

TO: Honorable Mayor and Members of the City Council
Attention: Laura C. Kuhn, City Manager

FROM: Shana S. Faber, Assistant City Attorney

**SUBJECT: ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE
AMENDING SECTIONS 9.18.130 AND 9.18.160 OF THE VACAVILLE MUNICIPAL
CODE RELATING TO DOOR-TO-DOOR PEDDLING AND SOLICITATION AND
ADDING A NEW CHAPTER 9.72 TO THE VACAVILLE MUNICIPAL CODE
RELATING TO AGGRESSIVE AND UNSAFE SOLICITING**

DISCUSSION:

Prior to 1991, state law made it a misdemeanor to panhandle in a public place. This law was overturned in a 1991 federal court ruling which held that panhandling constituted protected speech under the First Amendment. Thus, an ordinance that imposes an outright ban on panhandling and other forms of soliciting, such as day laborers seeking work, is impermissible under the First Amendment. However, a city may adopt reasonable time, place and manner regulations that regulate the location and permissible targets of such activity, provided that such regulations are (1) Content neutral; (2) Narrowly tailored to serve a significant government interest; and (3) Leave open ample alternative channels for communication.

The proposed ordinance would impose reasonable time, place and manner limitations on panhandling and other forms of solicitation. The proposed ordinance was prepared after careful review of other city ordinances that have been upheld by the courts. The ordinance would make it unlawful to: (1) Solicit from occupants of a vehicle or pedestrians in a manner that obstructs or impedes vehicular or pedestrian traffic; (2) Solicit or loiter in a median strip; (3) Solicit within 15 feet of a commercial driveway; (4) Solicit within 15 feet of an Automated Teller Machine; (5) Solicit on a public transportation vehicle; and (6) Solicit in an aggressive manner, such as following or threatening a person, and continuing to solicit a person after they have declined to make a contribution.

In addition, the proposed ordinance makes two revisions to the City's peddling and solicitation ordinance. First, it deletes the time restrictions on peddling and solicitation due to a recent federal case that enjoined the Town of Yorktown, Indiana from enforcing a similar time limitation, which restricted peddling and soliciting to the hours of 9 a.m. to 9 p.m. or sunset, whichever is earlier. The court determined that the time limitation violated the solicitor's free speech right. *Citizens Action Coalition of Indiana, Inc. v. Town of Yorktown* 2014 U.S. Dist. LEXIS 141158 (2014). The City's ordinance is very similar to that in *Yorktown* by limiting peddling and solicitation to the hours of 9 a.m. to 8 p.m. or sunset, whichever is earlier. For this reason, staff recommends eliminating the time restriction. Second, the proposed ordinance adds "No Trespassing" signs to those signs that peddlers and solicitors must honor. Currently, the ordinance mentions "No Peddlers" and "No Solicitors" signs.

FISCAL IMPACT:

No impact to the General Fund other than the Police Department's cost of enforcement.

RECOMMENDATION:

By title only, introduce the subject ordinance.

ATTACHMENTS:

Ordinance – Action Item

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE AMENDING SECTIONS 9.18.130 AND 9.18.160 OF THE VACAVILLE MUNICIPAL CODE RELATING TO DOOR-TO-DOOR PEDDLING AND SOLICITATION AND ADDING A NEW CHAPTER 9.72 TO THE VACAVILLE MUNICIPAL CODE RELATING TO AGGRESSIVE AND UNSAFE SOLICITING

THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1. Section 9.18.130 of the Vacaville Municipal Code is amended to read as follows:

9.18.130 Peddler – Conditions and regulations.

The following conditions and regulations shall also apply to the exercises of the privileges granted under the provisions of this chapter in addition to those set forth in other parts of this chapter or elsewhere in this code, including, but not limited, Section 5.16.090 of this code:

- A. Shouting – Calling Wares. No person acting under the provisions of this chapter shall shout or call out in a loud, boisterous or unseemly manner, nor shall he/she disturb or annoy the citizens or dwellers in the city.
- B. Identification by Signature. Every peddler, upon the request of any police officer, official or employee of the city, shall promptly sign his/her name in order to compare the signature with the signature upon the license or license application.
- C. Order to Be Written in Duplicate. Any person acting under authority of this chapter who solicits orders for future delivery shall write each order at least in duplicate, plainly stating the item or service ordered, the quantity or amount ordered, the price to be paid therefor, the total amount ordered and the amount to be paid upon or after delivery. One copy of such written order shall be given to the customer or person solicited or approached.
- D. Every peddler and solicitor shall, upon request of any person solicited or approached, provide:
 - 1. The peddler's or solicitor's full name, business address and telephone number; and
 - 2. The name, business address and telephone number of the person, firm, company, entity or corporation on whose behalf the solicitation is being made.
- E. Every peddler shall notify the chief of police of any change in address by the peddler or the person, firm, company, entity or corporation employing the peddler or on whose behalf the peddler is acting.

