



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

H-1

For the meeting of: May 3, 2016

Date: April 26, 2016
To: Board of Supervisors
From: Supervisor Ryan Sundberg and Supervisor Rex Bohn
Subject: Discuss Panhandling in Humboldt County

RECOMMENDATION(S): That the Board of Supervisors discuss community concerns related to panhandling in Humboldt County and take appropriate action, if required.

SOURCE OF FUNDING: N/A

DISCUSSION: Local jurisdictions such as the City of Eureka and the City of Fortuna have either recently passed or are currently in the process of considering implementation of a panhandling ordinance. Board Members have been asked to begin a discussion on a panhandling ordinance in the unincorporated areas of the County.

FINANCIAL IMPACT: N/A

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS: City of Eureka Aggressive Solicitation (Panhandling) Ordinance.

Prepared by Kathy Hayes

Signature 

Signature 

REVIEW:

Auditor _____ County Counsel _____ Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

☐ Consent
☐ Departmental
☐ Public Hearing
☒ Other Board Initiated (20 minutes)

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____ Seconded by Supervisor _____

Ayes _____
Nays _____
Abstain _____
Absent _____

SEE ACTION SUMMARY

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

Dated: _____

By: _____

Kathy Hayes, Clerk of the Board



**AGENDA SUMMARY
EUREKA CITY COUNCIL**

TITLE: AMENDMENT TO AGGRESSIVE SOLICITATION ORDINANCE

DEPARTMENT: CITY ATTORNEY

PREPARED BY: CYNDY DAY-WILSON, CITY ATTORNEY

PRESENTED FOR: ☒ Action ☐ Information only ☐ Discussion/Direction

RECOMMENDATION

Waive reading, read by Title only and Adopt Bill No. 907-C.S., an Ordinance of the City of Eureka Amending Title XIII Chapter 130 Section 130.06 "Aggressive Solicitation" of the Eureka Municipal Code to prohibit aggressive and intrusive solicitation.

FISCAL IMPACT

☒ No Fiscal Impact ☐ Included in Budget ☐ Additional Appropriation

COUNCIL GOALS/STRATEGIC VISION

EUREKA MUNICIPAL CODE UPDATE

DISCUSSION

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, staff recommended the imposition of reasonable time, place and manner restrictions on solicitation within the City of Eureka in 2012.

The Ordinance approved by Council in 2012 included amendments to the then-existing Aggressive Solicitation Ordinance. The amendments were proposed after the issuance of a ruling on September 24, 2012 by the Honorable Dale Reinholtsen, Humboldt County Superior Court Judge in a legal challenge to the Arcata Panhandling Ordinance. Judge Reinholtsen ruled, with regard to the Arcata Ordinance, that:

Subdivisions B through G of section 4282 of the Arcata Municipal Code violate the U.S. and California constitutions, with two exceptions: (1) section 4282(B) is constitutional to the extent that Arcata may prohibit panhandling (as defined) within twenty feet of any unenclosed automated

teller machine; and (2) section 4282(D) is constitutional to the extent that Arcata may prohibit panhandling "in any public transportation vehicle."

Thus, the ordinance proposed in 2012 did not include a prohibition with regard to motor vehicles; parking lots; pedestrian footbridges; entrance to a supermarket, retail store, restaurant or bar; or an intersection as contained in the Arcata Ordinance. The staff recommended at that time that "Once a further legal determination, if any, regarding these specific locations has been made, the ordinance can be amended."

Staff has been monitoring the status of legal challenges to other jurisdictions aggressive solicitation laws. Most recently, the County of Sacramento's law regarding aggressive solicitation was challenged in court. The Plaintiff's alleged that the county ordinance violated free speech and the principle of equal protection under the law because, they argued, it did not apply to everyone. As a result of the lawsuit, the County of Sacramento amended its ordinance to the satisfaction of the Plaintiffs and is now enforcing that ordinance with some success. A recent news report claims that "Sacramento County Ordinance Puts Dent In Panhandling Problems."

Staff has reviewed and analyzed the County of Sacramento's new ordinance along with other jurisdictions and is proposing amendments to Eureka's current ordinance in order to address ongoing issues regarding the safety and welfare of the public.

The proposed amendments, much like the Sacramento County Ordinance, will prohibit solicitation in the following additional areas of the City:

Motor Vehicles. No person shall solicit from an operator or occupant traveling in a motor vehicle while such vehicle is located within two hundred (200) feet of any intersection in which at least one corner is controlled by an official traffic signal of the type set forth in California Vehicle Code Section 21450 or by any sign regulating the flow of traffic, such as a stop sign or yield sign.

Median Strips. No person shall solicit on a median strip or in any manner or location that is inconsistent with the provisions of the California Vehicle Code.

Driveways Accessing Shopping Centers, Retail, and Business Establishments. No person shall solicit from an operator or occupant traveling in a motor vehicle while such vehicle is located within thirty-five (35) feet of a driveway providing vehicular access to a shopping center, retail, or business establishment.

Public Transportation Vehicles and Stops. No person shall solicit in any public transportation vehicle or within fifty (50) feet of any designated or posted public transportation vehicle stop.

