

4/10/07

ORDINANCE NO. 26738

An ordinance amending Section 31-35 of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended; defining terms; restricting outdoor solicitations in the city between sunset and sunrise, with certain defenses; restricting solicitations near outdoor dining areas and parking meters; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city council finds that verbal solicitations conducted in outdoor areas of the city at night create a safety hazard and an increased potential for criminal activity against persons using businesses, stores, restaurants, clubs, theaters, performance halls, exhibit halls, museums, parking lots, and other venues and facilities in the city at night, since those persons are often in dark, isolated locations, sometimes with cash conspicuously in their possession, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the city council believes it is in the best interest of the public health, safety, and welfare to restrict the times during which verbal solicitations may be conducted outdoors in the city; and

WHEREAS, the city council finds that solicitations conducted near parking meters create a safety hazard and an increased potential for criminal activity against persons using the parking meters, since those persons have cash conspicuously in their possession and are usually a captive audience, with their attention distracted from their surroundings, as they place or prepare to place money in the parking meters, thereby making those persons more vulnerable to and intimidated by solicitors; and

WHEREAS, the city council finds that solicitations conducted near outdoor dining areas create a safety hazard and an increased potential for criminal activity against persons using the outdoor dining areas, since those persons have cash conspicuously in their possession and are usually a captive audience, often with their attention distracted from their surroundings, as they order, wait for food to be served, dine, and pay their bills, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the city council believes it is in the best interest of the public health, safety, and welfare to restrict the distances at which solicitations may be conducted near these locations and facilities; Now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 31-35, "Solicitation by Coercion; Solicitation Near Designated Locations and Facilities," of Article I, "General," of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 31-35. SOLICITATION BY COERCION; SOLICITATION NEAR DESIGNATED LOCATIONS AND FACILITIES; SOLICITATION AFTER SUNSET.**

(a) In this section:

(1) AUTOMATED TELLER MACHINE means a machine, other than a telephone:

(A) that is capable of being operated by a customer of a financial institution;

(B) by which the customer may communicate to the financial institution a request to withdraw a benefit for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and

(C) the use of which may or may not involve personnel of a financial institution.

26738

## (2) COERCION means:

(A) to approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

- (i) imminent bodily injury; or
- (ii) the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(B) to persist in a solicitation after the person solicited has given a negative response;

(C) to block, either individually or as part of a group of persons, the passage of a solicited person; or

(D) to engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

(3) EXTERIOR PUBLIC PAY TELEPHONE means any coin or credit card reader telephone that is:

(A) installed or located anywhere on a premises except exclusively in the interior of a building located on the premises; and

(B) accessible and available for use by members of the general public.

(4) FIXED FOOD ESTABLISHMENT means a food establishment, as defined in Section 17-1.5 of this code, that is operated from a fixed facility.

(5) PUBLIC TRANSPORTATION STOP means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, or any other public transportation vehicle that is operated on a scheduled route with passengers paying fares on an individual basis.

(6) [(5)] SELF-SERVICE CAR WASH means a structure:

(A) at which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine; and

(B) that is accessible and available for use by members of the general public.

(7) [(6)] SELF-SERVICE FUEL PUMP means a fuel pump:

(A) from which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, without the aid of an employee or attendant of the premises at which the fuel pump is located; and

(B) that is accessible and available for use by members of the general public.

(8) [(7)] SOLICITATION means to ask, beg, solicit, or plead, whether orally or in a written or printed manner, for the purpose of receiving contributions, alms, charity, or gifts of items of value for oneself or another person.

(9) SUNRISE means the time of day published on the weather page of the Dallas Morning News as the time for sunrise on a particular day in the city.

(10) SUNSET means the time of day published on the weather page of the Dallas Morning News as the time for sunset on a particular day in the city.

(b) A person commits an offense if he conducts a solicitation by coercion.

(c) A person commits an offense if he conducts a solicitation in any outdoor area in the city at any time between sunset and sunrise on any day of the week. It is a defense to prosecution under this subsection if the solicitation:

(1) consisted exclusively of passive, nonverbal acts; or

(2) was being conducted on property with the advance written permission of the owner, manager, or other person in control of the property.

(d) A person commits an offense if he conducts a solicitation to any person placing or preparing to place money in a parking meter.

(e) A person commits an offense if he conducts any solicitation within 25 feet of:

(1) an automated teller machine;

(2) an entrance or exit of a bank, credit union, or other similar financial institution;

(3) an exterior public pay telephone;

(4) a self-service car wash;

(5) a self-service fuel pump; [or]

(6) a public transportation stop; or

26738

(7) an outdoor dining area of a fixed food establishment.

(f) [(d)] For purposes of Subsection (e) [(e)], measurement will be made in a straight line, without regard to intervening structures or objects, from the nearest point at which a solicitation is being conducted to whichever is applicable of the following:

(1) the nearest entrance or exit of a facility in which an automated teller machine is enclosed or, if the machine is not enclosed in a facility, to the nearest part of the automated teller machine;

(2) the nearest entrance or exit of a bank, credit union, or other similar financial institution;

(3) the nearest part of an exterior public pay telephone;

(4) the nearest part of the structure of a self-service car wash;

(5) the nearest part of a self-service fuel pump; [or]

(6) the nearest point of any sign or marking designating an area as a public transportation stop; or

(7) the nearest part of any table in an outdoor dining area or, if the outdoor dining area is contained within an enclosure, the nearest part of that enclosure.

(g) [(e)] In addition to any enforcement action by a peace officer for a violation of this section, any person who is a victim of a solicitation prohibited under Subsection (b), [or] (c), (d), or (e), or who witnesses a violation of Subsection (c), (d), or (e), may file a complaint with the city attorney. Evidence to support a conviction for a violation of this section may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence.”

SECTION 2. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$500.

SECTION 3. That CHAPTER 31 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

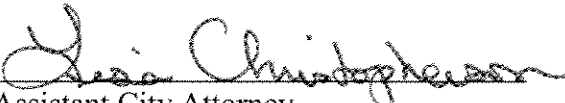
26738

071491

SECTION 5. That this ordinance will take effect on June 1, 2007, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By   
Assistant City Attorney

Passed     MAY 23 2007    

LC/DCC/00404A