

# Illinois Municipal League

## Legal Department

### Legal Q & A

#### Aggressive Panhandling

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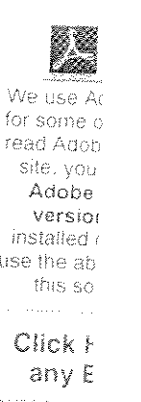
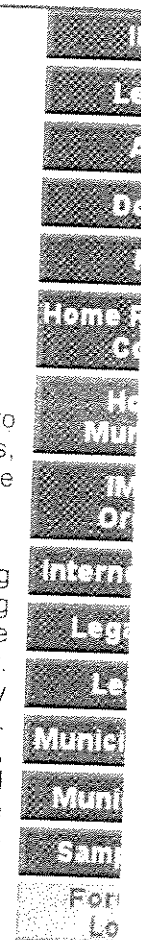
This monthly column examines issues of general concern to municipal officers. It is not meant to provide legal advice and is not a substitute for consulting with your municipal attorney. As always, when confronted with a legal question, contact your municipal attorney as certain unique circumstances may alter any conclusions reached herein.

Most residents of any municipality have, at one time or another, been approached by a person asking for a donation (a.k.a. panhandling). Most of the time the person and his or her panhandling or begging activities are harmless. However, as with the person who abuses the Internet access in the workplace, there are the few that ruin it for everybody else. In this case it's the aggressive panhandler. Aggressive panhandlers wait for and approach pedestrians, and sometimes even vehicles, when they are most vulnerable such as when they are alone, at intersections, and/or near banks and ATM's. Aggressive panhandlers may act in a variety of offending ways in their attempt to solicit a contribution, such as: (1) following someone and constantly repeating their request even after being ignored or told no; (2) touching, grabbing, barricading, and/or intimidating someone; (3) using obscene or abusive language; and/or (4) committing fraud to elicit a donation. The ill effects of aggressive panhandling to a municipality include, among others, a higher crime rate, a decline in tourism, and a decline in citizens' attitudes about their community. However, regulating panhandlers can raise some legitimate First Amendment concerns.

*Q: How can municipalities constitutionally yet effectively regulate aggressive panhandlers?*

*A: All municipalities in Illinois are statutorily authorized to implement ordinances to regulate panhandling.[1] Each ordinance, however, must pass constitutional muster. If the ordinance is content-based, the ordinance must be necessary to serve a compelling governmental interest, and narrowly tailored to serve that interest. But, the most effective and efficient approach to regulating aggressive panhandling may be through content-neutral restrictions. However, content-neutral regulations must be sufficient to avoid vagueness.*

Although all municipalities in Illinois are authorized to enact and implement ordinances to prevent begging,[2] ordinances imposing an absolute ban on begging, panhandling, and/or vagrancy will be rejected by the courts because begging is protected speech under the First Amendment.[3] For example, the appeals court in Loper v. New York Police Dept.[4] determined that the city's complete ban on begging as a form of loitering was unconstitutional under the First Amendment. For First Amendment purposes, the appeals court saw little difference between those that solicit for organized charities and those that solicit for themselves. The court found that, although begging itself may not implicate expressive conduct or communicative activity, begging is often accompanied with the transmission of some social or political message, such as the speaker's need for food, clothing, or shelter, that constitutes protected speech. Therefore, because begging is protected speech and such speech takes place in a public forum (city streets and sidewalks), any restrictions thereupon are considered content-based which must satisfy strict scrutiny.



Strict scrutiny requires that the regulation serve a compelling governmental interest and be narrowly tailored to serve that interest.[5] The federal district court in Patton v. Baltimore City[6] found that the city's ordinance was content-based because the ordinance only applied to panhandlers as opposed to those seeking money for charitable, political, or commercial benefits. However, applying strict scrutiny, the district court determined that the ordinance promoted several compelling governmental interests, such as protecting citizens from threats, intimidation, and harassment; promoting tourism and business; and, preserving the quality of urban life. The district court concluded that the ordinance was narrowly tailored to serve those compelling interests by only prohibiting specifically defined types of panhandling. Other types, such as non-aggressive panhandling, was not affected by the ordinance. Therefore, the city's ordinance passed strict scrutiny.

