

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

October 24, 2005

To: Council Downtown Committee
Council Member Ward, Chair
Council Member Jimenez
Council Member Halliday

THRU: Jesús Armas, City Manager



FROM: Sylvia Ehrental, Director of Community and Economic Development



SUBJECT:	Council Downtown Committee Meeting
DATE:	October 24, 2005
TIME:	7:00 - 9:00 p.m.
LOCATION:	Hayward City Hall - Work Session Room 2A

COUNCIL DOWNTOWN COMMITTEE

Monday, October 24, 2005

7:00 p.m.

Work Session Room 2A - Hayward City Hall

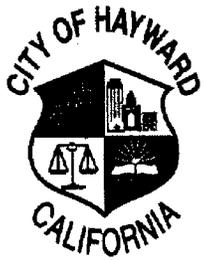
777 B Street

Hayward, CA 94541

Public Comments: (Note: For matters not otherwise listed on the agenda. The Committee welcomes under this section but is prohibited by State Law from discussing items not listed on the agenda. Your item will be taken under consideration and referred to staff.)

1. Aggressive Solicitation Ordinance

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Please request the accommodation at least 72 hours in advance of the meeting by contacting the Downtown Development Division at (510) 583-4260 or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.



CITY OF HAYWARD
STAFF REPORT

AGENDA DATE 10/24/05

AGENDA ITEM _____

WORK SESSION ITEM _____

TO: Council Downtown Committee
FROM: Chief of Police
SUBJECT: Aggressive Solicitation Ordinance

RECOMMENDATION:

It is recommended that the Downtown Committee recommend to the City Council that it introduce the attached ordinance related to aggressive solicitation.

BACKGROUND:

In 1994, Council adopted Ordinance 94-03 relating to Intimidating Solicitation (Aggressive Panhandling).

The existing ordinance regulates limited selective behaviors and actions directed toward the person solicited, only after the solicited person has rebuffed the solicitor's initial request. The ordinance is virtually impossible for the police to enforce because it requires the solicited person to be both victim and complainant. Victims who feel intimidated by the actions of a solicitor are reluctant to remain at a site where they have been subjected to threatening behavior, and wait until the police can arrive. Under the proposed ordinance officers will have the authority to issue citations without victim cooperation.

The proposed ordinance significantly expands the protections afforded to both residents and visitors to the city by regulating and prohibiting an expanded number of aggressive behaviors, frequently employed by solicitors, which generate fear and anxiety in the people they approach. The proposed ordinance designates specific locations where solicitation is prohibited such as within specific distances of financial institutions and automated teller machines, and in parking lots and structures during hours of darkness. Additionally, the proposed ordinance makes enforcement of the regulations simpler since many of the prohibited behaviors themselves can be identified by the police and do not require a victim's cooperation for a successful prosecution.

Problems with aggressive solicitation in public places have escalated in the past few years. (Any place to which the public has access is considered a public place.) Significantly more complaints are being received regarding the aggressive and intimidating behavior of solicitors from citizens, visitors, merchants, and business owners in the City. In extreme cases some landlords and tenants have resorted to seeking civil restraining orders against specific

individuals who repeatedly position themselves at certain locations and constantly harass approaching and departing customers.

“Window cleaners” not infrequently operate in private parking areas of local businesses and wash the windows of cars as the drivers park their vehicles, intimidating the vehicle owners to pay them for the “service” they provided, even when the driver has implicitly declined to authorize the work.

Solicitors are known to congregate in the areas of financial institutions and automated teller machines because it makes a solicitee’s assertion that they have no money to give to the solicitor less credible and the solicitee more susceptible to repeated and aggressive attempts to get money. Similarly customers of restaurants are subjected to aggressive and unwelcome solicitations.

Solicitors take advantage of situations in which the people they solicit are a captive audience, where it is difficult or impossible for them to exercise their own right to decline to listen or avoid solicitation from others. The proposed ordinance provides a reasonable balance between the rights of solicitors and the rights of those persons who wish to decline or avoid such solicitations.

Solicitors also work in groups, escalating the inherent fear level of the people being solicited, leading many to feeling trapped and with no choice but to submit and give money to the solicitors.

