

Homeless Task Force

City Ordinance Review

August 22, 2022



Subject Areas

- Public Right of Way
- Loitering
- Trespassing
- Panhandling



CITY OF
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We the People

**The First
Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



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Forums (Government-Controlled Places)

Traditional public forums

- Examples: public parks, sidewalks, and areas traditionally open to political speech
- No viewpoint discrimination
- Content-neutral time, place and manner restrictions only

Designated public forums

- Examples: municipal theaters and meeting rooms
- Additional regulations allowed – not obligated to stay open
- Also content-neutral

Nonpublic forums

- Examples: airport terminals, internal mail systems, polling places
- Gov't may restrict content but must be reasonable and viewpoint neutral



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Public Right of Way

Definitions:

Right of Way: *The right to pass through property owned by another.*

Public Right of Way: *The right of passage held by the public in general to travel on roads, freeways, and other thoroughfares.*



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Loitering – City Ordinance

§ 131.004 LOITERING PROHIBITED.

(a) **LOITERING** means remaining in a public place in the downtown loop area which, for purposes of this article, includes the central business district of the city and the area bordered by the west side of Minnesota Avenue to Grange Avenue between Eighth Street and Thirteenth Street, with the apparent purpose of

- establishing control over an identifiable area,
- intimidating others from entering those areas, or
- to conceal illegal activities.



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Loitering – Clarifying Language

LOITERING includes, but is not limited to:

- A. Creating or causing to be created any disturbance or annoyance to the passage, access and comfort of any person:
- B. Obstructing, impeding or restricting in any manner the free passage of pedestrians or vehicles; and
- C. Obstructing, molesting or interfering with any person lawfully in any public place.

Generally speaking, the broader the language, the greater the First Amendment scrutiny.



Loitering – City Ordinance

(b) No person shall be guilty of violation of this section unless a law enforcement officer has:

(1) Informed the person or persons within a group that the person or group is engaged in loitering within an area in which loitering is prohibited, and order the person or group to disperse and remove himself, herself or themselves from the area or from the place at which the order was issued; and

(2) Informed the person or persons within a group that he, she or they will be subject to arrest if the person or group fails to obey the order promptly or engages in loitering within sight or hearing of the location on which the order was issued during the next three hours.



Loitering – State Law

Definition:

22-24B-24(2) "Loiter," to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors;

22-24B-24. Loitering within community safety zone or public library prohibited--Exception--Violation as felony.

No person who is required to register as a sex offender as defined in this chapter may loiter within a community safety zone or a public library unless the person was under age eighteen at the time of the offense and the offender was not tried and convicted of the offense as an adult or the circuit court has entered an order pursuant to § 22-24B-28 exempting the offender from the provisions of §§ 22-24B-22 to 22-24B-28, inclusive.

A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.



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Enforcement Mechanism - Disorderly Conduct (City)

City Ordinance 131.001

A person commits disorderly conduct when he or she knowingly:

(g) Loiters, crowds or congregates on the public streets or sidewalks so as to unreasonably obstruct or interfere with pedestrian or vehicular traffic or use thereof or so as to create an unsafe condition for vehicular or pedestrian traffic or use of the street or sidewalk and who fails or refuses to disperse and move on when ordered to do so by a police officer;

*The City generally relies on State Law for the prosecution
of disorderly conduct charges.*



Enforcement Mechanism - Disorderly Conduct (State Law)

22-18-35. Disorderly conduct--Misdemeanor.

Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior;
- (2) Making unreasonable noise;
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
- (4) Obstructing vehicular or pedestrian traffic;

is guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, three or more violations of this section, within the preceding ten years, the defendant is guilty of a Class 1 misdemeanor for any fourth or subsequent offense.



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Trespassing – State Law

SDCL 22-35-6. Entering or refusing to leave property after notice--Misdemeanor.

Any person who, knowing that he or she is not privileged to do so, enters or remains in any place where notice against trespass is given by:

- (1) Actual communication to the person who subsequently commits the trespass;
- (2) Posting in a manner reasonably likely to come to the attention of trespassers; or
- (3) Fencing or other enclosure which a reasonable person would recognize as being designed to exclude trespassers;

is guilty of a Class 2 misdemeanor. However, if such trespasser defies an order to leave, personally communicated to him or her by the owner of the premises or by any other authorized person, the trespasser is guilty of criminal trespass, which is a Class 1 misdemeanor.



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Panhandling (i.e. Solicitation)

(b) *Prohibited acts.*

(1) No person shall solicit in an aggressive manner in any public place.

(2) No person shall solicit on private property without first having obtained the permission of the owner or other person lawfully in possession of the property.

(3) No person shall solicit an operator or other occupant of a motor vehicle while the vehicle is in motion or part of traffic on a street or highway. This prohibition shall not include the advertisement of the sale of goods or services to be accomplished when the vehicle is no longer on a public street or highway.

(4) No person shall solicit by stating that funds are needed to meet a specific need, when the solicitor does not intend to use the funds to meet that need or does not have that need.



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Panhandling (i.e. Solicitation)

Issues:

- Safety – of solicitor, “solicitee”, and others
- “Aggressive behavior”: approaching, touching, persisting, blocking, gesturing, following
- Evidentiary issues – direct observation of violations, victim/witness testimony
- Signage – “no panhandling”, “no standing on median”, alternative charitable options