

ORDINANCE

(AS AMENDED)

CITY OF NEW ORLEANS

CITY HALL: September 22, 2011

CALENDAR NO. 28,682

NO. 24636 MAYOR COUNCIL SERIES

BY: COUNCILMEMBER GISLESON PALMER AND CLARKSON

AN ORDINANCE to amend and re-ordain Offenses Affecting the Public Generally, Article VI of Chapter 54 of the Code of the City of New Orleans, to provide penalties for aggressive solicitation; and otherwise to provide with respect thereto.

WHEREAS, the City Council intends to recognize free speech rights for all citizens while at the same time protecting the coexistent rights for all citizens to enjoy safe and convenient travel in public spaces free from intimidation, threats, and harassment that stem from certain types of aggressive solicitation; and

WHEREAS, the City Council finds that there are numerous forms of solicitation that are not in and of themselves inherently threatening or aggressive, including non-vocal requests for a donation; carrying or displaying a sign requesting donations; shaking or jingling a cup of change; and ringing a bell in compliance with any applicable noise ordinance; and

WHEREAS, however, the City Council finds that there has been an increase in aggressive solicitation in the Vieux Carré, which threatens the security and privacy of both residents and visitors and may constitute harassment of such persons; and

WHEREAS, the City Council finds that certain solicitation impedes the orderly flow of pedestrian and vehicular traffic that leads to concerns regarding traffic and public safety; and

WHEREAS, this chapter is not intended to impermissibly limit an individual's right to exercise free speech associated with solicitation; rather it aims to impose specific time, place, and manner restrictions on solicitation and associated conduct in certain limited circumstances; namely, aggressive solicitation, solicitation at locations or times deemed particularly threatening or dangerous, or soliciting in places where people are a "captive audience" and there is a wish to avoid or reduce a threat of inescapable confrontations; and

WHEREAS, in promulgating this chapter, the City Council seeks to impose regulations that are narrowly tailored to serve the aforementioned significant government interests.

1 **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS**, that Article VI of Section 54 of the Code of the City of New Orleans is hereby
3 amended and reordained to read as follows:

4 **"Sec. 54-419 – Aggressive solicitation.**

5 (a) Policy. As an aid in the interpretation and enforcement of this section the City
6 Council finds that:

7 (1) Aggressive solicitation is disturbing and disruptive to residents and
8 businesses and contributes to the loss of access to and enjoyment of public
9 places and to a sense of fear, intimidation and disorder.

10 (2) Aggressive solicitation may include approaching or following pedestrians,
11 repetitive soliciting despite refusals, the use of abusive or profane language to
12 cause fear and intimidation, unwanted physical contact, or the intentional
13 blocking of pedestrian and vehicular traffic.

14 (3) The presence of individuals who solicit money from persons in places that
15 are confined, difficult to avoid, or where a person might find it necessary to
16 wait, is especially troublesome because of the enhanced fear of crime.

17 (4) This section is intended to protect citizens from the disruption, fear and
18 intimidation accompanying certain kinds of solicitation, and not to limit
19 constitutionally protected activity.

20 (b) Definitions.

21 (1) Solicitation, as used in this section, means any plea made in person where:

22 a. A person by vocal appeal requests an immediate donation of money
23 or other item from another person; or

24 b. A person verbally offers or actively provides an item or service of
25 little or no value to another in exchange for a donation, under
26 circumstances where a reasonable person would understand that the
27 transaction is in substance a donation. However, solicitation shall not
28 include the act of passively standing, sitting, or engaging in a
29 performance of art with a sign or other indication that a donation is
30 being sought, without any vocal request other than in response to an
31 inquiry by another person.

32 (2) Convenience store, as used in this section, means a retail
33 establishment offering for sale prepackaged food products, household
34 items, and other goods commonly associated with them, with a gross
35 floor area of less than seven thousand five hundred (7,500) square
36 feet.

37 (3) Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie,
38 or place an object in such a manner as to block passage by another
39 person or a vehicle, or to require another person or a driver of a
40 vehicle to take unreasonable evasive action to avoid physical contact.

41 (4) Unreasonable evasive action means causing a vehicle to depart from
42 the lane of traffic in which it is traveling to change lanes, to straddle
43 lanes, or to enter onto a neutral ground to obtain passage; it also
44 means causing a pedestrian to leave the sidewalk on which he is

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traveling or to make contact with a wall or fence bordering the sidewalk, or, at such times as the New Orleans Police Department shall have erected barricades to prohibit vehicular traffic from Bourbon Street or Royal Street, to cause a pedestrian to take unreasonable evasive action in the street to avoid physical contact.

(5) Public entertainment venue means a place that is open to the public (whether or not upon payment of a fee for admission and whether or not the management reserves the right to exclude individual members of the public) for entertainment, but does not include a shop. The term also includes Bourbon Street and Royal Street between the hours of sunset and sunrise.

(6) Shop means premises used for the sale or displaying or offering for sale of goods or food to a member of the public, whether on a wholesale or retail basis, and includes a warehouse (other than where the premises is temporarily used as a public entertainment venue)

(c) Prohibitions.

(1) It shall be unlawful in a public place to engage in an act of solicitation when the person being solicited is present at any of the following locations:

- a. In a restroom.
- b. At a bus stop or public transportation shelter.
- c. At or within twenty (20) feet in any direction from an intersection of two streets or a marked crosswalk.
- d. In any public transportation vehicle or public transportation facility.
- e. In a vehicle which is parked or stopped on a public

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street or alley.

- f. In a sidewalk cafe.
- g. In a line waiting to be admitted to a commercial or government establishment.
- h. Within twenty (20) feet in any direction from an automatic teller machine or entrance to a bank, other financial institution, or check cashing business.
- i. On any parkland, or in any park, playground, or public entertainment venue, including within twenty (20) feet of entry ways or exits thereto.
- j. At or within ten (10) feet in any direction of the property on which is located a gasoline filling station as defined in Section 150-963 of the Code of the City of New Orleans.
- k. At or within ten (10) feet in any direction of the property on which is located a liquor store, including any establishment with an Class B Permit (off-sale license) under Alcoholic Beverages, Chapter 10 of the Code of the City of New Orleans, and including any establishment with an on-sale license.
- l. At or within ten (10) feet in any direction of the property on which a convenience store is located.

(2) It shall be unlawful in a public place to engage in an act of solicitation in a manner that incorporates any of the following methods:

- a. Intentionally touching or causing harmful or offensive physical contact with the solicited person without that

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person's consent.

- b. Intentionally blocking the path of the solicited person, or the entrance to any building or vehicle.
- c. Following behind, ahead or alongside a person who walks away from the solicitor after being solicited, with the intent to intimidate or continue solicitation.
- d. Using obscene, profane, or abusive language or gestures toward the solicited person.
- e. Approaching the solicited person in a manner that:
 - 1. Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - 2. Is intended to or is likely to intimidate a reasonable person into responding affirmatively to the solicitation.
- f. Solicitation while under the influence of alcohol or drugs.
- g. Soliciting in a group of two (2) or more persons.

- (3) It shall be unlawful in a public place to engage in an act of solicitation on any day after sunset or before sunrise.
- (4) No person, in any public or private place, shall use offensive, obscene or abusive language, or grab, follow or engage in conduct which reasonably tends to arouse alarm or anger in others, or walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or

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to require another person or a driver of a vehicle to take evasive action to avoid physical contact. A person shall be guilty of obstructive interference if, in a public place, he intentionally obstructs pedestrian or vehicular traffic. It shall be prohibited for any person or group of persons to loiter or congregate on Bourbon Street for the purpose of disseminating any social, political or religious message between the hours of sunset and sunrise. Acts authorized by permit issued pursuant to the Parade Ordinances, Article XVI of Chapter 154 of the Code of the City of New Orleans shall not constitute interference with pedestrian or vehicular traffic.

- (d) Penalties. Each act prohibited by this section shall constitute a separate violation of this Section. Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00, and/or imprisoned for not more than six months. In the event that a person convicted of an offence under this section is employed by an organization responsible for the offender's actions constituting a violation of this ordinance then that organization shall be held similarly in violation of this section and similar penalties shall be levied upon the organization.

- (e) Section 54-419 shall only be applicable within the Vieux Carre as defined in Section 166-2 of the Code of the City of New Orleans.

147 (f) Severance. If any section, sentence, clause, or phrase of this law is
148 held invalid or unconstitutional by any court of competent
149 jurisdiction, it shall in no way affect the validity of any remaining
150 portions of this law.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS OCT 20 2011

**Jacquelyn B. Clarkson
PRESIDENT OF THE COUNCIL**

DELIVERED TO THE MAYOR ON OCT. 21 2011

**APPROVED:
DISAPPROVED: Wednesday, October 26, 2011**

**Mitchell J. Landrieu
MAYOR**

RETURNED BY THE MAYOR ON OCT 26 2011 AT 4 :15 PM

**Peggy Lewis
CLERK OF COUNCIL**

ROLL CALL VOTE:

YEAS: Clarkson, Gisleson Palmer, Granderson, Guidry, Head, Hedge-Morrell -6

NAYS: 0

ABSENT: Johnson - 1