

DATE: April 21, 2009
TO: Commander Charlotte Pang
FROM: Lieutenant Sandy Holliday
SUBJECT: Recommendation to Adopt an Ordinance Prohibiting
Loitering in Median Strips

ISSUE:

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 prevent this problem.

BACKGROUND:

The current Milpitas municipal Code states the following:

V-100-9.03 Standing in Roadways

No person shall stand in any roadway other than in a safety zone or in a crosswalk if such action interferes with the lawful movement of traffic. This Section shall not apply to any public officer or employee, or employee of a public utility when necessarily upon a street in line of duty. (Ord. 43 (part), 6/7/55)

The Municipal Code does not clearly define roadway to include the median, where transients stand to collect donations.

The proposed ordinance would prohibit persons from loitering in a median within a city street or other city-maintained thoroughfare. The proposed language is as follows:

“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 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 time, place and manner restrictions rationally related to public health and safety concerns.

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

RECOMMENDATIONS:

I recommend the City adopt an ordinance to prohibit loitering in a median strip. If approved, I will prepare an ARS requesting the adoption of the ordinance.

Date: September 19, 2008
To: Sgt. Max Nobida
From: Officer Kris Strauss
Subject: Transients in the center medians

Issue:

Over the past few years, Milpitas has seen an increasing number of homeless asking for food and cash along our streets. They usually stand in the center median strip asking for handouts. The locations in which they stand causes traffic issues with motorists stopping and providing them handouts, backing up traffic. Currently, there is no law or municipal ordinance that can be enforced to stop the homeless from asking for donations.

Background:

The homeless begging in the City range in age from 19 years to over 50 and are both male and female. Although most of the homeless are found in the Beat 1 and 5 area of the City, others have been seen in other beats within the City. Most of the time they can be seen standing/sitting in the center median strips with their small, cardboard signs asking for food or cash donations. The homeless I have spoken with do not seem to want the help that is available from various organizations in San Jose, but would rather get the handouts they get from passing motorists. One of the areas in which they ask for donations is generally littered with cigarette butts and other small pieces of wrappers. I have spoken with one homeless female who told me that she has been in an argument with another homeless female about who had the right to be at the location. I have also seen traffic having to stop behind motorists who, although trying to make a difference in the person's life, are causing traffic problems behind them.

There are currently no applicable penal code sections that can be enforced to keep the people from asking for donations. Penal Code section 647(c) states that any person, *"who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms."* is guilty of a misdemeanor. The homeless I see are not aggressive and either stand or sit with their request signs and only make contact when the driver makes contact with them, and are not "accosting" the citizen.

The California Vehicle Code also does not have sections that are easily applicable to the problem. Section 21950 (b) which relates to pedestrian right of way at crosswalks states: *"This section does not relieve a pedestrian from the duty of using due care for his or her safety. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. No pedestrian may unnecessarily stop or delay traffic while in a marked or unmarked crosswalk."* The homeless generally either stand on the curb and reach out for the donation or step briefly in the road while the vehicle is stopped for the light and take the donation.

The Milpitas Municipal Code is also similar to the vehicle code in regards to an applicable enforceable section. **Section V-100-9.03** of the Milpitas Municipal Code relates to standing in roadways. The section states:

No person shall stand in any roadway other than in a safety zone or in a crosswalk if such action interferes with the lawful movement of traffic. This Section shall not apply to any public officer or employee, or employee of a public utility when necessarily upon a street in line of duty. (Ord. 43 (part), 6/7/55)

Solution:

I spoke with Bronwen Lacey, the City's Deputy City Attorney, about any applicable ordinances that the City might have that we could use to rectify the problem. She agreed that the Municipal Code section listed above could be applicable, but the people would have to interfere with traffic. She stated that the long-term solution was to amend the Municipal Code and the Chief of Police would have to "sponsor" the amendment through the process. It would probably take 2 to 4 months and would require Council approval.

In an attempt to clear the homeless from the center median areas, a new municipal ordinance needs to be created and adopted. Currently two local cities, Sunnyvale and Mountain View, have municipal laws on the books that restrict people from standing in the center divider. Their laws make no mention of a person's residential status, but state that they cannot loiter in the center divider in the streets of their city. A City ordinance similar to what those two cities have would allow us to resolve the traffic problems and make those areas affected easier to travel through.