

Southgate City Council Agenda

Council Chambers

14400 Dix-Toledo Rd., Southgate, Michigan 48195

Wednesday July 7, 2021

WEB MEETING @ <https://us02web.zoom.us/j/82935387400>

CALL-IN @ + 1-312-626-6799 Passcode:82935387400#

6:30pm Work Study Session

1. Officials Reports
2. Revision to Shopping Cart Ordinance
3. Discussion on returning to live City Council Meetings

7:00 pm Regular Meeting

Pledge of Allegiance

Roll Call: Colovos, Farrah, George, Graziani, Rauch, Rollet, Zamecki.

Minutes:

1. Work Study Session Minutes dated June 16, 2021
2. Regular City Council Meeting Minutes dated June 16, 2021
3. Public Hearing Meeting Minutes dated June 16, 2021

Scheduled Persons in the Audience:

Consideration of Bids:

Scheduled Hearings:

Communications "A" –

Communications "B" – (Receive and File)

Ordinances:

1. Second Reading; Proposed Revision of City Ordinance 670.09 "Begging in Public Places"

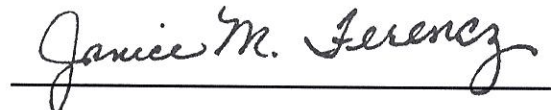
Old Business:

New Business:

Unscheduled Persons in the Audience:

Claims & Accounts: Warrant #1428 \$1,801,695.98

Adjournment:



Janice M. Ferencz, City Clerk

City Council

Work Study Session

June 16, 2021

An Informal Meeting of the Council of the City of Southgate was held on June 16, 2021 at 6:30 P.M. *(Due to the Covid-19 virus, this meeting was via Zoom pursuant to our Local State of Emergency to co-inside with Wayne County.*

Present: Bill Colovos (Southgate), Karen George (Southgate), John Graziani (Southgate), Phil Rauch (Southgate)
Chris Rollet (Southgate), Dale Zamecki (Southgate)

Absent: *Mark Farrah, *excused

Also Present: Mayor Joseph G. Kuspa, City Administrator Dustin Lent, City Attorney Brandon Fournier, Assistant City Administrator/Finance Director David Angileri, City Clerk Janice Ferencz, City Engineer John Hennessey, Public Safety Director Joseph Marsh, Police Chief Mark Mydlarz, Fire Chief Marc Hatfield, Acting DPS Director Kevin Anderson, Building Inspections Director Bob Casanova and Parks & Recreation Director Julie Goddard

Discussed the following agenda items:

- Proposed ordinance amendment to 670.09 "begging"
- City Hall Parking Lot Maintenance Improvements
- Drinking Water Revolving Fund (DWRF) Project Plan
- Police request to sell Shotguns
- Southgate Veteran's Memorial Library Commission Policy & Procedures Manual Changes

This meeting ended at 6:51 pm.

City of Southgate

Regular City Council Meeting

June 16, 2021

A Regular Meeting of the Council of the City of Southgate was held on Wednesday, June 16, 2021 and was called to order at 7:00 PM by Council President John Graziani (**DUE TO COVID-19 VIRUS, THIS MEETING WAS HELD VIA ZOOM, PURSUANT TO WAYNE COUNTY AND LOCAL STATE OF EMERGENCY.**)

This meeting began with the Pledge of Allegiance, followed by roll call.

Present: Bill Colovos (Southgate), Karen George (Southgate), John Graziani (Southgate), Phil Rauch (Southgate), Chris Rollet (Southgate), Dale Zamecki (Southgate)

Absent: *Mark Farrah, *excused

Also Present: Mayor Joseph G. Kuspa, City Administrator Dustin Lent, City Attorney Brandon Fournier, Assistant City Administrator/Finance Director David Angileri, City Clerk Janice Ferencz, City Engineer John Hennessey, Public Safety Director Joe Marsh, Police Chief Mark Mydlarz, Fire Chief Marc Hatfield, Acting DPS Director Kevin Anderson, Building Inspections Director Bob Casanova and Parks & Recreation Director Julie Goddard.

Minutes:

Moved by George, supported Zamecki, RESOLVED, that the minutes of the City Council Work Study Session dated June 2, 2021 be approved as presented. Carried unanimously.

Moved by Colovos, supported by George, RESOLVED, that the minutes of the Regular City Council Meeting dated June 2, 2021 be approved as presented. Carried unanimously.

Consideration of Bids:

1. Letter from Mayor; Re: City Hall Parking Lot Maintenance Improvements moved by Colovos, supported by George, RESOLVED, that the Southgate City Council hereby concurs with the Mayor's recommendation and awards the bid for City Hall Parking Lot Maintenance Improvements to AI's Asphalt Paving Company (25500 Brest Road, Taylor, MI 48181-4065) in the amount of \$9,746.75 plus a 15% contingency of \$1,462.01 for a total of \$11,208.76.

Motion carried unanimously.

Moved by Rauch, supported by Zamecki, RESOLVED THAT the Southgate City Council hereby enters into a public hearing at 7:03 p.m. to discuss the Drinking Water Revolving Fund (DWRF) Project Plan.

Moved by Zamecki, supported by George, RESOLVED THAT the Southgate City Council hereby closes the public hearing at 7:17p.m.

Communications "A":

1. Letter from City Engineers; Re: Drinking Water Revolving Fund (DWRF) Project Plan moved by Zamecki, supported by George, RESOLVED THAT the Southgate City Council hereby authorized Hennessey Engineers, 13500 Reeck Road, Southgate, Michigan 48195 under the supervision of Tiffany T. Neubig to prepare a Project Plan, which recommends the construction of the drinking water system project, consisting of the replacement of 70 lead and galvanized water service lines from the main to 18-inches

Regular City Council Meeting

June 16, 2021

inside the building for all properties at various locations throughout the city with construction beginning in 2022 and a watermain replacement project submitted to the Michigan Department of Environment, Great Lakes and Energy on July 1, 2021 and formally adopted will be funded through Michigan's Drinking Water Revolving Fund Loan Program.

