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# Pineville Police Department



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## Memo

**To:** Ryan Spitzer, Town Manager  
**From:** Michael Hudgins, Chief of Police  
**Date:** October 5, 2023

**Subject:** Town Council Agenda Item, recommended changes to current Panhandling Ordinances

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### Executive Summary

The Pineville Police Department requests the Town Council to modify our current ordinances related to panhandling. The police department's proposal will firm up the constitutionality of our ordinances, align our ordinances with the state's enabling law (§20-175), and add criminal penalties to the offense so our officers will have more options available to address this activity.

Our Town Attorney, Ms. Lyons, believes the Town can add a criminal penalty for individuals who fail to stop soliciting after a police officer has asked them to stop. However, Ms. Lyons stresses the department needs to educate our officers on how to enforce this ordinance, § 74.08, to avoid litigation that we are impinging on the panhandler's First Amendment rights and/or selectively enforcing the ordinance. The department is prepared to address her concern. For instance, Lieutenant Galuski was tasked with training the department on how best to enforce this ordinance. He will use this document to guide his training. He will also instill our philosophy of offering services to those engaged in this activity as a first attempt to resolve this matter.

Ms. Lyons states NCGS §20-175, Statutory Authority and Enforcement through Local Ordinances, contends that local governments may enact ordinances restricting or prohibiting a person from standing on streets, highways, or right of ways, excluding sidewalks to solicit. It further provides that "[i]n the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor." Officers also have the authority to use this section of the NC General Statutes to address panhandling on State-owned streets and right of ways.

Regarding current Town Ordinance § 74.08, Ms. Lyons concurs with the Police Department's position that "sidewalks" need to be excluded. Ms. Lyons also recommends adding a clause to the ordinance that requires an officer to give an order to the violator that the activity must stop before acting. Finally, Ms. Lyons supports the Police Department's request to reclassify this ordinance from a civil fine to a criminal offense, a class 3 misdemeanor.

Regarding Town Ordinance § 130.04, Ms. Lyons reviewed ordinances in other municipalities in North Carolina and informed the Police Department, "I like Hickory's definition of Aggressive panhandling, solicitation, or peddling." She also suggested adding the definition of aggressive panhandling to a revised ordinance for the Town, which we did.

Below are the Police Department's recommended changes to Town Ordinances § 74.08 and § 130.04. Please note that redactions are in red font with a strikethrough, and additions to the ordinance are in blue font. Finally, we have attached NCGS § 20-175 and an article that discusses the complexity of case law that regulates panhandling and supports the direction Ms. Lyons and the Police Department would like to go.

**Proposed revision to § 130.04** (Includes areas not associated with roadways)

**§ 130.04 BEGGING OR SOLICITING ALMS BY ACCOSTING OR FORCING ONESELF UPON COMPANY OF ANOTHER; PROHIBITED CONDUCT.**

(A) Aggressive panhandling, solicitation, or peddling includes:

- (1) Accosting a person by approaching or speaking to the individual or individuals in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his person, or upon property in his immediate possession;
- (2) Touching someone without his consent;
- (3) Using obscene or abusive language toward someone while attempting to panhandle or solicit him/her;
- (4) Forcing oneself upon the company of another by continuing to solicit in close proximity to an individual who has made a negative response by verbal or physical signs or by attempting to leave the presence of the person soliciting, or by other negative indication;
- (5) Blocking the path of the individual being solicited; otherwise engaging in conduct that could reasonably be construed as intending to force a person to accede to a solicitation;
- (6) Other conduct that a reasonable person being solicited would regard as intended to compel or force the person to accede to the solicitation.

(B) It shall be unlawful for any person to engage in any acts of aggressive soliciting, peddling, or panhandling as defined in subsection (a) of this section

(C) Panhandling means, without limitation, use of the spoken, written, or printed words, signs, bodily gestures, or other acts as are conducted in the furtherance of the purpose of obtaining alms or contributions of money, food, or clothing for the use of oneself or others.

A violation of this section may be punishable as a Class 3 misdemeanor and be subject to a maximum fine not to exceed \$200.00 pursuant to G.S. 160A-175 and G.S. 14-4.

