



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
I-2

For the meeting of: June 21, 2016

Date: May 24, 2016
To: Board of Supervisors
From: Amy S. Nilsen, County Administrative Officer *[Signature]*
Subject: Aggressive and Intrusive Solicitation Ordinance

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce the attached Ordinance by title (Attachment I), adding Chapter 1, Division 10 of Title IX to the Humboldt County Code, and waive the first reading;
2. Set the Ordinance for adoption on June 28, 2016;
3. Direct the Clerk of the Board to publish a post-adoption summary of the ordinance (Attachment II) and to post a certified copy of the full text of the proposed Ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the Ordinance will be adopted [Government Code Section 25124 (b)(1); and
4. Direct the Clerk of the Board, within 15 days after adoption of the Ordinance, to publish a post-adoption summary of the ordinance (Attachment III) with the names of the Supervisors voting for and against the Ordinance, and to post in the office of the Clerk of the Board a certified copy of the full text of the adopted Ordinance and amendments along with the names of those Supervisors voting for and against the Ordinance [Government Code Section 25124 (b)(1)].

Prepared by Amy S. Nilsen CAO Approval *[Signature]*
REVIEW: Auditor _____ County Counsel *[Signature]* Human Resources _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:
Board Order No. _____
Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Fennell* Seconded by Supervisor *Sundberg*
Ayes *Sundberg, Fennell, Lovelace, Bohm, Bass*
Nays _____
Abstain _____
Absent _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: June 21, 2016
By: *[Signature]*
Kathy Hayes, Clerk of the Board

SOURCE OF FUNDING: General Fund

DISCUSSION:

On May 3, 2016 your Board “directed staff to come back to the Board at the end of June for an aggressive solicitation ordinance modeled after the City of Eureka and City of Fortuna.” Aggressive solicitation usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. In order to protect the safety of the general public against certain abusive conduct of persons engaged in solicitation, municipalities often adopt ordinances that impose a reasonable time, place and manner restrictions on solicitation.

An aggressive solicitation (also referred to as panhandling) ordinance have been legally challenged, both successfully and unsuccessfully, on constitutional grounds including due process, equal protection, vagueness and overbreadth, under the First Amendment of the United States Constitution. In response to these lawsuits, most ordinances share several common features including:

- 1) Prohibitions on aggressive solicitation, which is generally defined to include an immediate request for funds accompanied by verbal or physical threats or coercion, or persisting in requests following a negative response from the individual being solicited;
- 2) Regulation of activity on public property and/or privately owned property open to the public or large groups of the public; and
- 3) Prohibitions on solicitation of any kind in specified locations, most often including within specified distances of banks, automated teller machines, public transportation facilities, in traffic or locations that interfere with or impede traffic.

The Eureka City Council approved an amended Aggressive Solicitation Ordinance in 2012 after the issuance of a ruling in September of 2012 by the Humboldt County Superior Court in a legal challenge to the Arcata Panhandling Ordinance. The City of Eureka has continued to monitor the status of legal challenges to other municipality’s aggressive solicitation laws. On March 15, 2016 the City of Eureka proposed additional amendments to their Aggressive and Intrusive Solicitation Ordinance after the County of Sacramento’s law regarding aggressive solicitation was challenged in court.

Therefore, staff recommends adopting an ordinance similar to the City of Eureka’s due to the diligence in which city staff have demonstrated in reviewing and amending their Aggressive and Intrusive Solicitation ordinance based on current legal challenges.

In addition, staff spoke with the two department heads that would have enforcement responsibilities relative to this ordinance, the Sheriff and District Attorney (DA). Both were amenable to pursuing the adoption of such an ordinance. The Sheriff advised this ordinance is an additional tool to help address public safety concerns in areas of the county. The Sheriff’s Office would not dedicate staff to pursue violation of this ordinance solely but would utilize the ordinance as a resource in applicable situations. Cases in the DA’s office are reviewed on a case-by-case basis. Depending upon the nature and circumstances surrounding an arrest, the DA may prosecute a single incidence of particularly aggressive solicitation or package together numerous offenses that are of a less egregious nature.

If your Board adopts the ordinance (Attachment I), it will be effective August 1, 2016.