Motion carried unanimously.

2. Memo from Director of Public Safety; Re: Police Dept. Request to sell Shotguns moved by George, supported by Rollet, RESOLVED THAT the Southgate City Council approves the sale of eight (8) Benelli Shotguns in the amount of \$600 each (totaling \$4,800) to Michigan Police Equipment (16753 Industrial Parkway, Lansing, MI 48906).

Motion carried unanimously.

3. Memo from Administrator; Re: Southgate Veteran's Memorial Library Comm.: Policy & Procedures Manual moved by George, supported by Zamecki, RESOLVED THAT the Southgate City Council approves the updated changes made to the Policy & Procedures Manual.

Motion carried unanimously.

Ordinances:

Councilman George gave the first reading of an ordinance to amend the Southgate Code of Ordinance to repeal and replace the current Section 670.09 related to begging.

New Business:

Mayor Kuspa congratulated Bob Casanova on his upcoming retirement.

Claims and Accounts:

Moved by George, supported by Zamecki, RESOLVED, that Claims and Accounts be paid as outlined on Warrant #1427 in the amount of \$3,464,559.12.

Motion carried unanimously.

Adjournment:

Moved by Colovos, supported by George, RESOLVED THAT this Regular Meeting of the Southgate City Council be adjourned at 7:25 P.M. Carried unanimously.

John Graziani
Council President

Janice M. Ferencz
City Clerk

City of Southgate

PUBLIC HEARING

June 16, 2021

REGARDING: Drinking Water State Revolving Fund (DWRf)

A Public Hearing of the Council of the City of Southgate was held on Wednesday, June 16, 2021 and was called to order at 7:03 P.M. by Council President John Graziani. **(DUE TO COVID-19 VIRUS, THIS MEETING WAS HELD VIA ZOOM, PURSUANT TO WAYNE COUNTY AND LOCAL STATE OF EMERGENCY.)**

Present: Bill Colovos, Karen George, John Graziani, Phillip Rauch, Chris Rollet, Dale Zamecki

Absent: *Mark Farrah, *excused

Also Present: Mayor Joseph G. Kuspa, City Attorney Brandon Fournier, Assistant Administrator/Finance Director David Angileri, City Engineer John Hennessey, City Clerk Jan Ferencz, Public Safety Director Joe Marsh, Police Chief Mark Mydlarz, Fire Chief Marc Hatfield, Building Inspections Director Bob Casanova, Acting Director of Public Services Kevin Anderson and Parks & Recreation Director Julie Goddard.

The purpose of this public hearing, duly advertised, is to consider views and comments from interested individuals on the Drinking Water State Revolving Fund (DWRf)

Moved by Rauch, supported by Zamecki, RESOLVED, that Council enters the public hearing.

A presentation was given by Tiffany Neubig from Hennessey Engineers. City Clerk read the letter from the City Engineer.

Council President asked for questions or comments from the audience and Council. There were no comments or questions.

Moved by Zamecki, supported by George, RESOLVED, that this Public Hearing be closed at 7:17 P.M. Carried unanimously.

John Graziani
Council President

Janice M. Ferencz
City Clerk

CHAPTER 679 SHOPPING CART REGULATION

SECTION:

- 679.01:** Purpose
- 678.02:** Declaration of Nuisance
- 678.03:** Definitions
- 678.04:** Shopping Cart Signage
- 678.05:** Impoundment and Fines
- 678.06:** Disposition of Carts
- 678.07:** Illegal Possession or Accumulation of Carts

679.01 PURPOSE:

It is the primary purpose of this ordinance to provide for the prompt retrieval of lost, stolen or abandoned shopping carts in order to promote public safety and improve the image and appearance of the City. It is a purpose of this ordinance to have the owners and operators of businesses providing shopping carts use the means available to them to deter, prevent or mitigate the removal of shopping carts from their business premises, and to retrieve any carts that may be removed despite these efforts. It is a further purpose of this ordinance to prevent the illegal removal of shopping carts from the business premises, to prevent the continued possession of illegally removed carts, and to prevent the accumulation of illegally removed carts on public or private properties.

679.02 DECLARATION OF NUISANCE:

Retail establishments provide shopping carts for the convenience of customers shopping on the premises of the businesses. A shopping cart that has been removed from the premises of the business and left abandoned on public or private property throughout the City constitutes a public nuisance and a potential hazard to the health and safety of the public; each lost, stolen or abandoned cart shall constitute a separate violation. Shopping carts abandoned on public and private property can create conditions of blight in the community, obstruct free access to sidewalks, streets and other rights-of-way, interfere with pedestrian and vehicular traffic on pathways, driveways, public and private streets, and impede emergency services. It is for these reasons that such lost, stolen, or abandoned shopping carts are

hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this ordinance, or in any other manner provided by law.

For purposes of this ordinance, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen, or abandoned, even if in the possession of any person, unless such person in possession thereof is:

- A. An authorized agent; or
- B. Retail Establishment personnel; or
- C. Enforcement personnel; or
- D. An authorized customer.

679.03 DEFINITIONS:

Except as otherwise expressly set forth herein, the following words and terms as used in this ordinance shall have the following meanings:

- A. Administrator: The City Administrator and/or Public Safety Director.
- B. Authorized Agent: The owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart.
- C. Authorized Customer: A customer of the owner of the shopping cart, having the written permission of the owner or owner's agent to remove the shopping cart from the owner's premises.
- D. Cart Patrol and Retrieval Company: A contracted agent who recovers shopping carts on behalf of retail establishments within a one (1) mile radius of the contracting retail establishment(s) no fewer than two (2) times per week.
- E. Enforcement Personnel: Any police officer, code enforcement inspector, or designated staff employed by the City of Southgate.
- F. 'Identification Sign' or 'Cart Sign': A clearly visible sign or Identification visible on each cart that provides ownership information required by this Chapter.
- G. Impounded Cart: Any shopping cart collected by authorized City personnel, regardless of whether or not the shopping cart is being transported to or is stored within City facilities.

