

**TO:** Government Operations Committee  
**FROM:** David Szewczyk  
**RE:** Proposed Ordinance Revision – Loitering on Medians  
**DATE:** June 13, 2024

As you may recall, on June 3<sup>rd</sup> this Committee discussed the proposed addition to the City’s loitering ordinance, which was drafted in response to expressed safety concerns. The scope of the proposed amendment is limited, as it is expected to apply to only a small number of narrow medians located in high-volume or high-speed traffic areas on city-owned streets. The amendment would not apply to medians located within state and interstate highways.

Since the initial meeting concerns have been expressed about the constitutionality of the proposed amendment as it relates to free speech, as well concern about potentially criminalizing the activities of impoverished individuals.

As for the constitutional concerns, ordinances that have been struck down previously were not as narrow in scope (*i.e.*, applied to all medians) and did not apply to all loitering activities (*i.e.*, allowed the placement of political signage). Other courts dealing with First Amendment issues have found that the overbreadth of an ordinance (all medians) cuts against the expressed public safety justification. By limiting the ordinance amendment to medians less than six feet wide in high-volume or high-speed traffic areas, it would be difficult to argue that the amendment is overbroad. As the amendment would apply to loitering activities, it would not favor one form of constitutionally-protected free speech over another, and would be considered content neutral.

As to the expressed concern about potentially criminalizing activities of impoverished individuals, an initial review by City staff has estimated that the proposed ordinance amendment would apply to only about ten medians within the City, the large majority of which are located either in current High Crash Locations according to the State of Maine, Department of Transportation, or in locations that have been designated by the DOT as High Crash Locations in the past. As we discussed on June 3<sup>rd</sup>, it is expected that enforcement of the proposed ordinance will involve only the redirection of citizens to safer locations, *i.e.*, anywhere other than these few, unsafe medians. There are hundreds or thousands of locations within the City where loitering is allowed and that would not be impacted by this proposed amendment. There are multiple avenues available to address refusals to be redirected to safer locations, none of which are expected to result in criminal sanctions.

It has also been suggested by some that any such proposed ordinance should identify the specific medians where loitering is prohibited. Such an approach was considered by staff, and it was ultimately decided that the slightly-more-flexible but very narrow-in-scope language used in the proposed amendment may have the advantage of applying to dangerous locations wherever they occur within the City, as opposed to having to change the ordinance each time traffic patterns change and high-speed or high-volume traffic makes a new location particularly dangerous.

There has been a suggestion by some that if there isn’t a history of harm at a location, there isn’t a need for a change in the law. While it is appreciated that historical data can inform decision-making, it is respectfully disagreed that a lack of serious injury or death to a pedestrian at a particular location negates the need for proactive changes in the law. Waiting for accidents or incidents to occur before implementing safety measures can result in unnecessary harm and loss to citizens.

**§174-1 Prohibited acts.**

It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle, either alone or in consort with others, in a public place in such manner as to:

- A.** Obstruct any public street, public highway, public sidewalk or any other public place or building or hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.
- B.** Commit, in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or to any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

It shall also be unlawful for any person to loiter, either alone or with others, on medians less than six feet wide in high-volume or high-speed traffic areas, due to safety concerns.

Additions are underlined; deletions are ~~struck through~~.