enforce the laws that are already on the books, but it is a shame that they have to spend as much time as they do with this problem. Councillor McQuillen said this proposal will make it easier for the ordinance to be enforced and make it fairer. He said police would no longer have to watch for aggressive behavior with the establishment of this 50-foot danger zone near the stoplights and signs. Anyone in the danger zone will be equally in violation of the ordinance. He said the point is not to write more tickets or make more arrests, but to make it clear to everyone that it is not safe to mix heavy traffic and pedestrians at these already dangerous intersections.

Chair Vaughn said that Councillor Oliver wished to be present at the meeting, but is unable to be present due to a death in the family.

The following people spoke in favor of the proposal:

Don Welsh, Indianapolis Convention and Visitor's Association (ICVA), President and CEO; Commander Darryl Pierce, Indianapolis Metropolitan Police Department (IMPD); Rick Alvis, CEO, Wheeler Mission Ministries; Tom Glass, citizen; Ron Roach, citizen; Adrian Smoot, citizen; and Ernie Shearer, citizen. Their comments include the following key points:

- Indianapolis has gained a reputation as a great, safe, clean and dynamic city, and one of the key advantages of selling and marketing Indianapolis is walkability.
- Indianapolis hosts a multitude of great sporting events, as well as possesses an abundance of music, theater and arts for guests to enjoy.
- Panhandlers can be found on almost every corner in downtown Indianapolis on any given day.
- Most panhandlers in downtown are not the homeless, and are known as professional panhandlers who continue to have a profound and negative impact on the positive image that the City has.
- There have been a growing number of concerns about the number of panhandlers and the perceived safety concerns associated with the panhandling issue.
- Currently there are five chip boxes in the downtown core, and the money raised from the those boxes goes to 47 qualified agencies that provide services to the homeless throughout the city.
- In most cases the state law has been used to enforce panhandling issues, but this proposal provides additional leverage for police officers.
- Many panhandlers use the money they receive to buy alcohol and drugs.
- To fight crime, the City must fight drug addictions and alcoholism.
- Resources such as this will help get people the help they need.
- It is not about taking away anyone's First Amendment right.
- Panhandlers have a large network, and they contact panhandlers from other cities during large events.
- The existing ordinance is not enough, and violators will adjust to the change after a period of time.
- The main issue with this ordinance is safety, and soliciting creates all kinds of hazards to the driving public.
- Free speech ends when it involves safety or infringes on the rights of other people.
- People should not have to be intimidated by solicitors, and it is time to do something about it.
- This ordinance does not target any specific group or organization.

Councillor Hunter asked Commander Pierce to explain how this ordinance is less encompassing than the Indiana Code. He said he believes that this would be another choice than enacting what is currently in Indiana Code offering a lesser charge ordinance and more of a community policing tool. Commander Pierce added this proposal will allow officers to cite individuals into environmental court and possibly offer them help. He said the purpose is to ensure that individuals who need help receive that help.

Councillor Moriarty Adams said that her issue with this has always been enforcement. She said she received an email from Sergeant Robert Hipple with the downtown district dated July 21. Sgt. Hipple told her that year-to-date, there have been 63 panhandling arrests in the downtown district. However, when she inquired with the deputy chief of operations, Chief John Conley, on the numbers in the East, South, West and North Districts, she was told that they did not keep track of that in the surrounding districts. She said she is concerned with amending an existing ordinance that is not even being enforced at all in surrounding districts, but she has seen this issue happening in the surrounding districts. She asked how they can get IMPD to enforce a stricter ordinance in the outer districts. Commander Pierce said that downtown is unique in the way that their crime rate is less than the other districts, and there is more time to enforce the ordinance downtown. He said downtown is also more compact, but with the passing of the ordinance, he said he is sure that it will be enforced throughout the districts. He said it is very manpower-intensive to deal with this issue. She asked that the Committee be updated on a regular basis if the ordinance is passed. Commander Pierce said he is sure those numbers will be made available. Chair Vaughn said, with respect to enforcement of aggressive panhandling, which is the state statute versus the city ordinance, there were more than 140 arrests for aggressive panhandling last year. The city has already exceeded the number this year, and these arrests were distributed throughout the county. He said they were more heavily concentrated downtown, but were being enforced in the outer districts as well.

Councillor Pfisterer asked if this could be a case of the downtown district keeping more documentation as to aggressive panhandling and the surrounding districts possibly lumping that into a different category or offense. Commander Pierce answered that he cannot answer for the other districts, but he knows that the downtown district keeps track of the numbers because due to the amount of people that utilize the downtown area for conventions, public safety is very important.

Councillor Sanders asked what is so significant in this amendment that would suddenly make enforcement more of a priority. Commander Pierce answered that enforcement of this ordinance has always been a priority, and in looking at arrests that have been made, most of the arrests are for habitual offenders. He said this ordinance will allow IMPD to cite inoffensive solicitors rather than address the habitual aggressive panhandlers in accordance with the state law. Councillor Sanders asked why the current ordinance is not enough to provide IMPD that authority. Commander Pierce answered that the current ordinance does not provide the leverage of not allowing the act within a specific area. Councillor McQuillen said that he does not believe that the language of the previous ordinance was specific enough to address the issue, and the addition of the 50-foot danger zone takes out the guesswork for police officers.

Councillor Bateman said that his issue with the proposal is that it is a violation of the First Amendment right, by legislating when the right begins and end. Chair Vaughn said that after researching the language of the ordinance and looking at ordinances such as this in other cities, it has been concluded that it is a First Amendment right to engage in panhandling activity, but a city is able to regulate it for a valid reason, such as public safety, with certain time, place and manner restrictions. However, a regulation that forecloses the ability to panhandle cannot be passed in any form. He said, in his opinion, this ordinance is a time, place and manner

restriction, and is reasonable and tailored to that effect. Chair Vaughn said that the state law includes many time, place and manner restrictions.

Councillor McQuillen said that he talked with Mr. Alvis of the Wheeler Mission because there has been some confusion about panhandling versus homelessness, and he wants to ensure that everyone is on the same page. Mr. Alvis said there is a separation between homelessness and panhandling, and very few homeless individuals panhandle. Unfortunately, there is no data to indicate those who are truly homeless. He said the vast majority of the individuals that utilize the Wheeler Mission are not panhandlers. He said that Wheeler Mission is not only a homeless shelter providing housing and meals to the homeless, but they also have an addictions center in Monroe County where they help men overcome their addictions, stabilize and return to the City to be successful and productive citizens.

Councillor Bateman asked if it would be considered panhandling or a violation of the ordinance if he was at a corner and flagged down a cab. Chair Vaughn said he understands the question to be whether this ordinance is so vague that perfectly legal conduct could be interpreted to be illegal. In that respect, he answered in the negative, and stated that there are several court decisions that lay out the language with respect to vagueness and how it is to be interpreted. Councillor Hunter said the section that Councillor Bateman is referring to is language of the existing ordinance.

John Cochran, Special Counsel, Mayor's Office, said that Mayor Gregory Ballard is supportive of this proposal.

Councillor Sanders said, with respect to Councillor Hunter's response to Councillor Bateman's question, although that section of the law is not being changed from the existing ordinance, other sections are being changed which would in turn change the interpretation of that section. She stated that the Councillors present are simply giving their opinions on the matter.

Mr. Glass said that he would like the description to be changed from "panhandling" to "roadside soliciting," as using the word "panhandling" seems to profile and target individuals.

The following people spoke in opposition of the proposal:

Timothy Maquire, citizen; Don Harris, citizen; John Mueser, citizen; Mori Evans, citizen; Larry Vaughn, citizen; Matthew Stone, citizen; Abu Henderson, President, Martindale-Brightwood Neighborhood Association (MBNA); Paul Ogden, attorney with Robertson Bishop; and Rev. Mike Mather, Pastor, Broadway United Methodist Church. Their comments include the following key points:

- There is already a law on the books addressing this issue, and more laws should not be created because current laws are not being enforced.
- The current ordinance should simply be enforced, as the concerns being voiced are already against the law.
- Under these provisions, this could also apply to political signs and tax rallies.

- Moving panhandlers away from corners will cause them to be in front of restaurants and hotels.
- The proposal is too broad and serves no real purpose.
- The issue of panhandlers not being homeless and collecting tax free money should be an issue for the Internal Revenue Service (IRS) or an appropriate state agency.
- The ability to panhandle may help people who are in need, but may not be homeless. It is not just to support drug or alcohol addictions.
- This proposal further devalues the citizens that are already the most vulnerable and down on their luck.
- People cannot be restricted from standing on a corner with a sign, because it is prior restraint and a restriction on common ground.
- First Amendment applies to this because the regulation must be narrowly tailored, serve a significant interest, and leave ample alternative channels of communications open.

Mr. Ogden said that the underlined portion of the paragraph in Sec. 431-702 causes a drafting error in the ordinance with respect to subsection 2. He said with the provision, political speech could be affected. Therefore, this section should be more specific or be included in subsection 1.