Section 2. Section 9.18.160 of the Vacaville Municipal Code is amended to read as

follows:

9.18.160 Peddling unlawful where signs posted.

It is unlawful for any peddler or solicitor to engage in the activities described in subsections 9.18.020 F and G of this code at any place or residence within the city where the statement “No Peddlers”, “No Solicitors”, “No Trespassing” or words of similar import is posted, painted or affixed so as to be exposed to public view.

Section 3. Chapter 9.72 of the Vacaville Municipal Code, entitled “Aggressive and Unsafe Soliciting” is adopted to read as follows:

**CHAPTER 9.72
AGGRESSIVE AND UNSAFE SOLICITING**

- 9.72.010 Purpose and Findings.**
- 9.72.020 Definitions.**
- 9.72.030 Aggressive Solicitations Prohibited.**
- 9.72.040 All Solicitations Prohibited at Specified Locations.**
- 9.72.050 Penalty.**
- 9.72.060 Regulations Nonexclusive.**

9.72.010. Purpose and Findings.

- A. This chapter is intended to protect the safety and welfare of the general public and to improve the quality of life and economic vitality of the city by imposing regulations against aggressive and unsafe soliciting. This chapter imposes reasonable time, place, and manner limitations on aggressive and unsafe soliciting while respecting the constitutional rights of free speech for all citizens.
- B. Soliciting in the public roadway is unsafe and subjects solicitors, pedestrians, and vehicles to an unacceptable level of danger. Drivers become distracted from their primary duty to watch traffic, which results in the delay and obstruction of the public’s free flow of travel. These activities further result in the congestion and blockage of streets when such persons approach vehicles in the public right-of-way to solicit or negotiate with the occupants. The most severe impacts are experienced when money or other items of value are directly and immediately exchanged, hand-to-hand, in the public right-of-way as a result of the solicitation. Distracted drivers are more prone to be involved in automobile accidents, and accidents on the public streets constitute a substantial traffic safety problem.
- C. The practice of soliciting near driveways that provide access to shopping centers, retail and business establishments and other public places presents an unacceptable level of danger for solicitors, pedestrians, and vehicles. The location of the solicitor near the driveway interferes with a driver’s vision and ability to safely enter and exit the driveway and results in the delay and obstruction of motorists’ free flow of travel when such person approaches the vehicles to solicit or negotiate with the occupants. Furthermore, drivers become distracted from their duty to watch traffic as they maneuver to avoid a solicitor who is preventing safe access to and from the driveway, causing vehicular congestion and blockage of traffic. This not only inconveniences parking lot

patrons, but potentially increases the occurrence of traffic accidents. As set forth above, distracted drivers are more prone to automobile accidents and the safety risk to the solicitors is also increased.

- D. Aggressive soliciting, including approaching or following pedestrians, the use of threatening or abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic, is abusive and detracts from the rights of citizens to the quiet enjoyment of public places. The City Council further finds as abusive the solicitation of people in places where they are a “captive audience” such as banks or automated teller machines and facilities, and public transportation vehicles, in which it is impossible or difficult for such persons to exercise their own right to decline to listen to or to avoid solicitation from others. Solicitation at such places often carries with it an implicit threat to both persons and property and increases the vulnerability to intimidation to the people being solicited since they must frequently have cash out or readily available at such sites, creating an unacceptable risk of loss of property and to such people’s safety and welfare. 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 unreasonable intrusions.
- E. This ordinance is timely and appropriate because current laws and city regulations are insufficient to address the aforementioned problems. Furthermore, in enacting this ordinance, the City Council recognizes the availability of community service and other sentencing alternatives which may be appropriate for persons who violate this chapter. The restrictions contained herein are neither overbroad nor vague, and are narrowly tailored to serve a substantial governmental interest, which is to protect citizens from traffic safety problems, along with intrusive conduct and personal intimidation that accompany certain kinds of solicitation that have become an unwelcome and oppressive presence in the city.
- F. Reasonable time, place, and manner limitations on aggressive and unsafe soliciting will avoid these negative effects and will not unreasonably restrict the expressive activity of people engaging in solicitation.
- G. Whenever any reference is made herein to any local law or regulation or to any state or federal statute, regulation or other law, the reference includes any subsequent amendment or superseding provision of such statute, regulation or law.

