

MEMORANDUM

Office of Dennis Graham, Chief of Police



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To: Honorable Mayor and City Council
Through: Tom Williams, City Manager
From: Dennis Graham, Chief of Police *D. G.*
Subject: Ordinance No. V-100-9.05 Loitering in Median Strips within a City Street
Date: May 7, 2009

Transients are causing traffic safety issues and affecting the quality of life of motorists by standing in center medians and asking for donations. There is no existing California Vehicle Code, Penal Code or Milpitas Municipal Code section that can be enforced to directly address this issue.

The proposed ordinance would prohibit persons from loitering in a median within a city street or other city-maintained thoroughfare. "Loiter" for the purposes of this section shall mean to linger or remain within the median strip for any purpose, including panhandling, other than stopping to allow traffic to pass in order to cross the street. For the purposes of this section, "median strip" means a non-landscaped, paved, planted or other landscaped strip of ground dividing a street or highway into lanes according to the direction of travel. This section shall not apply to authorized public officers or employees, or employees of a public utility when necessary to enter upon the street and/or median strip in the line of duty.

Restricting access to public streets for certain purposes, such as panhandling, can raise constitutional issues. Prior to 1991, the California Penal Code section 647 (c) made it a misdemeanor to panhandle in a public place. In September of 1991, the U.S. District Court for the Ninth Circuit ruled that panhandling was constitutionally protected speech and this restriction was unconstitutional as a violation of free speech guaranteed under the 1st Amendment of the U.S. Constitution. More recently, court decisions have upheld ordinances restricting solicitation based on the premise they do not prohibit all panhandling. They merely establish time, place and manner restrictions on panhandling activities.

Staff has worked with the City Attorney to ensure the proposed ordinance satisfies the requirements set forth by the Courts in order to meet constitutional requirements.

The proposed ordinance was presented to the Neighborhood Services and Education Subcommittee on April 28, 2009. The Subcommittee recommended posting signs at the targeted locations. Staff identified 8 median strips where people continually loitered.

The Neighborhood Services and Education Subcommittee recommended staff conduct follow-up to determine if the enforcement of the proposed ordinance transfers the problem to other locations within the City. Staff would report back to the City Council at the November 17, 2009 meeting.

Recommendation

Introduce Ordinance No. V-100-9.05 Loitering in Median Strips within a City Street.

Staff conduct follow-up to determine if the enforcement of the proposed ordinance transfers the problem to other locations within the City. Staff will report the findings to the City Council at the November 17, 2009 meeting.

Post 8 signs in locations as designated in the attached map.

Attachments:

Picture of Proposed Signage

Map of Proposed Signage

REGULAR

NUMBER: 43.211

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 100 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO PROHIBITION OF LOITERING IN THE MEDIAN

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____. upon motion by _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas finds that the activity by pedestrians in the roadway, including the median, distracts drivers from their primary duty to watch traffic and be alert for potential hazards in the roadway, to observe all traffic control signals, signs or warnings, and to be prepared to move through the City’s streets and intersections; and

WHEREAS, the practice of loitering in a public street subjects pedestrians and vehicles to an unacceptable level of danger by distracting drivers from their primary duty to watch traffic and results in the delay and obstruction of the public’s free flow of travel, and results in congestion and blockage of the streets when such persons approach the vehicles to speak with the occupants; and

WHEREAS, distracted drivers are more prone to be involved in automobile accidents, and accidents on the public streets constitute a substantial traffic safety problem; and

WHEREAS, the cumulative impact of this type of activity on the streets and highways on a daily basis creates a potential safety hazard, which poses a significant and substantial risk to the interest of the public in the free flow of travel; and

WHEREAS, the City Council finds that the prohibitions imposed by this Ordinance are intended to provide for the public safety and well-being of the community; and

WHEREAS, the City Council finds that this Ordinance is a reasonable time, place and manner regulation of speech; and

WHEREAS, the City Council finds that this Ordinance is content neutral and is not intended and does not restrict the right of free speech or alternative channels of communication; and

WHEREAS, the City Council finds that with the inclusion of the amendments herein, the Municipal Code remains internally consistent; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION V-100-9

Section V-100-9.05 is hereby added to Chapter 100 of Title V of the Milpitas Municipal Code as follows:

V-100-9.05 Loitering in Median Strips within a City Street.

No person shall loiter in a median within a city street or other city-maintained thoroughfare. "Loiter" for the purposes of this section shall mean to linger or remain within the median strip for any purpose, including panhandling, other than to stop to allow traffic to pass in order to cross the street. For the purposes of this section, "median strip" means a non-landscaped, paved, planted, or otherwise landscaped strip of ground dividing a street or highway into lanes according to the

direction of travel. This section shall not apply to authorized public officers or employees, or employees of a public utility when necessary to enter upon the street and/or median strip in the line of duty.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

**LOITERING
IN MEDIAN
STRIPS
PROHIBITED**

**VIOLATIONS
WILL BE
ENFORCED**

M.M.C. V-100-9.05

24"

18"