Aggressive solicitation, for money or other things of value, imperils the general health, safety, and welfare of the public. It undermines the public’s right to enjoy public places without threat of harm for refusing to give money or other things of value. The actions of aggressive solicitors have created a climate of fear and anxiety among members of the public who either find themselves confronted or who see others confronted as they go about their daily activities. Additionally, aggressive solicitation damages the economy by discouraging visitors and residents from patronizing City businesses and recreational facilities.

The proposal would prohibit aggressive and intimidating behavior toward someone in public places and places open to the public for the purpose of immediately obtaining money or something else of value.

Examples of behavior proposed to be prohibited include:

1. Approaching, speaking, or following a person before, during, or after a solicitation in a manner likely to cause a person to fear bodily harm, damage or loss of property or otherwise intimidating the solicitee;
2. Intentionally touching or causing physical contact with a person or an occupied vehicle;
3. Intentionally blocking or interfering with the safe and free passage of a person or vehicle;
4. Solicitation within a specified distance of certain financial facilities;
5. Soliciting from the driver or occupant of a motor vehicle on a public street;
6. Soliciting in a parking lot or parking structure during hours of darkness; and

7. Soliciting in groups of two or more.

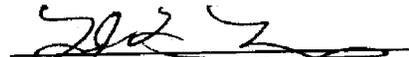
Violation of the ordinance would be an infraction. A third or subsequent violation of the provisions of the ordinance within a six-month period could be charged as an infraction or misdemeanor at the discretion of the District Attorney.

Prepared by:



Robert Weldon, Community Policing Lieutenant

Recommended by:


Lloyd Lowe, Chief of Police

Approved by:


Jesús Armas, City Manager

Attachment: Draft Ordinance

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 4 OF THE
HAYWARD MUNICIPAL CODE, BY THE ADDITION OF
ARTICLE 10 RELATING TO AGGRESSIVE SOLICITATION

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 4 of the Hayward Municipal Code is hereby amended to add Article 10 thereto, referring to Aggressive Solicitation, to read in full as follows.

"SEC. 4-10.00 TITLE. This article shall be known as the "Aggressive Solicitation Ordinance."

"SEC. 4-10.01 FINDINGS. The City Council of the City of Hayward finds as follows:

- "(a) That an increase in aggressive solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation and disorder; and
- "(b) That the presence of individuals who solicit money from persons at or near banks or automated teller machines is especially threatening and dangerous. Motorists also find themselves confronted by persons who, without permission, wash their automobile windows, despite explicit indications from the drivers not to do so. Such activity often carries with it an implicit threat to both person and property. People driving or parking on City streets frequently find themselves faced with panhandlers seeking money by offering to perform "services" in exchange for cash; and
- "(c) The City Council finds as abusive the solicitation of people in places where they are a "captive audience" in which it is impossible or difficult for them to exercise their own right to decline to listen or to avoid solicitation from others. Such places include buses, parking lots, and structures, and indoor and outdoor dining areas. Restricting solicitation in such places will provide a balance between the rights of solicitors and the rights of persons who wish to decline or avoid such solicitations, and will help avoid or diminish the threat of violence in such unwarranted and unavoidable confrontations.

- “(d) That no state laws address or protect the public from the problem of intimidating or aggressive solicitation.

“SEC. 4-10.02 PURPOSE. It is the intent of the City Council in enacting this ordinance to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against abusive conduct of persons engaged in solicitation, by imposing reasonable manner and place restrictions on solicitation while respecting the constitutional rights of free speech for all citizens.

“SEC. 4-10.03 DEFINITIONS. For purposes of this article:

- “(a) ‘Solicit, ask, or beg’ shall include using the spoken, written, or printed word, or bodily gestures, signs, or other means, with the purpose of obtaining an immediate donation of money or other thing of value, or soliciting the sale of goods or services. This article does not apply to peddling and soliciting activities governed by Chapter 8, Article 1 of this code.
- “(b) ‘Public place’ shall mean a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby or other portion of any business establishment, an apartment house, or hotel, not constituting a room or apartment designed for actual residence.