FINANCIAL IMPACT:

Costs associated with the research and development of this ordinance were that of staff in the County Administrative Office and County Counsel and these costs were included in the fiscal year 2015-16 budget. Costs for enforcement of the ordinance in the future would be included in the budget for fiscal year 2016-17.

This action supports the Board's Strategic Framework by creating opportunities for improved safety.

OTHER AGENCY INVOLVEMENT:

Not applicable.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could modify the ordinance. This will delay the adoption of the ordinance as well as the effective date.

ATTACHMENTS:

1. Draft Ordinance
2. Pre-Adoption Summary
3. Post-Adoption Summary

ORDINANCE NO _____

**AN ORDINANCE OF THE COUNTY OF HUMBOLDT ADDING CHAPTER 1,
DIVISION 10 OF TITLE IX TO THE HUMBOLDT COUNTY CODE RELATING TO
AGGRESSIVE AND INTRUSIVE SOLICITATION**

WHEREAS, the Board of Supervisors finds that, it is necessary to protect the safety and welfare of the general public and improve the quality of life and economic vitality of the COUNTY by imposing reasonable time, place and manner restrictions on aggressive and intrusive solicitation while respecting the constitutional rights of free speech for all citizens;

WHEREAS, aggressive and intrusive solicitation typically includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian vehicular traffic;

WHEREAS, there has been an increase in aggressive solicitation through the COUNTY and that such behavior has become disturbing and disruptive to residents and businesses, and has also contributed to the loss of access to and enjoyment of places open to the public and has created an enhanced sense of fear, intimidation and disorder;

WHEREAS, solicitation from 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 to or to avoid solicitation from others, is problematic and presents a risk to the health, safety and welfare of the public. Such places include public transportation vehicles and

their designated locations for stops, as well as gasoline stations;

WHEREAS, solicitation on roadway median strips, at traffic intersections, and in the public roadway is unsafe and hazardous for solicitors, drivers, pedestrians and the general public. Soliciting on roadway median strips, at traffic intersections and in the public roadway increases the risk of drivers becoming distracted from their primary duty to watch traffic which may result in automobile accidents, congestion and blockage of streets, delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems;

WHEREAS, the practice of solicitation near driveways accessing shopping centers, retail, and business establishments is unsafe and hazardous for solicitors, drivers, pedestrians and the general public. The location of the solicitor near the driveway compromises the solicitor's safety, impedes visibility, and impairs a driver's ability to safely enter and exit. Drivers also become distracted which may result in automobile accidents, congestion and blockage of streets, delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems.

WHEREAS, this law is timely and appropriate because current laws are insufficient to address the aforementioned problems. The restrictions contained herein are neither overboard nor vague and they are narrowly tailored to serve a substantial governmental interest. Furthermore, in enacting this ordinance, the COUNTY recognizes the availability of community service and other sentencing alternatives

Therefore, the Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Sections 9101-1 through 9101-6 of Chapter 1 of Division 10 of Title IX are hereby added as shown on the attached pages.

SECTION 2. This ordinance relates to aggressive and intrusive solicitation and shall take effect August 1, 2016. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2016.

AYES: Supervisors--
NOES: Supervisors--
ABSENT: Supervisors--

Chair of the Board of Supervisors of the
County of Humboldt, State of California

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
County of Humboldt

TITLE IX - PUBLIC PEACE, SAFETY AND WELFARE

DIVISION 10

AGGRESSIVE AND INTRUSIVE SOLICITATION

Chapter 1 - Aggressive And Intrusive Solicitation

- § 9101-1. Definitions.
- § 9101-2. Aggressive Solicitation Prohibited.
- § 9101-3. All Solicitation is Prohibited At The Specified Locations Set Forth Below.
- § 9101-4. Penalty.
- § 9101-5. Severability.
- § 9101-6. Non-Exclusivity.

