DURHAM
1869
CITY OF MEDICINE

CITY OF DURHAM | NORTH CAROLINA

DATE: November 7, 2013

TO: Mayor and City Council
FROM: Thomas J. Bonfield, City Manager
SUBJECT: Roadside Solicitation

Executive Summary

In December 2012 the City Council adopted Ordinance 14375 amending the laws associated with all roadside solicitation in the City limits. The Durham Police Department began enforcement of the Ordinance approximately February 2013. Following the enactment and enforcement of the Ordinance, several organizations that serve the City's homeless population expressed concerns to the City Council and the Homeless Services Advisory Committee (HSAC) that the restrictions of the roadside solicitation ordinance unfairly negatively impacted some of the homeless populations in Durham. The HSAC established a subcommittee to study this matter and in August 2013 adopted a recommendation to modify the City's roadside solicitation regulations to increase the locations where roadside solicitation would be allowed, along with a series of other recommendations related to solicitation and homeless populations. This agenda item transmits that recommendation from the HSAC, along with a staff analysis of the proposed changes, to the City Council.

Recommendation

That City Council receive the recommendations and communication from the Homeless Services Advisory Committee and provide the City Manager and City Attorney direction as to any desired modifications to City regulations related to roadside solicitation.

Background

In December 2012 the City Council adopted Ordinance 14375 amending the laws associated with all roadside solicitation in the City limits. The Durham Police Department began enforcement of the Ordinance approximately February 2013. Following the enactment and enforcement of the Ordinance several organizations that serve the City's homeless population expressed concerns to the City Council and the Homeless Services Advisory Committee (HSAC) that the restrictions of the roadside solicitation ordinance unfairly negatively impacted some of the homeless populations in Durham. The HSAC established a subcommittee to study this matter and in August 2013 adopted a recommendation to modify the City's roadside solicitation regulations to increase the locations where roadside solicitation would be allowed, along with a series of other recommendations related to solicitation and homeless populations. The City Manager and City Attorney have reviewed the proposed ordinance changes. In a number of areas the proposed ordinance would significantly modify the intent of the ordinance adopted by City Council.

Prior to receipt of the communication from the HSAC, the City Attorney and City Manager met with Chief District Court Judge Marcia Morey to discuss the opportunity to move violations of the roadside solicitation ordinance to a monthly "community life court" to for the most part, avoid violators from having to initially appear in criminal court. Judge Morey agreed and has established this arrangement, which began in September 2013.

During these hearings, staff from HSAC as well as social service agencies, is present to assist persons who are determined to be homeless and/or with other specials needs, in seeking alternative support and assistance.

Issues and Analysis

A comparison of the ordinance suggested by the HSAC and Ordinance #14375 by section indicates the following:

Section 54-26, definition of "First Amendment protected sales" – The HSAC proposal makes no real change.

Section 54-26, definition of "Litter" – The HSAC proposal arguably broadens the definition, which could increase requirements on solicitors. However, it is necessary to change this in conjunction with the HSAC proposed change to the "Removal of goods" provision in section 54-86(14) (which the HSAC version re-designates as 54-86(12)). The current ordinance says that when solicitors are more than 50 feet from the things they placed on the right of way, they will be treated as having littered. The proposal would remove that restriction, leaving the possibility that solicitors who walk away from their things could say that they intended to return and had not abandoned them.

Section 54-86(a), in conjunction with section 54-86(b) and 54-86((b) (10), under the current ordinance – The ordinance regulates attempting to stop cars on one-way Type B* streets. A solicitor may not try, with gestures or otherwise, to get a driver to stop, except in two situations: (i) the car is headed for a stop sign or traffic light that has turned red or (ii) the car has stopped for such a sign or light. While attempting to get a car to stop, the solicitor must be on a paved sidewalk. The solicitor may transact with the passenger, on the right side of the car, as long as the car is stopped in the lane next to the sidewalk for a traffic light or stop sign.

54-86(a) and 54-86(b) (9) under the HSAC proposal – Most provisions of the HSAC proposal lessen restrictions on solicitors. However, the HSAC proposal would prohibit all attempts by solicitors to stop cars, perhaps under the assumption that occupants of a car will assess whether someone standing in a travel lane or on the side of a street is soliciting. The HSAC proposal allows solicitors to stand and walk in the travel lanes while waiting for someone in a car to invite them to the car. Before a solicitor may "approach" a car, the car must be stopped for a traffic light or stop sign. Under the proposal solicitors may not "approach" or touch a car until an occupant of the car invites the solicitor. The proposal allows solicitors to walk across travel lanes. While it is not clear, the proposal may say that after an occupant has made an invitation, the solicitor may not walk in front of the car to engage with its occupants. The proposal appears to say that while a solicitor is engaging with any of a car's occupants, if anyone, whether or not connected with the solicitor, walks in front of the car, the solicitor must suspend his or her engagement with the occupants until the individual is no longer in front of the car. The distance in front of the car subject to that rule is not defined. Under the proposal, solicitors may engage with any occupant on either side of a car. The car may be on a one-way street or a two-way street. The transaction must cease when the light changes to green.

All solicitors, whether operating under the current ordinance or the proposal, are subject to the State law that prohibits impeding the normal movement of traffic. Section 66-12 of the City Code prohibits soliciting from medians, and the proposal would not affect that section.

Section 54-86(b)(4) "Animals" -- The current ordinance prohibits solicitors from being accompanied by animals, except for service animals. The HSAC proposal would repeal that prohibition, thus allowing solicitors to be accompanied by animals.

Section 54-86(b)(11) –(12) "Safe passage of pedestrians" and "Normal movement of pedestrians" -- The HSAC version, which combines these subsections into 54-86(b)(10), makes no real change.

Section 54-86(b)(13) "Littering and traffic laws" – The HSAC version, which is 54-86(b)(11), makes no real change.

Section 54-86(b)(16) "Access ramps" – The current ordinance prohibits solicitation activities on access ramps. In other words, access ramps are treated as Type A streets. The HSAC proposal repeals that provision, thus placing access ramps with Type B streets and thus subjects them to the regulations in the ordinance as other Type B streets.

Section 54-86(b)(17) "Bridges" -- The current ordinance prohibits solicitation activities on Type B streets from taking place on a bridge and on the 100 feet section of the street leading to or from a bridge. The HSAC proposal (numbered 54-86(b)(14)) would eliminate the 100 foot rule, leaving intact the prohibition on the bridge proper.

*NOTE: The current ordinance essentially divides streets into three types. All solicitations on the Type A streets are prohibited; solicitations are regulated on Type B streets; and the ordinance creates no restrictions on Type C, except that even in Type C streets, medians cannot be used for solicitations. The restrictions in 54-84 and 54-86 apply to Type B streets, not to Type C streets.

Alternatives
Should the Council elect to amend the current roadside solicitation ordinance it is recommended that guidance be provided to the City Attorney rather than simply accepting the proposed ordinance of the HSAC.

Financial Impact
No direct impact.

SBDE Summary
Not Applicable

Attachments
1. September 12, 2013 Letter and Packet from Homeless Services Advisory Committee