H. Lost, Stolen, or Abandoned Shopping Cart: A shopping cart that is either:

1. Removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart; or
2. Left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with permission of the owner;
3. For purposes of this ordinance, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen, or abandoned, even if in the possession of any person, unless such person in possession thereof is either:
 - a. The owner, or an employee or authorized agent of the owner, entitled to possession of said shopping cart; or
 - b. An officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts; or
 - c. City enforcement personnel retrieving, storing or disposing of said cart pursuant to the provisions of this code;
 - d. A customer with written permission from the owner or agent of the owner to take the cart off premises.

I. Owner: Any person or entity that owns, leases, possesses, or makes more than ten (10) shopping carts available to customers or the public in connection with the conduct of a business.

J. Parking Area: A parking lot or other property provided by a retail establishment for the use of customers of said retail establishment for the parking of customer vehicles. The parking area of a retail establishment located in a multi-store complex or a shopping center shall include the entire parking area used by the multi-store complex or shopping center.

K. Premises: Any building, property, or other area upon which any retail establishment business is conducted or operated in the City of Southgate, including the parking area provided for customers in such retail establishment.

L. Retail Establishment: Any business located in the City of Southgate which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.

M. Security Measures: Physical impediments or methods to prevent removal of shopping carts from the premises of the retail establishment including, but not limited to:

1. Electronically-activated self-braking wheels;
2. Poles mounted to shopping carts, which prevent their removal from the interior of the retail establishment
3. Utilization of a cart patrol and retrieval company;
4. Dedicated security personnel; and
5. Other measures deemed appropriate and effective by the Administrator.

N. 'Shopping Cart' or 'Cart': A basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

679.04 SHOPPING CART IDENTIFICATION:

A. Identification on carts required: Each shopping cart made available for use by customers shall have identification signage permanently affixed to it that includes the name of the business establishment.

B. Notice to Customers: All owners shall display and maintain conspicuous signs on the premises near all customer entrances and exits and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by State and City law.

679.05 IMPOUNDMENT AND FINES:

A. Impoundment of Shopping Carts: The City may immediately impound any lost, stolen or abandoned shopping cart within the City, or any cart within the City to which the required Identification signage is not affixed.

1. Impounded Carts: Owners identified on cart signage will be informed that they have ten (10) days in which to retrieve the cart(s) from the City; absence of the required signage shall relieve the City from this responsibility.

B. Fines: The City shall issue a twenty-five dollar (\$25) fine to the owner of each lost, stolen, or abandoned cart impounded by the City; The City shall issue an additional two hundred dollar (\$200) fine to any owner who has twelve (12) or more lost, stolen, or abandoned carts impounded by the City within a calendar month. Each cart impounded by the City shall constitute a separate violation.

679.06 DISPOSITION OF CARTS:

A. Disposition of Carts: Carts impounded by the City which are either held for more than ten (10) days following the date of notification, or carts without an Identification Sign, may be disposed of or sold by the City.

679.07 ILLEGAL POSSESSION OR ACCUMULATION OF CARTS:

A. Any person removing a shopping cart from the premises of an owner, without the written permission of the owner or the owner's authorized agent, shall be guilty of a misdemeanor larceny, Michigan carries two misdemeanor-level penalties for larceny Michigan state Law 750.356.

B. Any owner or lessee of a residential/commercial property that knowingly allows one or more shopping carts to remain on the property without written permission of the cart owner or the owner's authorized agent, is subject to being charged with possession of stolen property in the 3rd degree. This offense is a gross misdemeanor. However no charges will be brought if the owner or lessee has a record of contacting the owner(s) of the cart(s) on a weekly basis until the cart(s) are removed.

678.06 IMPOUNDING OF ABANDONED SHOPPING CARTS; RECLAMATION FEE.

The Director of Public Services and any person duly authorized by him or her or designated by the Mayor are hereby authorized to impound any shopping cart or similar device, commonly used by markets, stores and other business places, which shopping cart or similar device appears to be abandoned on any public or private property, and to notify the owner of such shopping cart or device to reclaim the same within one week of such notification. Notice may be made by telephone, United States mail or personal contact. A fee of ten dollars (\$10.00) per cart shall be paid to the City when the shopping cart or device is reclaimed. Any shopping cart or device that has not been reclaimed within the time specified shall be disposed of as rubbish.



SOUTHGATE POLICE DEPARTMENT MEMO

To: Honorable Mayor Joseph Kuspa
From: Director Joseph L. Marsh
CC: City Administrator Dustin Lent, Finance Director David Angileri, Police Chief
Mark Mydlarz
Subject: Proposed Revision of City Ordinance 670.09
Date: 06/09/2021

Dear Honorable Mayor Kuspa,

Based on a review of our current city ordinance 670.09 related to begging it is my recommendation that the ordinance be revised. This revision is necessary to ensure we are up to date with current applicable case law while protecting the constitutional rights of all people within the City of Southgate.

The proposed revision would remove the current ordinance language which states: **"No person who is idle or dissolute shall go about begging."** The proposed revised language is intended to protect citizens from aggressive solicitation which may lead a person to feel threatened or intimidated while protecting the First Amendment rights of all citizens engaging in constitutionally protected activities.

This revision will help ensure that we are maintaining a safe environment for all members of the community. Attached is a copy of the proposed ordinance revision for your review. Your consideration in this matter is appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "Joseph L. Marsh".

