

August 3, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

DRAFT ORDINANCE PROHIBITING AGGRESSIVE SOLICITATION

BACKGROUND

This is a status report on the San Francisco Aggressive Solicitation Ordinance. The Council's continuing interest in solving or mitigating the problem of aggressive solicitation prompted this interim report.

The San Francisco ordinance on aggressive soliciting was discussed in a City Attorney's report to the Committee on Rules, Legislation and Intergovernmental Relations, dated April 15, 1993, included as attachment 1, and a memorandum of law by Deputy City Attorney Joseph M. Battaglino, dated February 12, 1993, which is included as attachment 2.

As stated in attachment 2, this office has continued to monitor the San Francisco ordinance on aggressive soliciting. Informal discussions on July 27, 1993, with the San Francisco City Attorney's Office disclosed the following:

1. There have been no challenges to the ordinance.
2. The American Civil Liberties Union (ACLU) has advised the San Francisco City Attorney's Office that it would challenge the aggressive solicitation ordinance if it were to be vigorously enforced. San Francisco has complied with two ACLU requests under the California Public Records Act (Government Code Section 6250, et seq.) for statistics on enforcement. A copy of the requests and statistics furnished are being sent to our office.
3. There have been seventy-five (75) arrests charging violations of the ordinance, but no prosecutions.
4. Most of the cases have been dismissed for lack of evidence or "in the interests of justice."
5. Full prosecution of the ordinance is not expected because of its low priority and limited resources.
6. The ordinance has served to place the public on notice and "to warn" panhandlers that action could be taken.

DRAFT ORDINANCE

Attachment 3, a draft ordinance, which if enacted would make it unlawful for any person to harass or hound for the purpose of inducing another person through coercion, threat, or

intimidation, to give money or any other thing of value. The draft ordinance is a modification of San Francisco Police Municipal Code section 120-1 which makes it unlawful for any person "to harass or hound another person for the purpose of inducing that person to give money or another thing of value." The modification is designed to more narrowly define the compelling state interest of avoiding coercive, threatening or intimidating solicitation of the public. A narrowly tailored "compelling state interest" is required to justify a limitation on begging, which it is protected by the First Amendment.

FIRST AMENDMENT ISSUE

The First Amendment issue confronting the proposed draft ordinance is fully discussed in attachments 1 and 2. If enacted and vigorously enforced by arrest and successfully prosecuted, it is anticipated that the proposed draft ordinance would be challenged by the ACLU. The draft ordinance is more narrowly tailored than the San Francisco ordinance by the modification discussed above. However, it still remains open to a First Amendment challenge.

SUMMARY

1. The prepared draft ordinance is a modification of a San Francisco ordinance.
2. The modification is designed to more narrowly tailor the "compelling state interest" to survive a First Amendment challenge.
3. The ACLU has requested and received enforcement statistics on the ordinance from the San Francisco City Attorney's Office.
4. The ACLU will most likely challenge the proposed draft ordinance if enacted. The proposed draft ordinance is open to a First Amendment challenge despite the modification made to narrowly tailor the "compelling state interest" involved.

Respectfully submitted,
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JMB:jp:520.1(043.1)
Attachments
RC-93-38