

Can Disorderly Conduct Ordinances Survive in a Changing World?

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Disorderly Conduct – this often—invoked but troublesome term is defined in Black's Law Dictionary as:

A term of loose and indefinite meaning (except when defined by statutes), but signifying generally any behavior that is contrary to law, and more particularly such as tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality. An offense against public morals, peace or safety.

Black's goes on to elaborate:

A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or harm, or recklessly creating a risk thereof, he: (a) engages in fighting or threatening, or in violent or tumultuous behavior; or (b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or (c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. (Model Penal Code §250.2)

An early test for Disorderly Conduct ordinances came out of the United States District Court for the Western District of Kentucky, Louisville Division, in *Baker v. Bindner*, 274 F. Supp. 658. The court there said "Though we recognize that a city clearly has the authority to handle objects of legitimate municipal concern, they nevertheless must be handled in a constitutional manner, i.e., the standards must appear in the face of the ordinance."

In common terms, the court was saying "you have to be specific as to what type of conduct is prohibited. Otherwise the ordinance is vague and fails constitutionally." The specificity requirement issued in *Baker* is likely the reason for Disorderly Conduct ordinances such as the following one, provided courtesy of a Listserv contributor:

It shall be unlawful for any person to be a disorderly person within the city. The following persons shall be deemed disorderly persons:

(A) Any person who shall act in a violent or tumultuous manner toward another whereby any person is placed in danger or fear of safety of his life, limb or health.

(B) Any person who shall act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged.

(C) Any pe rson who shall endanger the lawful pursuits of another by acts of violence, angry threats or loud, boisterous or abusive conduct.

(D) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another.

(E) Any person who shall, for the purpose of engaging in any fight or brawl, assemble or congregate with another or others.

(F) Any person who shall be found jostling or roughly crowding or pushing any person in any public place.

(G) Any person who shall assemble or congregate with another or others for the purpose of or with the intent to engage in unlawful gambling.

(H) Any person who shall accost or attempt to force his/her company upon any person against his/her will.

(I) Any person who utters, while in the presence of another, any bawdy, lewd or obscene words or epithets or who makes any lewd, vulgar or suggestive gestures with his hands or body.

(J) Any person who shall act in a dangerous manner towards others.

(K) Any person who shall use "fighting words" directed towards any person who becomes outraged and thus creates a turmoil.

(L) Any person who shall assemble or congregate for the purpose of trouncing upon another.

(M) Any person who shall, by acts of violence, interfere with another's pursuit of a lawful occupation.

(N) Any person who shall congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuse to clear such public way when ordered by the city police or other lawful authority.

(O) Any person who shall interrupt or disturb any individual, group, audience or other lawful assembly of people within this city by any noise or loud talking, indecent behavior or other annoyance, which may in any manner interfere with good order and decorum.

(P) Any person who is grossly drunk in or on any street or other public place in the city.

(Q) Any person who makes any indecent exposure of his person.

(R) Any person who urinates or defecates in public.

(S) Any person who refuses to leave a residence, business or commercial establishment after having been asked to do so by the owner or person in control of the premises, or by law enforcement.

Rather long, isn't it? The entire text is provided to emphasize the point that specificity requirements (while a valid concern) render long statutes. And, as a side observation, it appears the ordinances in several cases have been used as a "catch all." That is, these ordinances are used to ticket an individual or group of persons when "the authorities have nothing else with which they can charge a person" in a given situation.

Indeed, I am told by the contributor that the above ordinance has been amended several times to encompass behavior for which the authorities (but for the amendment) could not have issued a ticket. Thus, Listserv research has shown a second consequence of the specificity requirement: frequent amendments. "We have changed it several times," said one contributor "to account for specific situations we had not previously encountered."

Baker took place in the "turbulent" 1960s. Standards of permissible behavior have come a long way (be it good or bad) since then. Behaviors such as wearing a mask in public, cross-dressing or intense picketing formerly were held to be disorderly, but might pass muster in today's society. Many existing Disorderly Conduct ordinances are older than the above example. How would such an ordinance be crafted today, if starting from scratch?

Changing morals and societal values have an effect on many statutes, but it would be difficult to find one more fluid than Disorderly Conduct, i.e., aka "bad behavior." And, as specificity necessitates longer and longer ordinances, at what point will the ordinances be deemed "overreaching or overbroad?" Further, given that what used to be "bad behavior" is now often considered "mainstream," one wonders how long these ordinances can survive?

City Council Choreography: Another interesting topic discussed on the Listserv has been the seating arrangements for members at a City Council meeting. IMLA members report the following arrangements:

Left to right in order of seniority.... District order from left to right... City Manager and Assistant Manager on either side of the Mayor, others in random order... Mayor sits in the middle, to his left is the City Manager, then the council members surround in a random and changing order... Random seating order based upon when people take office.....The presiding officer sits in the middle, the next senior elected official sits to the presiding officer's right (the place of honor), the next senior person sits at the presiding officer's left, etc... In the absence of anyone's making a challenge, it's first come, first served/seated... Decided by the Chair (Mayor)... Mayor is in the middle of a semicircular dais, the City Clerk to the right of the Mayor, the Mayor Pro Tem to the right of the Clerk, then another Commissioner on the right end. To the left of the Mayor is the City Manager, then another Commissioner, the City Attorney, and a seat for a Deputy Clerk to run the recording equipment. The positions of the three Commissioners other than Mayor and Mayor Pro Tem are determined by where the Clerk puts their name tags, not any type of seniority or other custom. (A little complex?)... City Attorney is to the Mayor's right and the Manager is to his left. Beyond that, we've left it to the Mayor's discretion on seating. Since all our members are at large, we don't have the issue of having at large sit closer and district further out...

And the winner for most complicated seating arrangement is this one: In an arc, from right to left: City Attorney, City Manager, District 6, District 7, District 8, District 9, District 10, Mayor, District 1, District 2, District 3, District 4, District 5, Deputy City Manager, Assistant to Council. The Manager/Attorney and the Deputy/Assistant are separated by a small divider from the Council. The Clerk and Deputy City Clerk sit at a table on the floor below the raised Dais, facing the Mayor, District 1 and District 10... (Rumor has it there is a quiz on this as a qualification for office).

Obviously, there is no single way to arrange the seating, and a lot has to do with form of government and/or whether there are single member districts or members at large. But, what fun to discuss the nuances in how we all accomplish the same thing.

As proof positive that fact is stranger than fiction, take this story from a local municipal court. The Prosecutor takes on a case to convict two gentlemen of violating the Business License ordinance for soliciting persons in the public to have their windshield inspected, and, if necessary repaired or replaced. The Prosecutor and Municipal Court Judge agree to dismiss the charges if the gentlemen go ahead and obtain the necessary license and maintain compliance. The defendants agree and proceed to the Business License Department. However, upon learning the requirements to obtain the license, the defendants decide to disregard the court's instruction and return to the streets to again solicit.

They make their first call an hour later at a local gas station, and approach a gentleman from behind as he fills his tank. They look over his windshield and shout out "Good afternoon sir. I couldn't help but notice that you might be in need of a windshield repair." "Well, good afternoon, gentlemen" responds the Prosecutor while turning around as he continues to fill his tank.

The result: Another ticket for a Business License Ordinance violation, an additional ticket for Contempt of Court, and a severe chewing out by the same Municipal Court Judge.

From the Humor Corner, a few real-life news headlines regarding municipal business:

Police Begin Campaign to Run Down Jaywalkers... Juvenile Court to Try Shooting Defendant... Federal Agents Raid Gun Shop, Find Weapons... City Council Runs Out of Time to Discuss Shorter Meetings... Multiple Personality Rapist Sentenced to Two Life Terms...Man Found Dead in Cemetery... Lawsuit - Miners Refuse to Work after Death... Mayor Says City is Safe Except for Murders... Man Shoots Neighbor With Machete...

The Prosecution rests, your honor... ML