Joseph L. Marsh
Director of Public Safety

Ordinance 670.09 BEGGING in Public Places

- a) Except as otherwise provided in this code of ordinances, or as otherwise authorized by law, no person shall beg or solicit for the immediate payment of money or goods from another person under any of the following circumstances:
- 1) Within twenty (20) feet of a bank or automated teller (ATM) machine.
 - 2) By soliciting a patron at a sidewalk venue (i.e. café, sidewalk sale, etc.) without first having obtained the permission of the operator of the business.
 - 3) By knowingly making a false and misleading representation in the course of a solicitation.
 - 4) In a manner that would constitute aggressive begging, which shall mean the following:
 - a. Touching the solicited person without that person's consent
 - b. Blocking the path of the person being solicited, or the entrance to any building or vehicle.
 - c. Engaging in repeated requests after a refusal by the person being solicited.
 - d. Following behind, alongside or ahead of a person who walks away from the solicitor after having been solicited.
 - e. Using abusive language, either during the solicitation or following the refusal to donate, and making any statement, gesture, or other communication that would cause a reasonable person to be fearful or feel compelled to make a donation.
- b) This provision is intended to protect persons from threatening, intimidating, or harassing behavior; to keep public places safe for use by all members of the community; and to maintain and preserve public places as places where all of the community can interact in a peaceful manner. This provision is also intended to facilitate the free flow of pedestrian and vehicular traffic on streets and sidewalks within the City. While the City finds that aggressive acts associated with solicitation and begging can interfere with the free flow of traffic and intimidate persons in public places, it is not the intent of the City to limit persons from exercising their constitutional right to solicit funds or engage in other constitutionally-protected activities. The provision is intended to protect First Amendment rights of all people within the City, as well as the rights of non-participating people and their property, and to ensure they will be free from duress and/or fraud to the extent possible.

Ord. No. 670.09- Chapter 670 Peace Disturbance

State Law reference – Such person defined as disorderly person, MCL 750.167(1)(h),
MSA 28.364(1)(h).

670.09 BEGGING.

No person who is idle or dissolute shall go about begging.
Ord. 405. Passed 1-23-85.)

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.167 Disorderly person; subsequent violations by person convicted of refusing or neglecting to support family; breastfeeding or expressing breast milk exempt.

Sec. 167. (1) A person is a disorderly person if the person is any of the following:

- (a) A person of sufficient ability who refuses or neglects to support his or her family.
 - (b) A common prostitute.
 - (c) A window peeper.
 - (d) A person who engages in an illegal occupation or business.
 - (e) A person who is intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance.
 - (f) A person who is engaged in indecent or obscene conduct in a public place.
 - (g) A vagrant.
 - (h) A person found begging in a public place.
 - (i) A person found loitering in a house of ill fame or prostitution or place where prostitution or lewdness is practiced, encouraged, or allowed.
 - (j) A person who knowingly loiters in or about a place where an illegal occupation or business is being conducted.
 - (k) A person who loiters in or about a police station, police headquarters building, county jail, hospital, court building, or other public building or place for the purpose of soliciting employment of legal services or the services of sureties upon criminal recognizances.
 - (l) A person who is found jostling or roughly crowding people unnecessarily in a public place.
- (2) If a person who has been convicted of refusing or neglecting to support his or her family under this section is charged with subsequent violations within a period of 2 years, that person shall be prosecuted as a second offender or third and subsequent offender as provided in section 168, if the family of that person is then receiving public relief or support.
- (3) A mother's breastfeeding of a child or expressing breast milk does not constitute indecent or obscene conduct under subsection (1) regardless of whether or not her areola or nipple is visible during or incidental to the breastfeeding or expressing of breast milk.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1939, Act 84, Eff. Sept. 29, 1939;—CL 1948, 750.167;—Am. 1956, Act 110, Eff. Aug. 11, 1956;—Am. 1964, Act 144, Eff. Aug. 28, 1964;—Am. 1969, Act 328, Eff. Mar. 20, 1970;—Am. 1974, Act 340, Eff. Jan. 1, 1977;—Am. 1977, Act 109, Eff. Jan. 15, 1978;—Am. 2014, Act 199, Imd. Eff. June 24, 2014.

Former law: See section 1 of Act 264 of 1889, being How., § 1997a; CL 1897, § 5923; CL 1915, § 7774; CL 1929, § 9090; and Act 35 of 1927.

726 F.3d 867
United States Court of Appeals,
Sixth Circuit.

James SPEET and Ernest Sims, Plaintiffs--
Appellees,
v.
Bill SCHUETTE, Defendant--Appellant.

No. 12-2213.

Argued: June 13, 2013.

Decided and Filed: Aug. 14, 2013.

Synopsis

Background: Arrestees brought action against state attorney general and city, challenging constitutionality of Michigan statute which criminalized begging in a public place. The United States District Court for the Western District of Michigan, Robert J. Jonker, J., 889 F.Supp.2d 969, granted arrestees' motion for summary judgment. Defendants appealed.

Holdings: The Court of Appeals, Boyce F. Martin, Jr., Circuit Judge, held that:

begging, or the soliciting of alms, was a form of solicitation that the First Amendment protected;

Michigan's anti-begging statute was facially invalid; and

statute could not be read to limit its constitutional effect.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Codenotes

Held Unconstitutional
M.C.L.A. § 750.167(1)(h)

Attorneys and Law Firms

***870 ARGUED:** Ann M. Sherman, Office of the Michigan Attorney General, Lansing, Michigan, for Appellant. Miriam J. Aukerman, American Civil Liberties Union

Fund of Michigan, Grand Rapids, Michigan, for Appellees. **ON BRIEF:** Ann M. Sherman, Office of the Michigan Attorney General, Lansing, Michigan, for Appellant. Miriam J. Aukerman, American Civil Liberties Union Fund of Michigan, Grand Rapids, Michigan, Michael J. Steinberg, Daniel S. Korobkin, American Civil Liberties Union Fund of Michigan, Detroit, Michigan, for Appellees. Before: MARTIN and SUTTON, Circuit Judges; ADAMS, District Judge.*

OPINION

BOYCE F. MARTIN, JR., Circuit Judge.

