

ORDINANCE NUMBER _____

AN EMERGENCY ORDINANCE OF THE MISSOULA CITY COUNCIL AMENDING MISSOULA MUNICIPAL CODE TITLE 9, ENTITLED *PUBLIC PEACE, MORALS AND WELFARE*, CHAPTER 34 ENTITLED *PEDESTRIAN INTERFERENCE*, SECTIONS 9.34.020, 9.34.030, 9.34.040, AND 9.34.050. ENACTED AS AN EMERGENCY ORDINANCE IN ORDER TO ADDRESS IMMEDIATELY THE SEASONAL INFLUX OF PANHANDLERS.

BE IT ORDAINED BY THE MISSOULA CITY COUNCIL THAT TITLE 9, CHAPTER 34, SECTIONS 9.34.020, 9.34.030, 9.34.040, AND 9.34.050 BE AMENDED AS FOLLOWS AND THAT THE ORDINANCE BE ENACTED AS AN EMERGENCY ORDINANCE SO IT IS IN EFFECT TO ADDRESS IMMEDIATELY THE SEASONAL INFLUX OF PANHANDLERS.

Section 1.

9.34.020 Purposes. The purpose of this emergency ordinance is to address immediately the seasonal influx of panhandlers. The purpose of this chapter is to protect the health, safety and welfare of the citizens of and visitors to the city by prohibiting acts of aggression or interference towards pedestrians. This includes prohibiting ~~pedestrian interference involving~~ actions that intentionally obstruct pedestrian passage on public bridges, streets, sidewalks, parks and other publicly held or owned lands. The city council declares that such prohibitions are necessary and desirable for the following reasons:

- A. The city deems it necessary to find solutions which make it easier for people to remain in public places peacefully rather than be excluded from them in order to make it easier for the city's diverse residents and visitors to share public areas with less conflict.
- B. The city deems it necessary to find solutions to encourage courteous behavior of people in order to promote greater tolerance and civility towards each other while narrowly defining unacceptable behaviors.
- C. There has been an alarming increase in the number of persons interfering with, and obstructing, harassing, threatening and intimidating other pedestrians on city streets in recent years, many of whom are wearing or carrying weapons or who are more aggressive or intimidating in their conduct. This conduct has been either related to obstruction of pedestrian passage or soliciting of pedestrians;
- D. The police department and other city offices have received complaints from citizens complaining that they are afraid to walk, or as business people, are afraid to allow their customers to walk on downtown city streets and riverfront walkways as a result of the aggressive, intimidating conduct of persons soliciting and/or conduct of persons harassing, intimidating, interfering with, obstructing or accosting pedestrians or people in public places;
- E. The city deems it necessary to protect the rights of its citizens and visitors to move openly and freely on the city streets, sidewalks, walkways, parks and other public places without fear of being harassed, interfered with, obstructed, accosted, intimidated, injured or robbed by aggressive individuals interfering with their passage; and
- F. The city deems it necessary to protect pedestrians, in public places on public property from obstruction, interference, intimidation, harassment, damage or injury caused or partially attributable to being accosted, harassed, interfered with or obstructed by any person, especially someone with a weapon.

Section 2.

9.34.030 Definitions. The following definitions shall apply to the provisions of this chapter.

A. "Accost" means physically approaching or, when in close proximity to an individual, speaking to that individual in such a manner as would cause a reasonable person to fear imminent bodily harm or fear endangerment that the commission of a criminal act upon his or her person, or upon property in his or her immediate possession, may be about to be committed by the accoster. "Accost" does not include passive, nonobstructive speech or conduct while standing or sitting along the side of a sidewalk or walkway if it does not physically obstruct pedestrians.

B. "Harass" means words, conduct, or actions directed toward another which would reasonably be expected to annoy, alarm, or cause emotional distress. Repeated or persistent harassment of individuals in a similar circumstance infers intent to harass the individual subjected to the behavior described.

C. "Intimidate" means to engage in conduct which would make a reasonable person fearful of imminent harm to his person or property or feel threatened.

— "Forcing oneself upon the company of another" means:

1. ~~Continuing to request or demand something while interfering with or obstructing the passage of the individual(s) addressed, after the person addressed has made a negative response, either verbally or by physical sign;~~

2. ~~Otherwise engaging in any conduct that could reasonably be construed as intended to compel or force a person to accede to demands as a result of fear for their safety, imminent bodily harm or the commission of a crime against them.~~

ⒸD. "Knowingly" means a person acts knowingly with respect to conduct or to a circumstance described by an ordinance defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by an ordinance defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

ⒸE. "Obstruct" means to walk, stand, sit, lie or place an object in such a manner as to impair, hinder or block passage by another person or to require another person to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest shall not constitute obstruction of or interference with pedestrian traffic.

F. "Public Place" means a place to which the public or a substantial group of people has access.

ⒸG. "Purposely" means a person acts purposely with respect to a result or to conduct described by an ordinance defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

ⒸH. "Weapon" means any firearm, knife, sword, club or any other object used as a weapon by the offender when violating the provisions of this chapter.

Section 3.

9.34.040 Prohibited conduct. The following conduct or action is prohibited pursuant to the city of Missoula "Pedestrian Interference Act" and is considered to be a violation of this chapter.

A. It is unlawful for any person to lie or sleep upon any street, sidewalk or other public right-of-way within the city limits.

B. It is unlawful for any person to walk, stand, sit, lie or place an object in such a manner which obstructs or hinders passage of pedestrians on any street crosswalk, sidewalk or other public place by leaving less than six feet (6') of clear right-of-way for pedestrian passage. within the city limits

~~C. It is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land to purposely or knowingly accost or intimidate another person(s) in such a manner as would cause a reasonable person to fear imminent bodily harm or fear that the commission of a criminal act upon his or her person or property in his or her immediate possession may be about to be committed by the accoster.~~

~~C.—It is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land while openly and visibly and in a threatening manner carrying a weapon to purposely or knowingly approach any person with intent to engage in actions or conduct that would obstruct pedestrian passage.~~

~~D. It is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land to purposely or knowingly force oneself upon the company of another as defined herein.~~

D. Exceptions. The prohibition in Section 9.34.040 shall not apply to any person:

1. Sitting or lying down on a public sidewalk due to a medical emergency;
2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;
3. Operating or patronizing a business which has permission to occupy the sidewalk; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to special event or other permit;
4. Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
5. Sitting on a public sidewalk within a bus stop zoned while waiting for public or private transportation.
6. Engaging in constitutionally protected expressive activities which would otherwise be unreasonably restricted by the limitations in Subsections A, B and C of this section.

Section 4.

9.34.050 Violation--Penalty. A person convicted of a violation of this chapter shall be guilty of a misdemeanor and shall be fined not to exceed one hundred dollars ~~or imprisoned for any term not to exceed ten days, or both.~~

Section 5.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a vote _____ and APPROVED on this _____ day of _____, 2009.

ATTEST:

APPROVED:

Martha L. Rehbein

John Engen