TITLE IX - PUBLIC PEACE, SAFETY AND WELFARE

DIVISION 10

AGGRESSIVE AND INTRUSIVE SOLICITATION

CHAPTER 1

9101-1. DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply:
(Ord. _____, § _____, / /2016)

(a) Aggressive Manner. Shall mean any of the following: (Ord. _____, § _____, / /2016)

1. Fear bodily harm to oneself or to another, damage to or loss of property; or (Ord. _____, § _____, / /2016)

2. Otherwise be intimidated into giving money or other thing of value; (Ord. _____, § _____, / /2016)

3. 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; (Ord. _____, § _____, / /2016)

4. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonable causing a pedestrian or vehicle operator to take evasive action to avoid physical contact; (Ord. _____, § _____, / /2016)

5. Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging; (Ord. _____, § _____, / /2016)

6. Persisting in closely following or approaching a person, after the person solicited 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 (Ord. _____, § _____, / /2016)

7. Using profane, offensive or abusive language which is inherently likely to provide an immediate violent reaction, either before, during, or after solicitation. (Ord. _____, § _____, / /2016)

(b) Automated Teller Machine. Any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account. (Ord. _____, § _____, / /2016)

(c) Automated Teller Machine Facility. 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. (Ord. _____, § _____, / /2016)

(d) Bank. 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. (Ord. , \$, / 2016)

(e) Credit Union. 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. (Ord. , \$, / 2016)

(f) Check Cashing Business. Any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with § 12000. (Ord. , \$, / 2016)

(g) Gas Station Pump. A facility that is open to the public to purchase and pump gasoline into vehicles, specifically where the machine that actually discharges the gasoline into the vehicle is located. (Ord. , \$, / 2016)

(h) Public Place. 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, public alley, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence. (Ord. , \$, / 2016)

(i) Public Transportation Vehicle. Any vehicle, including a trailer bus, designed, used or maintained for carrying ten or more persons, including the driver; or a passenger vehicle designed for carrying fewer than ten persons, including the driver, and used to carry passengers for hire. (Ord. , \$, / 2016)

(j) Savings and Loan Association. Any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, any federal credit union as defined in Section 2 of the Federal Credit Union Act. (Ord. , \$, / 2016)

(k) Solicit, Ask or Beg. Shall include 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. (Ord. , \$, / 2016)

9101-2. AGGRESSIVE SOLICITATION PROHIBITED.

No person shall solicit, ask or beg in an aggressive manner in any public place. (Ord. , \$, / 2016)

9101-3. ALL SOLICITATION IS PROHIBITED AT THE SPECIFIED LOCATIONS SET FORTH BELOW.

(a) Banks and ATMs. No person shall solicit, ask or beg within 15 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 15 feet of any automated teller machine during the time 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 of the automated teller machine facility. Provided further 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 division shall be construed to prohibit the lawful vending of goods and services within such areas. (Ord. , \$, / /2016)

(1) Exemptions. The provisions of this subsection (a) shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to, supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located. (Ord. , \$, / /2016)

(b) Public Transportation Vehicles. Any person who solicits, asks or begs in any public transportation vehicle is guilty of a violation of this section. (Ord. , \$, / /2016)

(c) Gas Station Pumps. Any person who solicits, asks or begs within 15 feet of any gas pump is guilty of a violation of this section. (Ord. , \$, / /2016)

9101-4. PENALTY.

Each act of solicitation shall constitute a separate offense. A violation of this section is punishable as a misdemeanor or infraction, chargeable at the District Attorney's discretion. (Ord. , \$, / /2016)

9101-5. SEVERABILITY.

The provisions of this section are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this section, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this section, or the validity of its application to other persons or circumstances. (Ord. , \$, / /2016)

9101-6. NON-EXCLUSIVITY.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws. (Ord. , \$, / /2016)

SUMMARY FOR PUBLICATION PRIOR TO ADOPTION OF ORDINANCE

(The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted.)

SUMMARY

On June ²⁸21, 2016, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance adding Sections 9101-1 through 9101-6 of Chapter 1 to Division 10 of Title IX of the Humboldt County Code relating to Aggressive and Intrusive Solicitation. This ordinance shall become effective August 1, 2016.

The text of the proposed ordinance is available from the Clerk of the Board, Room 111, 825 Fifth Street, Eureka, CA.

SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE

(The summary shall be published within fifteen (15) days after the adoption of the ordinance.)

SUMMARY

On June ²⁸~~21~~, 2016, the Humboldt County Board of Supervisors adopted Ordinance No. _____, adding Sections 9101-1 through 9101-6 of Chapter 1 to Division 10 of Title IX of the Humboldt County Code relating to Aggressive and Intrusive Solicitation. This ordinance shall become effective August 1, 2016.

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors.

The votes were:

AYES:

NOES:

ABSENT: