

ATTACHMENTS

- **A.J.C.C. § 10-1-13 Obstruction of Streets**
- **A.J.C.C. § 10-5-7 Camping Prohibited**
- **A.R.S. § 13-2904 Disorderly Conduct**
- **A.R.S. § 13-1504 Criminal Trespass first degree**
- **A.R.S. § 13-1503 Criminal Trespass second degree**
- **A.R.S. § 13-1502 Criminal Trespass third degree**
- **A.R.S. § 13-1203 Assault**
- **A.R.S. § 13-2914 Aggressive Solicitation**
- **ACLU- Arizona's Anti-Begging Law Declared Unconstitutional**
- **U.S. District Court Judgment**

Print

Apache Junction, AZ Code of Ordinances

§ 10-1-13 OBSTRUCTION OF STREETS.

It is unlawful for any person to obstruct any public street, alley, sidewalk or park or other public grounds within the city by committing any act or doing anything which is injurious to the health or indecent or offensive to the senses, or to do in or upon any such streets, alleys, sidewalks, parks or other public grounds, any act or thing which is an obstruction or interference to the free use of property or with any business lawfully conducted by anyone, in or upon, or facing or fronting on any of such streets, alleys, sidewalks, parks or other public grounds in the city.

(Prior Code, § 10-1-13) Penalty, see Vol. I, § 1-1-11

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Apache Junction, AZ Code of Ordinances

§ 10-5-7 CAMPING PROHIBITED.

It is unlawful for any person to camp in or upon any city sidewalk, street, alley, lane, park, public right-of-way or other place to which the general public has access, or under an bridge way or viaduct, unless otherwise specifically authorized by Vol. I or by declaration by the mayor in emergency circumstances. This shall not be deemed to prohibit camping at designated campsites. No person shall be convicted of violating this section unless that person shall continue to camp after receiving a warning to leave and given a reasonable period of time, not to exceed 24 hours, to leave. The warning shall be given by a peace officer or by any city employee or officer.

(Prior Code, § 10-5-7) Penalty, see Vol. I, § 1-1-11

13-2904 . Disorderly conduct; classification

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or
2. Makes unreasonable noise; or
3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or
6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

B. Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3, 4 or 5 is a class 1 misdemeanor.

13-1504. Criminal **trespass in the first degree; classification**

A. A person commits criminal **trespass** in the first degree by knowingly:

1. Entering or remaining unlawfully in or on a residential structure.
2. Entering or remaining unlawfully in a fenced residential yard.
3. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
4. Entering unlawfully on real property that is subject to a valid mineral claim or lease with the intent to hold, work, take or explore for minerals on the claim or lease.
5. Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
6. Entering or remaining unlawfully in or on a critical public service facility.

B. Criminal **trespass** in the first degree under subsection A, paragraph 6 of this section is a class 5 felony. Criminal **trespass** in the first degree under subsection A, paragraph 1 or 5 of this section is a class 6 felony. Criminal **trespass** in the first degree under subsection A, paragraph 2, 3 or 4 of this section is a class 1 misdemeanor.

13-1503. Criminal **trespass** in the second degree; classification

A. A person commits criminal **trespass** in the second degree by knowingly entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard.

B. Criminal **trespass** in the second degree is a class 2 misdemeanor.

13-1502. Criminal **trespass** in the third degree; classification

A. A person commits criminal **trespass** in the third degree by:

1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by a law enforcement officer, the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.
2. Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching yards or rolling stock of a railroad company.

B. Pursuant to subsection A, paragraph 1 of this section, a request to leave by a law enforcement officer acting at the request of the owner of the property or any other person having lawful control over the property has the same legal effect as a request made by the property owner or other person having lawful control of the property.

C. Criminal **trespass** in the third degree is a class 3 misdemeanor.

13-1203. Assault; classification

A. A person commits assault by:

- 1. Intentionally, knowingly or recklessly causing any physical injury to another person; or**
- 2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or**
- 3. Knowingly touching another person with the intent to injure, insult or provoke such person.**

B. Assault committed intentionally or knowingly pursuant to subsection A, paragraph 1 is a class 1 misdemeanor. Assault committed recklessly pursuant to subsection A, paragraph 1 or assault pursuant to subsection A, paragraph 2 is a class 2 misdemeanor. Assault committed pursuant to subsection A, paragraph 3 is a class 3 misdemeanor.

13-2914. Aggressive solicitation; classification;
definitions

A. It is unlawful for a person to solicit any money or other thing of value or solicit the sale of goods or services:

1. Within fifteen feet of any bank entrance or exit or any automated teller machine if the person does not have permission to be there from the bank or the owner of the property on which the automated teller machine is located.

2. In a public area by:

(a) Intentionally, knowingly or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent.

(b) Approaching or following the person being solicited in a manner that is intended or is likely to cause a reasonable person to fear imminent bodily harm to oneself or another or damage to or loss of property or that is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

(c) Continuing to solicit the person after the person being solicited has clearly communicated a request that the solicitation stop.

(d) Intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation. This subdivision does not apply to acts that are authorized as an exercise of one's constitutional right to picket or protest.

(e) Intentionally, knowingly or recklessly using obscene or abusive language or gestures that are intended or likely to cause a reasonable person to fear imminent bodily harm or that are reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

B. A violation of this section is a petty offense.

C. For the purposes of this section:

1. "Automated teller machine" has the same meaning prescribed in section 6-101.

2. "Bank" means a bank, credit union or other similar financial institution.

3. "Public area" means an area that the public or a substantial group of persons has access to and includes alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open to the general public, and the doorways and entrances to buildings and dwellings and the grounds enclosing them.

4. "Solicit" means using any means of communication, including by spoken, written or printed word, to request an

immediate donation or exchange of money or other thing of value from another person regardless of the solicitor's purpose or intended use of the money or other thing of value.



Published on *American Civil Liberties Union*
(<https://www.aclu.org>)

Arizona's Anti-Begging Law Declared Unconstitutional ^[1]

Federal judge declares peaceful panhandling is protected speech

October 4, 2013

FOR IMMEDIATE RELEASE

CONTACT: 212-549-2666, media@aclu.org ^[2]

FLAGSTAFF - An Arizona law that made it a crime to panhandle peacefully in public places was declared unconstitutional today, as was Flagstaff's practice of arresting, jailing and prosecuting people who asked passersby for money or food.

Today's ruling abolishes a law used by police and prosecutors throughout Arizona to harass and arrest people for exercising their fundamental right of expression.

The American Civil Liberties Union of Arizona and Flagstaff-based attorney Mik Jordahl filed the suit on behalf of an elderly Hopi woman who was arrested in Flagstaff for begging.

In a judgment entered by U.S. District Court Judge Neil V. Wake, the anti-begging provision-A.R.S. 13-2905(a)(3)-was deemed unconstitutional on its face because it violated free speech rights granted by both the U.S. and state constitutions.

"Prosecutors and police across the state will no longer be able to use this anti-begging law to criminalize protected expression," said ACLU of Arizona Legal Director Dan Pochoda.

"Flagstaff officials ignored the fact that constitutional protections for speech do not depend on public approval of the views expressed," Pochoda said. "Flagstaff will no longer be allowed to elevate the interests of local business owners above the rights of persons seeking a dollar for food."

Judge Wake's judgment prohibits the use of the anti-begging statute for any purpose by law enforcement officials in Arizona. All law enforcement agencies in the state will be notified that A.R.S. 13-2905(a)(3) is void and shall not be used for any purpose.

In addition, the judgment permanently prohibits any law or ordinance from being used by the City of Flagstaff for the purpose of "interfering with, targeting, citing, arresting, or prosecuting any person on the basis of their act(s) of peaceful begging in public areas."

On Feb. 22, 2013, a Flagstaff police officer wearing plain clothes arrested Marlene Baldwin after she asked him if he could spare \$1.25 for bus fare. Baldwin, who is in her late-70s,

less than five feet tall, disabled and losing her eyesight, was jailed. It was the second time Baldwin was arrested for begging.

"I'm glad I won't be taken to jail just for speaking to people," Baldwin said. "I was arrested by Flagstaff police and prosecuted just for asking for food when I was hungry."

In addition to Baldwin, the ACLU also represented Robert George and Andrew R. Wilkenson, panhandlers who became afraid to exercise their right to peacefully solicit because they were threatened with arrest. The ACLU's fourth plaintiff was Food Not Bombs, a volunteer-run organization that regularly feeds the homeless in Flagstaff city parks. Several of its members were arrested for requesting donations from passersby.

"Many of the people arrested under the begging law simply needed a little assistance-not a jail cell," said Jordahl, who served as co-counsel with the ACLU. "Law enforcement must stand up for the constitutional rights of peaceful beggars and not just respond to complaints from powerful downtown business interests who would take those rights away and sweep homelessness and poverty out of sight."

In 2008, the City of Flagstaff adopted a policy in cooperation with local businesses-called "Operation 40"-to remove panhandlers from downtown areas by jailing them early in the day. Flagstaff utilized the now-void statute, which equated panhandling with loitering, to justify the arrests. Between June 2012 and May 2013, 135 arrests were made by the Flagstaff Police Department under the law.

The Arizona Court of Appeals and the 9th Circuit Court of Appeals have both struck down similar laws attempting to outlaw begging, including a Phoenix city ordinance.

Kelly Flood, ACLU of Arizona senior staff attorney, and Robert S. Malone, an attorney in private practice in Flagstaff, assisted with this case.

[Read today's order.](#) ^[3]

[Read the complaint in the case.](#) ^[4]

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Marlene Baldwin, et. al.,
10 Plaintiffs,
11 v.
12 Michelle D'Andrea, et. al.,
13 Defendants.
14

No. CV-13-08161-PCT-NVW
**JUDGMENT AND PERMANENT
INJUNCTION**

15
16 For good cause shown, and pursuant to the parties' Stipulation for Entry of Agreed
17 Order and Injunction, the Court orders, adjudges and decrees:

18 1. Arizona Revised Statutes ("A.R.S.") § 13-2905(a)(3) provides that "[a] person
19 commits loitering if such person intentionally [i]s present in a public place to beg, unless
20 specifically authorized by law[.]"

21 2. Plaintiffs have alleged, and Defendants concede, that A.R.S. 13-2905(a)(3) is
22 facially unconstitutional and void under the First and Fourteenth Amendments of the
23 United States Constitution, and under Section 6, Article 2 of the Arizona Constitution.

24 3. Pursuant to 28 U.S.C. 1331 and 1343 and Federal Rule of Civil Procedure
25 65(d)(2), Defendants, their officers, agents, servants and employees, and all persons in
26 active concert or participation with them are hereby perpetually enjoined and restrained
27 from in any manner enforcing the provisions of Ariz. Rev. Stat. § 13-2905(a)(3).
28

5. That pursuant to 28 U.S.C. 1331 and 1343 and Rule 65(d)(2), Federal Rule of Civil Procedure, Flagstaff Defendants, their officers, agents, servants, employees and attorneys, and all other persons who are in active concert or participation with the Defendants, shall be permanently enjoined from interfering with, targeting, citing, arresting, or prosecuting any person on the basis of their act(s) of peaceful begging in public areas within the City of Flagstaff. This injunction does not prohibit content neutral time, place or manner restrictions that are consistent with court decisions interpreting the 1st amendment of the U.S. Constitution and the free speech clause of the Arizona Constitution.

6. That Plaintiffs' counsel may make application for reasonable attorneys' fees and costs pursuant to the normal time lines as called for in Rule 54(d)(2).

Dated this 4th day of October, 2013.

Neil V. Wake
Neil V. Wake
United States District Judge