~~(A) It shall be unlawful for any person to ask, beg or solicit alms or contributions, or exhibit oneself for the purpose of begging or soliciting alms or contributions, by accosting another, or forcing oneself upon the company of another.~~

~~(B) For purposes of this section, **ASK, BEG OR SOLICIT** shall include, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms or contributions.~~

~~(C) For purposes of this section, **ACCOSTING** shall be defined as approaching or speaking to someone in a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his or her or her person, or upon property in his or her or her immediate possession.~~

~~(D) For purposes of this section, **FORCING ONESELF UPON THE COMPANY OF ANOTHER** shall be defined as:~~

~~— (1) Continuing to request, beg or solicit alms in close proximity to the person addressed after the person to whom the request is directed has made a negative response;~~

~~— (2) Blocking the passage of the person addressed; or~~

~~— (3) Otherwise engaging in conduct which could reasonably be construed as intended to compel or force a person to accede to demands.~~

~~(Ord. 4, passed 12-19-1995) Penalty, see § 130.99~~

**Proposed revision to § 74.08** (Includes roadways owned by the Town, which NCGS § 20-175 does cover)

## **§ 74.08 PEDESTRIANS SOLICITING EMPLOYMENT, BUSINESS OR FUNDS UPON PUBLIC STREETS.**

No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any public street, ~~including~~ **excluding** sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle on the public highways or streets; provided that the provisions of this section shall not apply to licensees, employees or contractors of the Department of Transportation or of the town engaged in construction or maintenance or in making traffic or engineering surveys.

In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, or create threatening or hostile situations, any law enforcement officer with proper jurisdiction

may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 3 misdemeanor and be subject to a maximum fine not to exceed \$200.00 pursuant to G.S. 160A-175 and G.S. 14-4.

~~(Ord. 9, passed 4-13-1999) Penalty, see § 10.99~~

**Case law on Panhandling:** 2023 Article from the Free Speech Center of Middle Tennessee State University <https://firstamendment.mtsu.edu/article/panhandling-laws/>

There are two types of panhandling: passive and aggressive. Passive panhandling is soliciting without threat or menace, often without exchanging any words— just a cup or a hand is held out. Aggressive panhandling is soliciting coercively, with actual or implied threats or menacing actions. If a panhandler uses physical force or extremely aggressive actions, the panhandling may constitute robbery.

In recent years, an increasing number of U.S. cities have enacted ordinances restricting panhandling because of the influx of people living in public spaces. For the most part, cities are particularly concerned about the effects of panhandling on public safety, tourism and small businesses.

So far, this trend has included measures making it illegal for persons to ask for money in public, as well as measures prohibiting activities such as sleeping/camping, eating, sitting, and begging in public spaces. Other efforts to crack down on panhandling and related activities include limiting begging to daylight hours, barring panhandling from certain areas, banning panhandlers on drugs or alcohol, ticketing or fining panhandlers, and imposing license requirements.

The growing number of ordinances criminalizing panhandling over the years has spun off a corresponding growth in support of panhandlers' free speech rights under the First Amendment. Although the Supreme Court has never addressed this issue directly, its decisions provide some guidance to regulations on direct solicitation by charities as opposed to street beggars.

### **Courts have held that solicitation for money is intertwined with speech**

In *Schaumburg v. Citizens for a Better Environment* (1980), a case dealing with the regulation of legitimate charities, the Court held that “solicitation for money is closely intertwined with speech” and that “solicitation to pay or contribute money is protected under the First Amendment.”

However, since *Schaumburg* the Supreme Court has allowed restrictions on a variety of direct solicitations where cities have found such activities inimical (cause harm) to the purpose of public space. For example, in *Young v. New York City Transit Authority* (2d Cir. 1990), the Court declined to hear an appeal challenging a New York City regulation prohibiting begging in the city's subway system. In *International Society for Krishna*

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Consciousness v. Lee (1992), the Court upheld prohibitions on solicitation at a state fairground, on sidewalks outside of a post office, and within an airport terminal.

### **Panhandling rules can be overbroad**

Thus far, although some lower courts have deemed panhandling to have some constitutional protection as “speech,” some have also recognized that communities have substantial leeway in devising regulations on “how and where” panhandling may occur within a community. And yet some courts have struck down for overbreadth laws in cities such as Austin, Texas, and Minneapolis, Minnesota, while upholding restrictive panhandling policies in cities such as Indianapolis, Indiana. In Madison, Wisconsin, the city ordinance was revised to avoid infringing on the free speech rights of panhandlers.

### **Reed decision has affected panhandling litigation**

In 2015, the U.S. Supreme Court explained in *Reed v. Town of Gilbert* (2015) that laws that discriminate against speech on their face or in their purpose are considered content-based and are subject to strict scrutiny. The Court’s decision in *Reed* has had an impact on panhandling litigation, as the lower courts have invalidated numerous panhandling laws as impermissible content-based restrictions on speech.

For example, the 7th U.S. Circuit Court of Appeals in *Norton v. City of Springfield* (7th Cir. 2016) invalidated Springfield, Illinois’ panhandling ordinance as unconstitutional. Springfield’s ordinance banned only oral requests for immediate money but did not address signs requesting money or oral requests for money later.

Some panhandling laws only regulate the location where solicitations for money take place. Even under *Reed*, such laws may be content-neutral time, place and manner restrictions on speech.

### **Ordinances restricting solicitation must pass intermediate scrutiny**

City ordinances restricting solicitation in a public place must pass intermediate scrutiny and

- (1) be neutral in content;
- (2) be narrowly tailored;
- (3) leave open ample alternative channels of communication;

and (4) serve a significant government interest that is pressing and legitimate.

Even under intermediate scrutiny, many panhandling ordinances have been invalidated. For example, the 1st U.S. Circuit Court of Appeals in *Cutting v. City of Portland* (1st Cir. 2015) struck down Portland, Maine’s ordinance that prohibiting panhandling while standing on median strips because it was not narrowly tailored and banned too much expressive activity.

### **Fate of panhandling under First Amendment remains unclear**

Thus, the fate of panhandling under the First Amendment remains less than clear. Some scholars contend that ordinances that regulate ordinary panhandling can be clearly distinguished from those that regulate menacing and intimidating behavior — aggressive panhandling. Others argue that city laws regulating panhandling are unconstitutionally vague and overbroad, deprive panhandlers of their free speech rights, and raise serious due process concerns by targeting the homeless.

In spite of the strong views on both sides of this issue, the plethora of city actions that regulate and criminalize panhandling today arguably speak more to the lack of clarity from the Supreme Court on the issue.

As shown, cities can enact ordinances that properly regulate the time, place, and manner of panhandling without completely prohibiting begging, as long as such ordinances are content neutral and do not burden people’s abilities to exercise their free speech rights. Such a regulation would be constitutional because neither intimidating conduct nor threatening speech is a recognized communication protected under the free speech guarantees of the First Amendment.

#### **North Carolina General Statute §20-175**

##### **§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.**

(a) No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the provisions of this subsection shall not apply to licensees, employees or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) Repealed by Session Laws 1973, c. 1330, s. 39.

(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. No local government may enact or enforce any ordinance that prohibits engaging in the distribution of newspapers on the non-traveled portion of any street or highway except when those distribution activities impede the normal movement of traffic on the street or highway. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys except as provided in subsection (e) of this section.

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(e) A local government shall have the authority to grant authorization for a person to stand in, on, or near a street or State roadway, within the local government's municipal corporate limits, to solicit a charitable contribution if the requirements of this subsection are met. A person seeking authorization under this subsection to solicit charitable contributions shall file a written application with the local government. This application shall be filed not later than seven days before the date the solicitation event is to occur. If there are multiple events or one event occurring on more than one day, each event shall be subject to the application and permit requirements of this subsection for each day the event is to be held, to include the application fee.

The application must include: (1) The date and time when the solicitation is to occur; (2) Each location at which the solicitation is to occur; and (3) The number of solicitors to be involved in the solicitation at each location.

This subsection does not prohibit a local government from charging a fee for a permit, but in no case shall the fee be greater than twenty-five dollars (\$25.00) per day per event. The applicant shall also furnish to the local government advance proof of liability insurance in the amount of at least two million dollars (\$2,000,000) to cover damages that may arise from the solicitation. The insurance coverage must provide coverage for claims against any solicitor and agree to hold the local government harmless.

A local government, by acting under this section, does not waive, or limit, any immunity or create any new liability for the local government. The issuance of an authorization under this section and the conducting of the solicitation authorized are not considered governmental functions of the local government.

In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor. (1937, c. 407, s. 136; 1965, c. 673; 1973, c. 507, s. 5; c. 1330, s. 39; 1977, c. 464, s. 34; 2005-310, s. 1; 2006-250, ss. 7(a), 7(b); 2008-223, s. 1.)