However, a municipality may be better suited to enact and implement an ordinance which regulates aggressive panhandling through a content-neutral restriction. For example, the Seventh Circuit Court of Appeals has very recently examined an aggressive panhandling ordinance in a content-neutral context in Gresham v. Peterson. [7] The ordinance at issue defined "panhandling" as "any solicitation made in person upon any street, [or] public place . . . in which a person requests an immediate donation . . . from another person . . . ." The ordinance, however, required a vocal request to constitute panhandling. The ordinance prohibited "panhandling on any day after sunset, or before sunrise." It further prohibited panhandling at bus stops, in public transportation vehicles or facilities, in parked or stopped vehicles on a public street or alley, in a sidewalk café, or within twenty feet from an automatic teller machine or entrance to a bank. Finally, the ordinance prohibited aggressive panhandling which included: (1) non-consensual touching while soliciting; (2) soliciting a person standing in line and waiting to be admitted to a commercial establishment; (3) blocking the path of a person or the entrance to any building or vehicle while soliciting; (4) following a person who walks away from a panhandler after being solicited; (5) using profane or abusive language during a request for or following a refusal to make a donation which would cause a reasonable person to be fearful or feel compelled; or (6) panhandling in a group of two or more persons.[8]

In Gresham, the appeals court determined that the ordinance was content-neutral because the ordinance did not ban all panhandling and, therefore, was to be understood as a time, place, and manner regulation.[9] To pass constitutional muster under the test for time, place, and manner restrictions, the ordinance must be narrowly tailored to achieve a significant governmental purpose and leave open alternative channels of communication.[10] The appeals court determined that the ordinance served a significant governmental purpose because the city has a legitimate interest in promoting the safety and convenience of its citizens on public streets.[11] In addition, the appeals court determined that the ordinance was narrowly tailored to achieve that interest because it was restricted only to those times and places where citizens would feel most insecure in their surroundings.[12] Finally, the appeals court determined that the ordinance left alternative channels of communication because the panhandlers could: express their verbal message all day; hold up signs; entertain; and, phone or door-to-door solicitation at night.[13] Therefore, the appeals court held that the city's aggressive panhandling ordinance was a proper content-neutral time, place, and manner restriction.

An aggressive panhandling ordinance, however, must also avoid vagueness. Specifically, such an ordinance needs to provide a sufficient definition of "aggressive panhandling" because legislative enactments must articulate terms with a reasonable degree of clarity to reduce the risk of arbitrary enforcement and allow individuals to conform their behavior to the requirements of the law.[14] In Gresham, the appeals court examined the city's definition of the term "aggressive panhandling" to determine whether the state court could reasonably construe the definition to save the ordinance from a vagueness challenge. The appeals court determined that paragraph (d) (4) of the ordinance, which prohibits panhandlers from following a person who has walked away after being solicited, could be reasonably construed because the state court could interpret that paragraph to mean that a continuing request for a donation coupled with "following" would be prohibited.[15] However, walking in the same direction as the solicited person would not be a violation provided the walking was divorced from the request.[16] The appeals court further determined that the provisions of the ordinance which required some subjective interpretations by the person being solicited could reasonably be interpreted by the state court to avoid vagueness because the ordinance included the "reasonable person" standard within those provisions.[17] Therefore, the appeals court also held that the ordinance was sufficiently clear to avoid vagueness.

In conclusion, any municipality that is interested in enacting an ordinance to prohibit aggressive panhandling must be cognizant of the First Amendment implications. For example, the appeals court in Gresham determined that the aggressive panhandling ordinance at issue was a content-based restriction because it was targeted towards the specific request for donations rather than all solicitations.[18] However, the appeals court was compelled to evaluate the ordinance in the context of content neutrality because the parties stipulated that the ordinance was content-neutral.[19] Therefore, municipalities considering such an ordinance are strongly recommended to consult with their municipal attorney to ensure its constitutionality.

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[1]. See 65 ILCS 5/11-5-4 (West 1998 & Supp. 1999).

[2]. See *supra*, note 1.

[3]. See Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980); Smith v. City of Ft. Lauderdale, 177 F.3d 954 (11th Cir. 1999); Loper v. New York City Police Dept., 999 F.2d 699 (2d Cir. 1993).

[4]. 999 F.2d 699 (2d Cir. 1993).

[5]. Boos v. Barry, 485 U.S. 312 (1988).

[6]. No. S 93-2389 (D. Md. August 19, 1994).

[7]. 225 F.3d 899 (7th Cir. 2000).

[8]. City-County General Ordinance No. 78 (1999), Revised Code of Indianapolis and Marion County § 407-102; Gresham, 225 F.3d at 901-902.

[9]. Gresham, 225 F.3d at 905.

[10]. Gresham, 225 F.3d at 906; Loper, 999 F.2d at 704.

[11]. Gresham, 225 F.3d at 906.

[12]. *Id.*

[13]. Gresham, 225 F.3d at 907.

[14]. *Id.*

[15]. Gresham, 225 F.3d at 908.

[16]. *Id.*

[17]. Gresham, 225 F.3d at 909.

[18]. Gresham, 225 F.3d at 905.

[19]. Gresham, 225 F.3d at 906.