This appeal involves a facial challenge to the constitutionality, under the First and Fourteenth Amendments to the United States Constitution, of a Michigan statute that criminalizes begging. This appeal poses two issues. The first issue is whether begging is a form of solicitation that the First Amendment protects. We hold that it is. The second issue is whether, as the district court concluded, the statute violates—on its face—the First Amendment. We agree with the district court that it does. Michigan's anti-begging statute cannot withstand facial attack because it prohibits a substantial amount of solicitation, an activity that the First Amendment protects, but allows other solicitation based on content. Therefore, we **AFFIRM** the district court's judgment.

The Michigan anti-begging statute at issue in this case has existed since at least 1929. Mich. Comp. Laws § 900 (1929). The statute provides that "[a] person is a disorderly person if the person is any of the following: ... (h) A person found begging in a public place." Mich. Comp. Laws Ann. § 750.167(1)(h) (West 2013). The statute criminalizes begging. A person convicted under section 750.167(1)(h) is "guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both." Mich. Comp. Laws Ann. § 750.168(1) (West 2013). According to the record, the police department in Grand Rapids, Michigan recorded four-hundred and nine reports of incidents of police enforcing this anti-begging ordinance from 2008–2011.

***871** Among those whom the Grand Rapids police arrested under the anti-begging ordinance are the plaintiffs: James

Where a plaintiff makes a facial challenge under the First Amendment to a statute's constitutionality, the "facial challenge" is an "overbreadth challenge." *Connection Distrib. Co.*, 557 F.3d at 335; see also *City of Houston, Tex. v. Hill*, 482 U.S. 451, 458, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) ("Only a statute that is substantially overbroad may be invalidated on its face." (citing *New York v. Ferber*, 458 U.S. 747, 769, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982); *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973))). Instead of having to prove that no circumstances exist in which the enforcement of the statute would be constitutional, the plaintiff bears a lesser burden: "to demonstrate that a 'substantial number of instances exist in which the law cannot be applied constitutionally.'" *Glenn v. Holder*, 690 F.3d 417, 422 (6th Cir.2012) (quoting *Richland Bookmart, Inc. v. Knox Cnty.*, 555 F.3d 512, 532 (6th Cir.2009)). Thus, "[t]he First Amendment doctrine of overbreadth is an exception to [the] normal rule regarding the standards for facial challenges." *Virginia v. Hicks*, 539 U.S. 113, 118, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) (citing *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984)).

And in a facial challenge, a plaintiff must show substantial overbreadth: that the statute prohibits "a substantial amount of protected speech both in an absolute sense and relative to [the statute's] plainly legitimate sweep[.]" *Carey v. Wolnitzek*, 614 F.3d 189, 208 (6th Cir.2010) (quoting *Connection Distrib. Co.*, 557 F.3d at 336). We have acknowledged that "[t]he concept of 'substantial overbreadth'" has "some elusive qualities[.]" *Connection Distrib. Co.*, 557 F.3d at 340; see also *Taxpayers for Vincent*, 466 U.S. at 800, 104 S.Ct. 2118 ("[t]he concept of 'substantial overbreadth' is not readily reduced to an exact definition."). But the doctrine of substantial overbreadth "involves an inquiry into the 'absolute' nature of a law's suppression of speech." *Connection Distrib. Co.*, 557 F.3d at 340. A facial challenge based on substantial overbreadth "describe[s] a challenge to a statute that in all its applications directly restricts protected First Amendment activity and does not employ means narrowly tailored to serve a compelling governmental interest." *Sec'y of State of Md. v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 966 n. 13, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984) (citing *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 637-639, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (rest of citation omitted)). As the Supreme Court has explained, the point of an overbreadth challenge "is that there is no reason to limit challenges to case-by-case 'as applied' challenges when the statute on its face and therefore in all its applications falls short of constitutional demands." *Joseph H. Munson Co., Inc.*, 467 U.S. at 966 n.

13, 104 S.Ct. 2839. If we determine that a statute is substantially overbroad, we have necessarily determined that there is "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *N.Y. State Club Ass'n v. City of N. Y.*, 487 U.S. 1, 11, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988) (quoting *Taxpayers for Vincent*, 466 U.S. at 801, 104 S.Ct. 2118). To succeed in an overbreadth challenge, therefore, a plaintiff must "demonstrate from the text of [the statute] and from actual fact that a substantial number of instances exist in which the [statute] cannot be applied constitutionally." *N.Y. State Club*, 487 U.S. at 14, 108 S.Ct. 2225.

So the first step in reviewing a facial challenge to a law's overbreadth requires us "to determine whether the enactment reaches a substantial amount of constitutionally protected conduct." *City of Houston*, 482 U.S. at 458-59, 107 S.Ct. 2502 (quoting *Vill. of Hoffman Estates*, 455 U.S. at 494, 102 S.Ct. 1186; *Kolender v. Lawson*, 461 U.S. 352, 359 n. 8, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)). If the law does not reach a substantial amount of constitutionally protected conduct, "then the overbreadth challenge must fail." *Vill. of Hoffman Estates*, 455 U.S. at 494, 102 S.Ct. 1186. In other words, the "first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *Williams*, 553 U.S. at 293, 128 S.Ct. 1830. We must scrutinize "[c]riminal statutes ... with particular care[.]" *City of Houston*, 482 U.S. at 459, 107 S.Ct. 2502 (citing *Winters v. New York*, 333 U.S. 507, 515, 68 S.Ct. 665, 92 L.Ed. 840 (1948)). Here, then, we must first determine whether the Michigan statute reaches a substantial amount of constitutionally protected conduct or speech. And, because it is a criminal statute, we must scrutinize the statute with particular care.

On appeal, Attorney General Schuette argues that the anti-begging statute does not reach any conduct or speech that the First Amendment protects. But begging, by its very definition, encapsulates the solicitation for alms. Although neither the anti-begging section of the statute, nor another section of the statute, defines "begging," according to Michigan law, "[w]hen a statute fails to define a term, we will construe it 'according to its common and approved usage....'" *Jennings v. Southwood*, 446 Mich. 125, 521 N.W.2d 230, 237 (1994) (quoting *State ex rel. Wayne Cnty Prosecuting v. Levenburg*, 406 Mich. 455, 280 N.W.2d 810, 812 (1979), *abrogated on other grounds by Michigan ex rel. County Prosecutor v. Bennis*, 447 Mich. 719, 527 N.W.2d 483 (1994)). Michigan law further provides "874 that 'resort[ing] to the standard dictionary definition is an appropriate means of determining [a term's] common and approved usage.'" *Shinkle v. Shinkle*, 255 Mich.App. 221,

Department, 999 F.2d 699, 706 (2d Cir.1993), affirmed the district court's judgment that had declared unconstitutional, on First Amendment grounds, a state statute which stated that "[a] person is guilty of loitering when he: 1.[l]oiterers, remains or wanders about in a public place for the purpose of begging...." N.Y. Penal Law § 240.35(1) (McKinney 1989). *Loper*, like *Gresham*, relied on *Schaumburg*'s holding that "charitable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of view and ideas, and the advocacy of causes—that are within the protection of the First Amendment." *Loper*, 999 F.2d at 704 (quoting *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). *Loper* explained that "[i]nherent in all the charitable solicitation cases revolving around the First Amendment is the concept that '[c]anvassers in such contexts are necessarily more than solicitors for money.'" *Id.* (quoting *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). The *Loper* panel explained that "[b]egging frequently is accompanied by speech indicating the need for food, shelter, clothing, medical care or transportation." *Loper*, 999 F.2d at 704. It concluded that[,] "in regard to the message conveyed," it saw "little difference between those who solicit for organized charities and those who solicit for themselves[.]" because those who solicit for organized charities "are communicating the needs of others[.]" while those who solicit for themselves "are communicating their personal needs." *Id.* According to the *Loper* panel, "[b]oth solicit the charity of others. The distinction is not a significant one for First Amendment purposes." *Id.* (citation omitted).

The Eleventh Circuit, in *Smith v. City of Fort Lauderdale, Fla.*, 177 F.3d 954, 955 (11th Cir.1999), held that a city's regulation proscribing begging on a certain five-mile strip of beach and two attendant sidewalks was narrowly tailored to serve the city's legitimate interests. But the court *876 began its analysis by stating that "[l]ike other charitable solicitation, begging is speech entitled to First Amendment protection." *Id.* at 956 (footnote omitted) (citing *Loper* 999 F.2d 699 at 704; *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826).

This year, the Fourth Circuit, in *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 551 (4th Cir.2013), addressed the question of whether a municipal ordinance, that prohibited people from soliciting immediate donations in two streets near a downtown shopping area, unconstitutionally restricted the free speech of individuals who regularly begged there. The court noted, "[a]s a preliminary matter," that "the speech and expressive conduct that comprise begging merit First Amendment protection." *Id.* at 553. The court observed that the United States Supreme Court has "held that the solicitation of

'charitable contributions' is protected speech." *Id.* (quoting *Riley*, 487 U.S. at 789, 108 S.Ct. 2667). The court also observed that several other United States Courts of Appeals had "extended that holding to begging, which is simply solicitation on behalf of the speaker." *Id.* (citing *Smith* 177 F.3d at 956; *Loper*, 999 F.2d at 704). The court concluded by stating "[w]e agree that begging is communicative activity within the protection of the First Amendment." *Id.*

Michigan relies on several authorities to argue that the First Amendment does not protect begging, or soliciting alms—but we find not one of these authorities persuasive. First, Michigan cites Part II of Justice Kennedy's concurrence in *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 703, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (plurality opinion). In Part II of his concurrence, Justice Kennedy stated that he was "in full agreement with the statement of the Court that solicitation is a form of protected speech." *Lee*, 505 U.S. at 704, 112 S.Ct. 2701 (citing *Riley*, 487 U.S. at 788–89, 108 S.Ct. 2667; *Schaumburg*, 444 U.S. at 629, 100 S.Ct. 826) (rest of citation omitted). But Justice Kennedy argued that an airport regulation that prohibited solicitation for the immediate payment of funds did not violate the First Amendment because the regulation "reache[d] only personal solicitations for immediate payment of money." *Lee*, 505 U.S. at 704, 112 S.Ct. 2701. Justice Kennedy hypothesized that, had the regulation "prohibited all speech that requested the contribution of funds," then he "would [have] conclude[d] that it was a direct, content-based restriction of speech in clear violation of the First Amendment." *Id.* But, Justice Kennedy wrote, the "regulation d[id] not prohibit all solicitation[.]" rather, "it prohibit[ed] the 'solicitation and receipt of funds.'" *Id.* Justice Kennedy characterized the restriction as "directed only at the physical exchange of money, which is an element of conduct interwoven with otherwise expressive solicitation." *Id.* at 705, 112 S.Ct. 2701.

We decline to follow the reasoning in Part II of Justice Kennedy's concurrence in *Lee* for three reasons. First, to the extent that Part II of Justice Kennedy's concurrence argues that the "physical exchange of money" may be isolated from the act of solicitation, it runs contrary to *Schaumburg*'s holding that solicitation of charitable donations is "characteristically intertwined with informative and perhaps persuasive speech[.]" *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826. *Schaumburg* does not suggest that the physical exchange of money may be isolated; it is "intertwined" with speech that the First Amendment protects. Second, Part II of Justice Kennedy's concurrence is not *Lee*'s holding. And third, Justice Kennedy wrote Part II without another Justice joining him

*877 Michigan also cites the Second Circuit's decision in *Young v. New York City Transit Authority*, 903 F.2d 146 (2d Cir.1990), as authority for the proposition that the First Amendment does not protect begging. *Young* initially framed the issue as "whether the prohibition of begging and panhandling in the New York City subway system violate[d] the First Amendment of the United States Constitution." *Young*, 903 F.2d at 147 (footnote omitted). The regulation provided that "no person, unless duly authorized ... shall upon any facility or conveyance ... solicit alms, subscription or contribution for any purpose." *Id.* at 148 (quoting N.Y. Comp.Codes R. & Regs. tit. 21, § 1050.6(b) (1989)). The Second Circuit opined that "[c]ommon sense" dictates that "begging is much more 'conduct' than it is 'speech.'" *Id.* at 153. Therefore, the court reframed the issue as "whether begging constitutes the kind of 'expressive conduct' protected to some extent by the First Amendment." *Id.*

Young read *Schaumburg*'s holding to be limited to appeals by organized charities; only these solicitations involve a variety of speech interests including communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes. *Id.* at 155. *Young* asserted that "neither *Schaumburg* nor its progeny stand for the proposition that begging and panhandling are protected speech under the First Amendment." *Id.* Rather, the court said, *Schaumburg*, *Munson* and *Riley* "hold that there is a sufficient nexus between solicitation by organized charities and a 'variety of speech interests' to invoke protection under the First Amendment." *Id.* *Young* displayed the panel's distaste for begging, writing that "[w]hile organized charities serve community interests by enhancing communication and disseminating ideas, the conduct of begging and panhandling in the subway amounts to nothing less than a menace to the common good." *Young*, 903 F.2d at 156 (citing *Taxpayers for Vincent*, 466 U.S. at 805, 104 S.Ct. 2118).

We decline to follow the *Young* majority's reasoning. We find more persuasive *Young*'s dissent, which held that there is no "legally justifiable distinction" between "begging for one's self and solicitation by organized charities." *Young*, 903 F.2d at 164 (Meskill, J., dissenting). The dissent read *Schaumburg*—as we do—as holding that "charitable solicitation is protected because it 'is characteristically intertwined with ... speech seeking support for particular causes or for particular views on economic, political, or social issues.'" *Id.* at 165 (quoting *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826). We agree with the dissent's statement that *Schaumburg* "held that First Amendment protection attaches to all charitable solicitation, whether or not any speech incident to the solicitation actually takes place, because a sufficient nexus exists between a charity's

expression of ideas and its fundraising." *Id.* We further agree with the dissent's conclusion that "if First Amendment protection extends to charitable solicitation unaccompanied by speech, as it apparently does, it must extend to begging as well." *Id.* And we agree that "begging is indistinguishable from charitable solicitation for First Amendment purposes. To hold otherwise would mean that an individual's plight is worthy of less protection in the eyes of the law than the interests addressed by an organized group." *Id.* at 167.

Moreover, *Loper* overruled *Young*'s holding that begging is not conduct that communicates. *Loper* stated that "[w]hile we indicated in *Young* that begging does not always involve the transmission of a particularized social or political message, see *Young*, 903 F.2d at 153, it seems certain that it usually involves some communication *878 of that nature." *Loper*, 999 F.2d at 704.

Based on the foregoing discussion, we hold that begging, or the soliciting of alms, is a form of solicitation that the First Amendment protects.

We now consider whether Michigan's anti-begging statute is substantially overbroad. We will not apply the "strong medicine" of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested law." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 n. 6, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008) (citing *N.Y. State Club*, 487 U.S. at 14, 108 S.Ct. 2225). The plaintiff bears "the burden of demonstrating ... substantial overbreadth." *Connection Distrib. Co.*, 557 F.3d at 336 (quoting *Hicks*, 539 U.S. 113, 122, 123 S.Ct. 2191 (2003)). A plaintiff "must demonstrate from the text of the statute and from actual fact that a substantial number of instances exist in which the law cannot be applied constitutionally." *United States v. Coss*, 677 F.3d 278, 289 (6th Cir.2012) (quoting *Am. Booksellers Found. for Free Expression v. Strickland*, 601 F.3d 622, 627 (6th Cir.2010)). A plaintiff may not "leverag[e] a few alleged unconstitutional applications of the statute into a ruling invalidating the law in all of its applications." *Connection Distrib. Co.*, 557 F.3d at 340. Sometimes plaintiffs have difficulty bearing this burden. For example, in one case we said that the record was "utterly barren about whether some, many, indeed any, [other people] [were] affected by ... application of the statute." *Glenn*, 690 F.3d at 422 (quoting *Connection Distrib. Co.*, 557 F.3d at 338–39). We do not have that problem here.

The record shows that the statute reaches a substantial amount of begging, which we have held that the First Amendment protects because it is a form of solicitation.

Instead of a few instances of alleged unconstitutional applications, we have hundreds. The Grand Rapids Police Department produced four hundred nine incident reports related to its enforcement of the anti-begging statute. Thirty-eight percent of the people that the police stopped were holding signs requesting help, containing messages like "Homeless and Hungry: Need Work," "Homeless Please Help God Bless," "Lost My Job Need Help," and "Homeless and Hungry Vet." The other sixty-two percent of the stops (two hundred fifty-five instances) involved people verbally soliciting charity. In forty-three percent of the cases, the police immediately arrested the people who were begging. In two hundred eleven cases, people convicted of begging were sentenced directly to jail time. The record in this case bolsters our "judicial prediction" that "the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick*, 413 U.S. at 612, 93 S.Ct. 2908.

Thus, sustaining the facial challenge in this case is appropriate because the risk exists that, if left on the books, the statute would chill a substantial amount of activity protected by the First Amendment. We must provide "this expansive remedy" because "the threat of enforcement of an overbroad law may deter or 'chill' constitutionally protected speech"—especially where, as here, "the overbroad statute imposes criminal sanctions." *Hicks*, 539 U.S. at 119, 123 S.Ct. 2191 (citing *Schaumburg*, 444 U.S. at 634, 100 S.Ct. 826; *Bates v. State Bar of Ariz.*, 433 U.S. 350, 380, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)). The reason for this is that "free expression may be inhibited almost as easily by the potential or threatened use of power as by the actual exercise of that power." *N.Y. v. State Club*, 487 U.S. at 11, 108 S.Ct. 2225 (citing *Thornhill v. Alabama*, 310 U.S. 88, 97–98, 60 S.Ct. 736, 84 L.Ed. 1093 (1940)). We are concerned that "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech, harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Hicks*, 539 U.S. at 119, 123 S.Ct. 2191 (citation omitted). Thus "[o]verbreadth adjudication, by suspending *all* enforcement of an overinclusive law, reduces these social costs caused by the withholding of protected speech." *Id.* As long as "the statute remains available to the State the threat of prosecutions of protected expression is a real and substantial one." *Dombrowski v. Pfister*, 380 U.S. 479, 494, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).

But "[f]acial overbreadth has not been invoked when a

limiting construction has been or could be placed on the challenged statute." *Broadrick*, 413 U.S. at 613, 93 S.Ct. 2908 (citing *Dombrowski*, 380 U.S. at 491, 85 S.Ct. 1116; *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 91 S.Ct. 1400, 28 L.Ed.2d 822 (1971); *Breard v. Alexandria*, 341 U.S. 622, 71 S.Ct. 920, 95 L.Ed. 1233 (1951)). Therefore, we must consider any limiting construction of the statute that Michigan can present. *Vill. of Hoffman Estates*, 455 U.S. at 495 n. 5, 102 S.Ct. 1186 ("[i]n evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered.") (citing *Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). We need not consider a limiting construction, however, if the statute "is not 'fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question.'" *Bd. of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 575, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987) (quoting *Harman v. Forssenius*, 380 U.S. 528, 535, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965)).

Here, we cannot read the statute to limit its constitutional effect. The statute simply bans an entire category of activity that the First Amendment protects.

We acknowledge that the statute serves "a sufficiently strong, subordinating interest that [Michigan] is entitled to protect." *Schaumburg*, 444 U.S. at 636, 100 S.Ct. 826. Here, Attorney General Schuette argues that Michigan's interest is in preventing fraud. He argues that not all those who beg are homeless and destitute, nor do all those who beg use the funds they receive from begging to meet basic needs. Instead, those who beg often spend that money on alcohol. The record contains an affidavit of an executive director of an agency that works with the homeless as saying that "the great majority of people panhandling for money are using the money for alcohol and drugs." Furthermore, panhandlers who display signs saying that they are homeless often are not. Rather, they use the signs "to elicit sympathy and money, often to feed a drug or alcohol problem." Even the United States Department of Justice has recognized "[t]his potential for fraud" and has put out a publication on panhandling which states that "some panhandlers pretend to be disabled and/or war veterans," and that the panhandlers' "primary purpose is to immediately buy alcohol or drugs." Attorney General Schuette also argues that the ordinance prevents duress.

We agree with Attorney General Schuette that the prevention of fraud and duress are substantial state interests. In *Schaumburg*, the Village argued that its ordinance was intimately related to the "880 substantial

governmental interests in protecting the public from fraud, crime, and undue annoyance. *Schaumburg*, 444 U.S. at 636, 100 S.Ct. 826. The Court noted that, like here, "[p]revention of fraud [was] the Village's principal justification" for the ordinance. *Id.* The Court declared that, while these interests were substantial, they were "only peripherally promoted" by the ordinance and "could be sufficiently served by measures less destructive of First Amendment interests." *Id.* The Court said, "[t]he Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation." *Id.*

Michigan's interest in preventing fraud can be better served by a statute that, instead of directly prohibiting begging, is more narrowly tailored to the specific conduct, such as fraud, that Michigan seeks to prohibit. Indeed, "[b]ecause First Amendment freedoms need breathing space to survive," "a state 'may regulate in the area only with narrow specificity.'" *Gooding v. Wilson*, 405 U.S. 518, 522, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) (quoting *Butt*, 371 U.S. at 433, 83 S.Ct. 328). A state must carefully craft the statute "to punish only unprotected speech and not be susceptible of application to protected expression." *Gooding*, 405 U.S. at 522, 92 S.Ct. 1103. As the Supreme Court has warned, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Broadrick*, 413 U.S. at 611-12, 93 S.Ct. 2908 (citations

omitted). Where, as here, "the statute unquestionably attaches sanctions to protected conduct, the likelihood that the statute will deter that conduct is ordinarily sufficiently great to justify an overbreadth attack." *Taxpayers for Vincent*, 466 U.S. at 800 n. 19, 104 S.Ct. 2118 (citing *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 217, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975)). Michigan may regulate begging. As the Supreme Court has said, "[s]oliciting financial support is undoubtedly subject to reasonable regulation [.]" *Schaumburg*, 444 U.S. at 632, 100 S.Ct. 826. But Michigan must regulate begging "with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues[.]" *Id.*

Because the anti-begging ordinance violates the First Amendment in banning a substantial amount of activity that the First Amendment protects, we **AFFIRM** the district court's judgment. We need not, and so do not, consider whether the ordinance violates the Fourteenth Amendment.

All Citations

726 F.3d 867

Footnotes

* The Honorable John R. Adams, United States District Judge for the Northern District of Ohio, sitting by designation.