9.72.020. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning or intent:

Aggressive Manner. The term “Aggressive Manner” shall mean any of the following conduct in the course of soliciting, or occurring immediately before or after a solicitation:

1. Approaching or speaking to a person, or following a person before, during or after soliciting, if that conduct is intended or is likely to cause a reasonable person to (A) fear bodily harm to oneself or to another, damage to or loss of property, or (B) otherwise be intimidated into giving money or other thing of value to such person;
2. Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's or occupant's consent in the course of soliciting;
3. Intentionally blocking, delaying 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;
4. Using violent or threatening gestures or motions toward a person solicited either before, during or after soliciting;
5. Persisting in closely following or approaching a person, after the person has informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or other thing of value to the solicitor; or
6. Using profane, offensive, or abusive language which is inherently likely to provoke fear or an immediate violent reaction in another person, either before, during or after soliciting that person.

Automated Teller Machine. The term "Automated Teller Machine" shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or savings account.

Automated Teller Machine Facility. The term "Automated Teller Machine Facility" shall mean the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers before, during or after regular banking hours.

Commercial Driveway. The term "Commercial Driveway" shall mean any driveway that provides vehicular access to a shopping center, retail or business establishment or other public place from a public street or highway.

Financial Institution. The term "Financial Institution" shall mean any of the following entities:

1. "Bank". Any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or any other banking institution organized or operated under the law of the United States, and any banks the deposits of which are insured by the Federal Deposit Insurance Corporation.
2. "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.

3. "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.
4. "Check cashing business". Any person duly licensed as a check seller, commencing with section 12000.

Median, Median Strip. The term "Median" or "Median Strip" shall mean a paved, unpaved or planted area of public right-of-way, dividing a public street or highway into opposing lanes of travel.

Public Place. The term "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 and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence.

Public Street or Highway. The term "Public Street or Highway" shall mean all of that area dedicated to public use for vehicular travel, including but not limited to, roadways, parkways and median strips.

Public Transportation Vehicle. The term "Public Transportation Vehicle" shall mean any vehicle, including a trailer bus or shuttle, that is designed, used or maintained for carrying ten (10) or more persons, including the driver, or (2) a passenger vehicle designed for carrying fewer than ten (10) persons, including the driver, and used to carry passengers for hire.

Solicit. The term "Solicit" or "Soliciting" shall mean the use of spoken, written, or printed words, or bodily gestures, signs or other methods for the purpose of obtaining a direct and immediate receipt of money or other thing of value or soliciting the direct and immediate sale of goods or services. Solicit or Soliciting shall not include such activities that merely involve communications and informational exchanges that do not involve or call for the direct and immediate receipt of money or other thing of value.

Solicitation. The term "Solicitation" shall mean the act of soliciting.

9.72.030. Aggressive Solicitations Prohibited.

No person shall solicit in an aggressive manner in any public place.

9.72.040. All Solicitations Prohibited At Specified Locations.

A. Public Streets or Highways.

1. No person shall stand in a public street or highway and solicit from the driver or occupant of any unparked motor vehicle, or from any motor vehicle that is stopped in, or blocking, a lane of traffic.

2. No person, while the driver or occupant of an unparked motor vehicle or a motor vehicle that is stopped in, or blocking, a lane of traffic, shall solicit from any person who is on a public street or highway.
3. The foregoing restrictions shall not apply to any motor vehicle that is legally parked.

B. Soliciting or Loitering in Median Strip. Except as otherwise permitted by law, it is unlawful for any person to solicit or loiter in or on a median strip within a public street or highway. For the purposes of this section, "loiter" shall mean to linger or remain in or on a median strip for any purpose unrelated to safely traversing a street or other roadway, except in an emergency. This section shall not apply to authorized city personnel or contractors who are repairing or maintaining the median strip or adjacent roadway.

C. Commercial Driveways. No person shall solicit within fifteen (15) feet of a commercial driveway. The fifteen (15) foot distance shall be measured from the edge of the driveway.

D. Public Transportation Vehicles. No person shall solicit in any public transportation vehicle.

E. Financial Institutions and Automated Teller Machines. No person shall solicit:

1. Within fifteen (15) feet of any entrance or exit of any financial institution during its business hours.
2. Within fifteen (15) feet of any automated teller machine, automated teller machine facility, or person standing in line to use any automated teller machine or facility 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.
3. 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.
4. The foregoing restrictions shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary function is unrelated to banking activities, including but not limited to, supermarkets and other retail businesses, provided that such automated teller machine is only available for use during the regular hours of operation of the building, structure or space in which such machine is located.

9.72.050. Penalty.

Every violation of this chapter is an infraction, except that a violation may be charged as a misdemeanor after five or more convictions for violation of any provision of this chapter within a thirty-six (36) month period.

9.72.060. Regulations Nonexclusive.

The provisions of this chapter are not intended to be exclusive and nothing in this chapter in any way limits or precludes the enforcement of any other applicable laws, or any other remedy that may be available to the city for conduct that violates this chapter.

Section 4. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 5. Publication and Effective Date.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 24th day of March, 2015, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville held on the ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

APPROVED:

Michelle A. Thornbrugh, City Clerk

Leonard J. Augustine, Mayor