Gasoline Stations and Fuel Pumps. No person shall solicit from an operator or occupant of a motor vehicle while such vehicle is stopped in a gasoline station or at a gasoline pump.

REVIEWED AND APPROVED BY:

- ☒ City Attorney
- ☐ City Clerk/Information Services
- ☒ Development Services
- ☒ Finance
- ☒ Fire
- ☒ Parks and Recreation
- ☐ Personnel
- ☒ Police
- ☒ Public Works

ATTACHMENTS: REDLINED AMENDED AGGRESSIVE AND INTRUSIVE SOLICITATION ORDINANCE

**~~AN ORDINANCE OF THE CITY OF EUREKA DELETING TITLE XIII CHAPTER 130
SECTION 130.06 "AGGRESSIVE SOLICITATION" AND ADDING A NEW TITLE XIII
CHAPTER 130 SECTION 130.06 TO THE EUREKA MUNICIPAL CODE TO PROHIBIT
AGGRESSIVE SOLICITATION~~**

**AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE XIII CHAPTER 130
SECTION 130.06 – AGGRESSIVE AND INTRUSIVE SOLICITATION**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

Title XIII, Chapter 130, Section 130.06 is *amended* as follows:

Findings

- A. The purpose and intent of this Section is to protect the safety and welfare of the general public and improve the quality of life and economic vitality of the City of Eureka by imposing reasonable time, place and manner restrictions on aggressive and intrusive solicitation while respecting the constitutional rights of free speech for all citizens.
- B. 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. The City Council finds that there has been an increase in aggressive solicitation throughout the City of Eureka and that such behavior has become disturbing and disruptive to residents and businesses. It 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.
- C. The City Council finds that 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.
- D. The City Council finds that 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.

- E. The City Council finds that 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.
- F. This law is timely and appropriate because current laws are insufficient to address the aforementioned problems. The restrictions contained herein are neither overbroad nor vague and they are narrowly tailored to serve a substantial governmental interest. Furthermore, in enacting this ordinance, the City Council recognizes the availability of community service and other sentencing alternatives, which may be appropriate remedies for violations of this law. The goal of this law is to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome presence in the City of Eureka.

Section 2

- (A) *Definitions.* For purposes of this section:

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 physical 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 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

(f) Using profane, offensive or abusive language which is inherently likely to provoke an immediate violent reaction, either before, during, or after solicitation.

AUTOMATED TELLER MACHINE. Any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.

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.

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.

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.

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.

DONATION. Shall mean a gift of money or other item of value.

INTRUSIVE. Shall mean to thrust or force oneself in without invitation, permission, or welcome and cause physical contact, block the path of travel, or behave in a threatening manner.

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.

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.

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, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

~~SOLICIT, ASK OR BEG.~~ Shall include mean to ask, beg, request, and/or panhandle 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.

(B) *Aggressive solicitation prohibited.*

(1) No person shall solicit, ~~ask or beg~~ in an intrusive or aggressive manner in any public place.

(C) All solicitation is prohibited at the following specified locations.

(1) *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.

(a) *Exemptions.* The provisions of division (C)(1) 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.

~~(2) — Public transportation vehicles.~~

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

(2) Motor Vehicles. No person shall solicit from an operator or occupant traveling in a motor vehicle while such vehicle is located within two hundred (200) feet of any intersection in which at least one corner is controlled by an official traffic signal of the type set forth in California Vehicle Code Section 21450 or by any sign regulating the flow of traffic, such as a stop sign or yield sign.

(3) Median Strips. No person shall solicit on a median strip or in any manner or location that is inconsistent with the provisions of the California Vehicle Code.

(4) Driveways Accessing Shopping Centers, Retail, and Business Establishments. No person shall solicit from an operator or occupant traveling in a motor vehicle while such vehicle is located within thirty-five (35) feet of a driveway providing vehicular access to a shopping center, retail, or business establishment.

(5) Public Transportation Vehicles and Stops. No person shall solicit in any public transportation vehicle or within fifty (50) feet of any designated or posted public transportation vehicle stop.

(6) Gasoline Stations and Fuel Pumps. No person shall solicit from an operator or occupant of a motor vehicle while such vehicle is stopped in a gasoline station or at a gasoline pump.

These provisions shall not apply to solicitations related to business authorized by and/or conducted by the property owner, business owner, or employees thereof on the premises.

(D) Exemptions. Nothing in this Section shall be construed or prohibit the lawful vending of good and services.

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(E) *Penalty.* Each act of solicitation is a violation of Section 10.99 of the Eureka Municipal Code and shall constitute a separate offense. A violation of this section is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion.

(E-F) *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.

(F) *Non-exclusivity.* Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

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PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the ____ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

COUNCILMEMBERS

COUNCILMEMBERS

COUNCILMEMBERS

COUNCILMEMBERS

Linda Atkins, Mayor Pro Tem

THE ABOVE ORDINANCE WAS PRESENTED TO THE MAYOR on the ____ day of _____, 2015, and hereby approved.

Frank J. Jäger, Mayor

Approved as to Administration:

Approved as to form:

Greg L. Sparks, City Manager

Cyndy Day-Wilson, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the ____ day of _____, 2016.

Pamela J. Powell, City Clerk