“SEC. 4-10.04 AGGRESSIVE SOLICITATION PROHIBITED. No person shall solicit, ask, or beg in an aggressive manner in any public place. ‘Aggressive manner’ shall mean any of the following:

- “(a) Approaching or speaking to a person, or following a person before, during, or after soliciting, asking, or begging, if that conduct is intended or is likely to cause a reasonable person to:
 - “(1) Fear bodily harm to oneself or to another, damage to or loss of property, or
 - “(2) Otherwise be intimidated into giving money or other thing of value.
- “(b) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person’s consent in the course of soliciting, asking, or begging;
- “(c) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle

operator to take evasive action to avoid contact;

- “(d) Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking, or begging;
- “(e) Persisting in closely following or approaching a person, after the person has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or
- “(f) Using profane, offensive, or abusive language which is inherently likely to provoke an immediate violent reaction, either before, during, or after solicitation.
- “(g) By soliciting in a group of two or more persons.”

“SEC. 4-10.05 ALL SOLICITATION PROHIBITED AT SPECIFIED LOCATIONS.

- “(a) **Banks and ATMs.** No person shall solicit, ask, or beg within 30 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 30 feet of any automated teller machine during the time that it is available for customers’ use; provided, however, that when an automated teller machine is located within an automated teller machine facility such distance shall be measured from the entrance or exit to the automated teller machine facility; further provided that no person shall solicit, ask, or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall prohibit the lawful vending of goods and services within such areas.

“(1) **Definitions.** For purposes of this section:

- “i. ‘Bank’ means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.
- “ii. ‘Savings and Loan Association’ means any federal savings and loan association and any ‘insured institution’ as defined in Section 401 of the National Housing Act, as amended, and any federal

credit union as defined in Section 2 of the Federal Credit Union Act.

- “iii. ‘Credit Union’ means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.
- “iv. ‘Check cashing business’ means any person duly licensed as a check seller, bill payer, or prorated pursuant to Division 3 of the California Financial Code, commencing with section 12000.
- “v. ‘Automated teller machine’ shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.
- “vi. ‘Automated teller machine facility’ means the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

“(2) Exemptions. The provisions of subsection (a) of this section shall not apply to any unenclosed automated teller machine located within any building, structure, or space whose primary purpose of function is unrelated to banking activities, including but not limited to supermarkets, airports, and school buildings, provided that such automated teller machine be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

“(b) Motor Vehicles and Parking Lots.

- “(1) Motor Vehicles. No person shall solicit, ask, or beg from an operator or occupant of a motor vehicle while such vehicle is located in a public place.
- “(2) Parking Lots. No person shall solicit, ask, or beg in any parking lot or parking structure any time after dark. ‘After dark’ means any time for one-half hour after sunset to one-half hour before sunrise.
- “(3) Exemptions. Subsection (b) of this section shall not apply to any of the following:
 - “i. Solicitations related to business which is being conducted on the

subject premises by the owner or lawful tenants;

“ii. Solicitations related to the lawful towing of a vehicle; or

“iii. Solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

“(c) Public Transportation Vehicles.

“(1) ‘Public transportation vehicle’ shall mean any vehicle, including a trailer bus, designed, used, or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

“(2) Any person who solicits, asks, or begs in any public transportation vehicle is guilty of a violation of this section.

“(d) Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

“(1) He or she remains there after being asked to leave by the owner, manager, or supervisor of the restaurant or other food establishment; the agent of the owner, manager, or supervisor of the restaurant; a member of a security force employed by the restaurant; or a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Pen. Code § 830), acting at the request of any of the persons specified in this subdivision; or

“(2) Within the immediately preceding 30 days, he or she has engaged in a solicitation at that location and has been asked to leave by a person specified in subdivision (d)(1) above.

“(3) Subdivision (d)(2) is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of the person specified in subdivision (d)(1).

“SEC. 4-10.07 PENALTY. A violation of this article is punishable as an infraction; any persons who violates the sections of this article three times within a six-month period is guilty of either an infraction or a misdemeanor, at the discretion of the District Attorney.

"SEC. 4-10.08 NON-EXCLUSIVITY. Nothing in this article shall limit or preclude the enforcement of other applicable laws.

Second 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Repeal of Ordinance. Upon the adoption of this ordinance, Ordinance No. 94-03, shall be rescinded and repealed in its entirety.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2005, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2005, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward