

AN ORDINANCE AMENDING ORDINANCE NO. 017886 WHICH AMENDED TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.32 (PEDESTRIANS) OF THE EL PASO CITY CODE BY REPEALING SECTION 12.32.060 (SOLICITING RIDES OR BUSINESS-PROHIBITIONS) AND ADOPTED A NEW SECTION 12.32.063 (SOLICITATION PROHIBITIONS) TO AMEND SECTION 12.32.063(A) (DEFINITIONS) BY AMENDING THE DEFINITION OF AGGRESSIVE MANNER AND ADDING DEFINITIONS OF "INTIMIDATE" AND "THREATENING CONDUCT", AND AMEND SECTION 12.43.063(B)(1)(b) BY DELETING SECTIONS 12.43.063(B)(1)(b)(i-vii) & (ix-x).

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

Section 1. That Title 12 (Vehicles and Traffic), Chapter 12.32 (Pedestrians), Section 12.32.063 (Solicitation Prohibitions) of the El Paso City Code is adopted to read as follows:

12.32.063 Solicitation Prohibitions

12.32.063(A) Definitions

As used in this Chapter, the following words, terms, and phrases should have the following meanings:

1. *Aggressive manner* means:

- a. Making any physical contact with or touching another person while in the course of soliciting without the other person's, operator's, or passenger's consent; or
- b. Following a person, group, operator, or passenger being solicited, if the conduct is:
 - i. Reasonably likely to cause fear of imminent bodily injury or theft; or
 - ii. Reasonably likely to intimidate the person, group, operator, or passenger being solicited; or
- c. Continuing to solicit from a person, operator, or passenger of a motor vehicle, after the person, operator, or passenger has made a negative response such as to constitute threatening conduct; or
- d. Blocking the passage of a person, group, operator, or passenger of a motor vehicle; or
- e. Using abusive or obscene language or bodily gestures towards a person, group, operator, or passenger of a motor vehicle such as to constitute threatening conduct; or

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- f. Approaching a person, group, operator, or passenger of a motor vehicle in a manner:
 - i. That is likely to put a reasonable person in fear of imminent harm or theft or
 - ii. Is reasonably likely to intimidate into responding in the affirmative.
- 2. *Adult* means a person who is 18 years of age or older.
- 3. *Automated Teller Machine (ATM)* means a device, linked to a bank's account records, which is able to carry out banking transactions.
- 4. *Automated Teller Facility* means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.
- 5. *Bank* includes a bank, savings bank, savings and loan association, credit union, trust company, or a similar financial institution.
- 6. *Bus* means a vehicle operated by a transit authority for public transportation.
- 7. *Check cashing business* means an entity in the business of cashing checks, drafts, or money orders for consideration.
- 8. *Intimidate* means conduct which threatens the person solicited.
- 9. *Median* means a dividing area, whether landscaped or paved, maintained for the purpose of separating or directing vehicular traffic.
- 10. *Minor* means a person who is below the age of 18.
- 11. *Parking meter or pay station* means a location on a street, parking lot or parking garage where persons pay for parking by either cash or credit to a person or at a machine or other device designed to accept payment.
- 12. *Public place* means an area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.
- 13. *Solicitation or solicit* mean to request, by the spoken, written, or printed word, or by other means of communication, an immediate donation or transfer of money or

another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

14. *Threatening conduct* means conduct which would make a reasonable person fearful of harm to his person or property.

12.32.063(B) Solicitation Prohibitions

(1) A person commits an offense if the person solicits:

(a) In an aggressive manner in a public place; or

(b) From a median in a street open to the public or within fifteen (15) feet of a street corner on a street open to the public;

(c) Upon any commercial property within the City when such property is affixed with conspicuously posted signage stating "NO SOLICITING ALLOWED," that notifies that solicitation is not permitted on the property, or is otherwise permitted only in restricted areas of the property. Such signs shall have bold lettering of not less than one inch in height as follows:

i) "NO SOLICITING ALLOWED. VIOLATIONS ARE SUBJECT TO FINE PURSUANT TO THE EL PASO CITY CODE 12.32.063." -The sign shall comply with the permit requirements under 20.18.400 of the El Paso City Code.

(d) No occupant of a motor vehicle may contribute to, accept or purchase material from any other person who is on any public roadway, or from a person twelve years of age or younger who is on the surrounding sidewalks, medians, islands and unpaved roadway, while the motor vehicle is stopped in obedience to a traffic control signal. It is specifically provided that a person may contribute to, accept, or purchase material from a person, other than a person twelve years of age or younger, who is on the surrounding sidewalks, medians, islands and unpaved shoulders, and not in or on the roadway itself.

(e) It is unlawful for a person, without the effective consent of an occupant, to intentionally or knowingly touch or strike or cause an object to touch or strike a vehicle stopped on a public roadway in obedience to a traffic control signal light, during an act of soliciting rides or business from the occupants of the vehicle.

(2) A culpable mental state is not required, and need not be proved, for an offense under this section.

(3) The penalty for violation of this ordinance is provided in Chapter 1.08 of this Code.

Section 2. Except as amended herein, Title 12 (Vehicles and Traffic) shall remain in full force and effect.

ADOPTED this _____ day of _____, 2013.

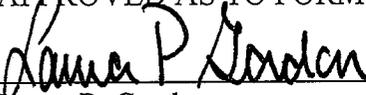
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

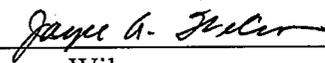
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Laura P. Gordon
Deputy City Attorney

APPROVED AS TO CONTENT



Joyce Wilson
City Manager

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ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 017886 WHICH AMENDED TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.32 (PEDESTRIANS) OF THE EL PASO CITY CODE BY REPEALING SECTION 12.32.060 (SOLICITING RIDES OR BUSINESS-PROHIBITIONS) AND ADOPTED A NEW SECTION 12.32.063 (SOLICITATION PROHIBITIONS) TO AMEND SECTION 12.32.063(A) (DEFINITIONS) BY AMENDING THE DEFINITION OF AGGRESSIVE MANNER AND ADDING DEFINITIONS OF “INTIMIDATE” AND “THREATENING CONDUCT”, AND AMEND SECTION 12.43.063(B)(1)(b) BY DELETING SECTIONS 12.43.063(B)(1)(b)(i-vii) & (ix-x).

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12.32.063 Solicitation Prohibitions

12.32.063(A) Definitions

As used in this Chapter, the following words, terms, and phrases should have the following meanings:

1. Aggressive manner means:

- a. Making any physical contact with or touching another person while in the course of soliciting without the other person’s, operator’s, or passenger’s consent; or
- b. Following a person, group, operator, or passenger being solicited, if the conduct is:
 - i. Reasonably likely to cause fear of imminent bodily injury or theft; or
 - ii. Reasonably likely to intimidate the person, group, operator, or passenger being solicited; or
- c. Continuing to solicit from a person, operator, or passenger of a motor vehicle, after the person, operator, or passenger has made a negative response such as to constitute threatening conduct; or
- d. Blocking the passage of a person, group, operator, or passenger of a motor vehicle; or

- e. Using abusive or obscene language or bodily gestures towards a person, group, operator, or passenger of a motor vehicle such as to constitute threatening conduct; or
- f. Approaching a person, group, operator, or passenger of a motor vehicle in a manner:
 - i. That is likely to put a reasonable person in fear of imminent harm or theft or
 - ii. Is reasonably likely to intimidate into responding in the affirmative.

2. *Adult* means a person who is 18 years of age or older.

3. *Automated Teller Machine (ATM)* means a device, linked to a bank's account records, which is able to carry out banking transactions.

4. *Automated Teller Facility* means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.

5. *Bank* includes a bank, savings bank, savings and loan association, credit union, trust company, or a similar financial institution.

6. *Bus* means a vehicle operated by a transit authority for public transportation.

7. *Check cashing business* means an entity in the business of cashing checks, drafts, or money orders for consideration.

7.8. *Intimidate* means conduct which threatens the person solicited.

8.9. *Median* means a dividing area, whether landscaped or paved, maintained for the purpose of separating or directing vehicular traffic.

9.10. *Minor* means a person who is below the age of 18.

10.11. *Parking meter or pay station* means a location on a street, parking lot or parking garage where persons pay for parking by either cash or credit to a person or at a machine or other device designed to accept payment.

11.12. *Public place* means an area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.

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13. *Solicitation or solicit* mean to request, by the spoken, written, or printed word, or by other means of communication, an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

~~12.14.~~ Threatening conduct means conduct which would make a reasonable person fearful of harm to his person or property.

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12.32.063(B) Solicitation Prohibitions

(1) A person commits an offense if the person solicits:

(a) In an aggressive manner in a public place; or

(b) ~~From a median in a street open to the public or Within within~~ fifteen (15) feet of ~~a street corner on a street open to the public; the following areas, where the public is considered vulnerable, or where solicitation would interfere with the flow of traffic:~~

~~i) An automated teller machine;~~

~~ii) An automated teller facility;~~

~~iii) The entrance or exit of a bank;~~

~~iv) The entrance or exit of a check cashing business;~~

~~v) A parking meter or parking pay station on a street;~~

~~vi) A public parking garage or parking lot pay station;~~

~~vii) The entrance or exit of a restaurant or the outdoor café portion of a restaurant;~~

~~viii) From a median;~~

~~ix) A bus station or stop, or at a facility operated by a transportation authority for passengers;~~

~~x) On either side of the street on a block where the entrance to a school attended by minors is located or where a child care facility has an entrance or exit;~~

(c) Upon any commercial property within the City when such property is affixed with conspicuously posted signage stating "NO SOLICITING ALLOWED," that notifies that solicitation is not permitted on the property, or is otherwise permitted only in

restricted areas of the property. Such signs shall have bold lettering of not less than one inch in height as follows:

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(e) It is unlawful for a person, without the effective consent of an occupant, to intentionally or knowingly touch or strike or cause an object to touch or strike a vehicle stopped on a public roadway in obedience to a traffic control signal light, during an act of soliciting rides or business from the occupants of the vehicle.

(2) A culpable mental state is not required, and need not be proved, for an offense under this section.

(3) The penalty for violation of this ordinance is provided in Chapter 1.08 of this Code.

Section 2. Except as amended herein, Title 12 (Vehicles and Traffic) shall remain in full force and effect.

ADOPTED this _____ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Laura P. Gordon
Deputy City Attorney

APPROVED AS TO CONTENT

Joyce Wilson
City Manager

February 5, 2013

John Cook, Mayor
El Paso City
2 Civic Center Plaza
El Paso TX 79901



Dear Mayor Cook:

My name is Mark Lusk. I am a social worker in El Paso. I was unable to speak to the Council today due to timing. I write in relation to Ordinance **017886** – an ordinance that pertains to panhandling. I represent the Human Rights Committee of the Texas Chapter of the National Association of Social Workers. Our association represents thousands of social workers in Texas who seek to create better conditions for those in Texas who have low incomes and limited access to resources.

Our association respectfully requests that the City Council reconsider the Panhandling Ordinance as it infringes on the First Amendment rights of El Pasoans. The First Amendment permits all forms of free speech including what some may deem as undesirable speech, such as begging. Laws that seek to regulate begging by limiting the mobility of the speaker or the content of his speech go against the rights of citizens.

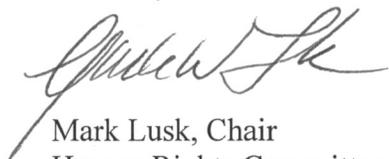
If a person who solicits money does so in a disorderly way or acts under the influence, law enforcement has adequate tools already in the form of statues against disorderly conduct, criminal mischief and public intoxication. To single out lawful panhandlers is an act of discrimination based on membership in a particular group and restricts a specific type of speech – begging.

The causes of panhandling are rooted in high unemployment and poverty. Many turn to begging as their sole means of support. Our organization, the Human Rights Committee of the Texas Chapter of the National Association of Social Workers, respectfully requests that you repeal this ordinance.

They are not just asking for alms, they are begging for justice.

Thank you for your time and consideration.

Sincerely,



Mark Lusk, Chair
Human Rights Committee
Texas Chapter – National Association of Social Workers