



CITY OF STAMFORD, CONNECTICUT

INTER-OFFICE CORRESPONDENCE

DATE: June 8, 2006

TO: David Martin, President
Board of Representatives

FROM: Michael S. Toma, Assistant Corporation Counsel *MST*

RE: Proposed Day Worker Ordinance

This memo responds to two questions that you posed regarding the above proposal. You asked whether state law authorizes the Board of Representatives to pass an ordinance regulating traffic. You also asked whether the civil citation process that is codified at Chapter 97 of the City Code may be used as the enforcement mechanism for such an ordinance.

Because the proposed ordinance would create a non-solicitation zone on a state highway (East Main Street/Route 1), the authority to regulate traffic on this roadway rests with the State Traffic Commission. Section 14-309 of the general statutes provides that no traffic control device (defined as signs, signals, markings and devices placed for the purpose of regulating, warning or guiding traffic) shall be installed on any state highway by a local traffic authority except by consent and written approval of the State Traffic Commission. The type of signs contemplated here, which are ones prohibiting the stopping of vehicles for the purpose of solicitation of employees, fall under the definition of a traffic control device. This statute further provides that no local ordinance relating to such traffic control device shall take effect until approved in writing by said commission or be effective after such approval has been revoked. Therefore, before the signs could be posted, a request would need to be submitted to the State Traffic Commission asking that it approve of the signage and the proposed ordinance.

You also asked whether the civil citation process could be used to enforce the ordinance. The Board of Representatives is free to elect to have designated city employees issue civil citations for violations of the ordinance. However, the civil citation process contains a requirement that may decrease its effectiveness when used in a traffic enforcement context. Section 97-12 of the Code provides that a citation officer shall first

issue a written warning providing notice of the specific violation and the time period within which it shall be corrected (not less than twenty-four hours) before issuing a citation, unless a violation is causing an immediate and significant danger to others. In cases where a vehicle is against the curb or is otherwise completely out of the travel lane, a citation officer may be unable to conclude that an immediate and significant danger exists, in which case he or she will be required to issue a warning.

Enforcement of the proposed ordinance by civil citation may raise some procedural questions. Section 51-164p of the general statutes provides that notwithstanding any local law, any violation of any ordinance for which the penalty does not exceed ninety dollars is an infraction. Within the state criminal court system is a process for receiving pleas of not guilty in connection with infractions. If a recipient of a civil citation wishes to contest it in a forum where the government has the highest burden of proof, he may elect to plead not guilty in Superior Court, where guilt must be proven beyond a reasonable doubt. Since a person can only be required to pay the \$90 fine once, if a person elects the Superior Court process, the civil citation process would need to be held in abeyance until the conclusion of the criminal proceedings. If a person were found guilty in Superior Court and he pays the fine to the Superior Court, the City would have to cease civil enforcement; if the person were found not guilty, then the civil proceeding could go forward, albeit in the context of a previous finding of no guilt.

Although section 7-148 of the general statutes allows for fines of up to \$100 for ordinance violations, the scenario described in the previous paragraph cannot be avoided by simply increasing the fine to \$100, because the offense would then fall into the more serious "violation" classification instead of an "infraction," and an individual still would have the right to seek a hearing in the Superior Court.

You also asked if any state statutes exist that might achieve the objectives of the proposed ordinance if vigorously enforced. In going through the motor vehicle statutes, I came across section 14-251, "parking vehicles," which contains the following: "no vehicle shall be permitted to remain stationary within the limits of a public highway in such a manner as to constitute a traffic hazard or obstruct the free movement of traffic thereon." As an alternative to the proposed ordinance, the City may consider more aggressive enforcement of this statute.

If the areas of East Main Street that are intended to be made non-solicitation zones are areas where parking is not allowed, then a second alternative to the proposed ordinance is available. Under state law (section 14-1), a "parked vehicle" means a motor vehicle in a stationary position within the limits of a public highway. If no-parking signs are posted, the police can ticket a car pulled to the side of the road, even if the car's engine is on and the driver is behind the wheel.