

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Manager

AGENDA DATE: Introduction on October 2, 2012; public hearing on October 9, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Joyce Wilson, City Manager, 541-4844

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

The Solicitation Prohibition Ordinance seeks to ban all types of aggressive solicitation. It further would ban all solicitation in certain public areas because of safety concerns for either the solicitor or the solicited person. Furthermore, business owners may choose to ban solicitation on their property by posting signage. The proposed ordinance would be a replacement for a current ordinance. The proposed ordinance does take certain portions from that current ordinance.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This ordinance deals with the solicitation of money in certain public areas. It is divided into five main parts. The first bans all aggressive solicitation. As stated in the ordinance, aggressiveness is defined as physical contact, following, continuing to solicit after being denied, blocking passage, obscene language, or approaching in a threatening manner. The second bans general solicitation within fifteen feet in certain areas due to public safety issues. Some of those areas are medians, ATM machines, and bank entrances. The third aspect allows businesses to opt into banning solicitation on their property by adding signs that inform people that soliciting is not permitted on their property. The fourth part bans occupants of a vehicle from participating in solicitation. The final portion of the ordinance prohibits striking or touching a vehicle stopped at a signal light to solicit rides or business. The fourth and fifth portions of this ordinance are incorporated in the previous ordinance that is being replaced.

Some concern has been raised that this ordinance, if enforced, will be mainly targeting the homeless population. However, this is not the purpose of the ordinance. A citizen has already threatened to sue if passed.

Council first heard of this proposed ordinance in a Legislative Review Committee meeting in August.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

There is a current city ordinance, 12.32.060, that deals with similar acts that has been in the City Code since 1987. However, the proposed ordinance goes further and Council has not considered this particular item in the past.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

NA _____

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

NA _____

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 12 (VEHCILES AND TRAFFIC) CHAPTER 12.32 (PEDESTRIANS) OF THE EL PASO CITY CODE BY REPEALING SECTION 12.32.060 (SOLICITING RIDES OR BUSINESS—PROHIBITIONS) AND ADOPTING A NEW SECTION 12.32.063 (SOLICITATION PROHIBITIONS), TO PROHIBIT THE AGGRESSIVE SOLICITATION OF MONEY OR OTHER SERVICES WHILE AT OR NEAR CERTAIN AREAS, AND CREATING AN OFFENSE; THE PENALTY BEING AS PROVIDED IN CHAPTER 1.08 (GENERAL PENALTY) OF THE EL PASO CITY CODE.

WHEREAS, the City Council finds that there are risks to the health and safety of the residents and visitors to the City caused by aggressive soliciting of money or services in certain places and;

WHEREAS, prohibiting the act of aggressively soliciting money or services while in certain places addresses the possible hazard, which can include assaults, thefts, harassment, limitation on commerce, vehicular collisions involving a pedestrian on the median, vehicles involved in the solicitation, or other vehicles not directly involved in the solicitation; and

WHEREAS, this regulation addresses the City’s interest in maintaining regulation of the public safety using its police power to appropriately address conduct which the City may regulate.

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 12.32.060 (Soliciting Rides or Business—Prohibitions) of the El Paso City Code is hereby deleted in its entirety.

Section 2. 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; 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; 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.
8. *Median* means a dividing area, whether landscaped or paved, maintained for the purpose of separating or directing vehicular traffic.
9. *Minor* means a person who is below the age of 18.
10. *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. *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.
12. *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.

12.32.063(B) Solicitation Prohibitions

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

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

(b) Within fifteen (15) feet of 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:

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.

12.32.063(C) Solicitation Prohibitions—Construction

Severability is intended throughout and within the provisions of the soliciting rides or business ordinance. If any provision, including inter alia any subsection, part, phrase, term or word, or the application thereof to any person or circumstances is held invalid or unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance, and such remaining portions shall remain in full force and effect.

Section 3. 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:

APPROVED AS TO CONTENT

Nathan Brown
Assistant City Attorney

Joyce Wilson
City Manager

12.32.060 - Soliciting rides or business—Prohibitions.

A.

~~No person who is within a public roadway may solicit or sell or distribute any material to the occupant of any motor vehicle stopped on a public roadway in obedience to a traffic control signal light. It is specifically provided that a person, other than a person twelve years of age or younger, may solicit or sell or distribute material to the occupant of a motor vehicle on a public roadway so long as he or she remains on the surrounding sidewalks, medians, islands and unpaved shoulders, and not in or on the roadway itself.~~

B.

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.

C.

~~It is unlawful for a person who is twelve years of age or younger to stand on a roadway, traffic median, shoulder, improved shoulder or sidewalk to solicit or attempt to solicit or sell or distribute or attempt to sell or distribute any material to the occupant of any motor vehicle stopped on a public roadway or to assist or be with a person lawfully conducting any such activities otherwise permitted by this section.~~

D.

~~It is unlawful for a person to knowingly cause a person twelve years of age or younger to stand on a roadway, traffic median, shoulder, improved shoulder or sidewalk to solicit or attempt to solicit or sell or distribute or attempt to sell or distribute any material to the occupant of any motor vehicle stopped on a public roadway.~~

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.

F.

~~For purposes of this chapter, the term "cause" shall mean aid, direct, hire, encourage, permit or allow.~~