Rosie Stockdale, citizen, said that she is in support of the ordinance and the amendment, but the problem is that there is an enforcement issue because of the lack of public safety personnel. She said instead of making it a stricter law, people need to pull together to help make the current law more enforceable.

Councillor Bateman asked why not make it against the law to give money. Councillor McQuillen said the purpose of this is to keep roadways safe and not to prohibit panhandlers from receiving money.

Councillor Hunter asked if people have actually read the ordinance to its full extent, as this is just a better tool for officers to enforce the current law. He said there are several laws that Indianapolis police officers witness daily and do not have the time to enforce. He said this proposal does not restrict free speech, other than where it can be done. It does not target homeless people and is not based on race. He said he has received a number of emails about this issue, and 90% of them were in favor of the proposal.

Chair Vaughn said he asked the Council Clerk to print the emails that come into the Council office of people for or against the proposal. He said there were 40 people in favor of the amendment and one person against it.

Councillor Cockrum commented that the terms “panhandler” and “sign” are not listed anywhere in the ordinance. He said that this ordinance specifically prohibits activity in the public right-of-way and does not include someone’s private property.

Councillor Pfisterer said that she solicited her constituents about the ordinance, and 21 out of 22 constituents that responded were in favor of the ordinance.

Chair Vaughn clarified that there were arrests in excess of 140 persons last year, and 140 persons so far this year with specific aggressive panhandling violations. Therefore, officers are paying attention, acting and making arrests on this issue to some extent. He said the Council is attempting to provide those officers another tool for effectuating public safety purposes. He said suggesting that the City does not have the manpower, workforce or capacity to address the issue, that it has gone neglected and a change in the ordinance is ineffective is a misrepresentation.

Councillor Sanders said that Pastor Mather stated that the City is long on compassion and short on justice, and she agrees and believes that the Council needs to be vigilant when passing legislation, but 50 feet into the right-of-way could be in someone's front yard. She said that the underlined language in the amendment references oral or written, which would include signs by definition. She said that she has also received a number of emails and most of them were asking that she ensure that the Council is looking at the language in a constitutional manner and not reducing the rights of individuals. Councillor Sanders said she is concerned that Councillor Moriarty Adams received conflicting information than Chair Vaughn received, because it suggests that not everyone is on the same page. She said she also understands that officers are busier in some areas than others, but the Council increased the County Option Income Tax (COIT) in order to increase the number of officers.

Chair Vaughn asked Councillor Moriarty Adams if the information she received on the number of arrests was due to violations of the city ordinance or State Statute. Councillor Moriarty Adams answered that she is unsure, but her numbers are confined to the downtown district. She was told by Deputy Chief Conley that they do not have information available for the four surrounding districts because they had not been tracking it. Chair Vaughn said that his request was from the Department of Public Safety, and he is unsure from where the information was obtained, but, nonetheless, it shows that the issue is being addressed on some level.

Councillor Scales said that she agrees with the public safety aspect of this proposal, and she feels that the City offers many resources for those who are in need to receive the help they need to try to change their situations. She said she understands that there will be those who still struggle to change their life circumstances due to addictions, but one must be careful when giving money without knowing its purpose, because it can enable someone and provide a stumbling block to them.

Councillor Moriarty Adams said that she is against the ordinance, and while she appreciates what IMPD does for the community, she believes that the police are too busy to focus on enforcing this and it gives people a false sense of security. She said she is concerned that she could not obtain the statistics that she needed from an ordinance passed in 2005, where there should have been an adequate amount of citations or tickets issued to show how much the outlying areas of Marion County dealt with this problem or if there was a problem in those areas. She again asked that IMPD update the Council on a regular basis on how well this is being enforced from all of the Marion County districts.

Councillor McQuillen said that many people and agencies support this measure, and the Council must not let class, age or race confuse what is at stake. He said the police force deserves a better defined law that will take less time to enforce, allowing them to focus on other crimes in the

area. The bottom line is that a street is no place for monetary transactions, and he does not want anyone to get hurt or injured in the streets.

Councillor Pfisterer moved, seconded by Councillor Scales, to forward Proposal No. 237, 2009 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 5-1, with Councillor Moriarty Adams casting the negative vote.

With no further business pending, and upon motion duly made, the Public Safety and Criminal Justice Committee of the City-County Council was adjourned at 7:15 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "RV", is positioned below the text "Respectfully submitted,".

Ryan Vaughn, Chair
Public Safety and Criminal Justice Committee

RV/nsm