

ORDINANCE NUMBER _____

AN ORDINANCE OF THE MISSOULA CITY COUNCIL ADOPTING MISSOULA MUNICIPAL CODE TITLE 9, CHAPTER 36 ENTITLED *SOLICITATION AND AGGRESSIVE SOLICITATION AS ACTS OF DISORDERLY CONDUCT*, SECTIONS 9.36.010; 9.36.020; 9.36.030; 9.36.040; 9.36.050; 9.36.060; 9.36.070; 9.36.080, AND 9.36.090.

BE IT ORDAINED BY THE MISSOULA CITY COUNCIL THAT TITLE 9, CHAPTER 36 ENTITLED *SOLICITATION AND AGGRESSIVE SOLICITATION AS ACTS OF DISORDERLY CONDUCT*, SECTIONS 9.36.010; 9.36.020; 9.36.030; 9.36.040; 9.36.050; 9.36.060; 9.36.070; 9.36.080, AND 9.36.090 BE ADOPTED AS FOLLOWS:

Section 1.

9.36.010 Title. This chapter shall be known as the City of Missoula Solicitation and Aggressive Solicitation as Acts of Disorderly Conduct Act.

Section 2.

9.36.020 Purposes. The purpose of this chapter is to protect the health, safety and welfare of the citizens of and visitors to the city by prohibiting acts of aggression or interference towards pedestrians as allowed by Section 7-32-4304 of the Montana Code Annotated. This includes prohibiting aggressive soliciting actions that threaten, harass, intimidate or cause fear of bodily injury in pedestrians; general soliciting in places where pedestrians and citizens are more open to threats of aggression or harm; general soliciting that poses a threat of harm to pedestrians and vehicle traffic; and false or misleading soliciting actions. The city council declares that such prohibitions are necessary and desirable for the following reasons:

A. The city deems it necessary to find solutions which make it easier for people to remain in public places peacefully rather than be excluded from them in order to make it easier for the city's diverse residents and visitors to share public areas with less conflict.

B. The city deems it necessary to find solutions to encourage courteous behavior of people in order to promote greater tolerance and civility towards each other while narrowly defining unacceptable behaviors.

C. There has been an alarming increase in the number of persons aggressively soliciting, or while soliciting, interfering with, obstructing, harassing, threatening and intimidating other pedestrians, or impeding vehicles and pedestrians in traffic on city streets in recent years. This conduct has been either related to obstruction of pedestrian passage or soliciting of pedestrians;

D. The police department and other city offices have received complaints from citizens complaining that they are afraid to walk, or as business people are afraid to allow their customers to walk, on downtown city streets and riverfront walkways as a result of the aggressive, intimidating conduct of persons soliciting and/or conduct of persons harassing, intimidating, interfering with, obstructing or accosting pedestrians or people in public places;

E. The city deems it necessary to protect the rights of its citizens and visitors to move openly and freely on the city streets, sidewalks, walkways, parks and other public places without fear of being aggressively solicited, harassed, interfered with, obstructed, accosted, intimidated, injured or robbed by aggressive individuals soliciting them or interfering with their passage; and

F. The city deems it necessary to protect pedestrians, in public places on public property from obstruction, interference, intimidation, harassment, damage or injury caused or partially attributable to being aggressively solicited, accosted, harassed, interfered with or obstructed by any person, especially someone with a weapon.

G. The city deems it necessary to protect citizens in vehicles from solicitation in general to protect and preserve the welfare and safety of citizens in vehicles and pedestrians on city streets.

Section 3.

9.36.030 Definitions. The following definitions shall apply to the provisions of this chapter.

A. "Aggressive Manner" shall mean:

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 fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into giving money or other things of value;
2. Continuing to solicit from a person after the person has given a negative response to such soliciting;
3. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;
4. 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;
5. Using violent or threatening gestures towards a person solicited;
6. Using profane or abusive language which is likely to provoke an immediate violent reaction from the person being solicited;
7. Following the person being solicited, with the intent of asking that person for money or things of value.

B. "Harass" means words, conduct, or actions directed toward another which would reasonably be expected to annoy, alarm, or cause emotional distress.

C. "Intimidate" means to engage in conduct which would make a reasonable person fearful of imminent harm to his person or property or feel threatened.

D. "Knowingly" means a person acts knowingly with respect to conduct or to a circumstance described by an ordinance defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by an ordinance defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

E. "Public Place" means a place to which the public or a substantial group of people has access.

F. "Purposely" means a person acts purposely with respect to a result or to conduct described by an ordinance defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

G. "Soliciting" shall mean asking for money or objects of value, with the intention that the money or object be transferred at that time and at that place. Soliciting shall include using the spoken, written or printed word, bodily gestures, signs or other means for the purpose of urging, requesting, commanding or obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

Section 4.

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

Section 5.

9.36.050 Soliciting in Certain Places. It shall be unlawful for any person to solicit in the following places:

A. Banks and ATM's. No person shall solicit within twenty feet of any entrance or exit of any check cashing business or bank, or within twenty feet of any automated teller machine. Provided, however, that when an automated teller machine is located within a building or facility, such distance shall be measured from the entrance or exit of the facility;

B. Motor Vehicles and Parking Lots.

1. No persons shall solicit from any operator or occupant of a motor vehicle while such vehicle is located on any street or highway for the purpose of performing or offering to perform a service in connection with such vehicle or otherwise soliciting donations or the sale of goods or services.

2. No person shall solicit in any public transportation vehicle, within 20 feet of any bus or bus station or stop, in any public or private parking lot or structure, or within twenty (20) feet of any parking lot pay box.

C. No person shall solicit within six (6) feet of an entrance to a building;

D. No person shall solicit within twenty (20) feet of any outdoor patio or sidewalk café where food or drink is served.

E. No person shall solicit after dark, which shall mean one-half hour after sunset until one-half hour before sunrise;

F. No person shall solicit within twenty (20) feet of any vendor's location when the vendor has a valid permit.

G. No person shall solicit within twenty (20) feet of any pay telephone.

H. No person shall solicit within twenty (20) feet of the entrance to or exit from any public toilet facility, which includes any temporary use site (port-a-toilet).

I. No person shall solicit on private or residential property after having been asked to leave or asked to refrain from soliciting by the owner or other person lawfully in possession of such property.

J. Exemption. The city council may by resolution temporarily suspend the requirements and restrictions imposed by this section in order to accommodate charitable fund raising events. The granting of such an exemption is discretionary with the city council, may include conditions, and is limited to the duration of twenty-four (24) hours.

Section 6.

9.36.060. False or Misleading Soliciting. It shall be unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

A. Stating that the solicitor is from out of town and stranded when such is not true;

B. Stating or suggesting falsely that the solicitor is either a present or former member of the armed service;

C. Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;

D. Stating the solicitor is homeless, when he or she is not.

Section 7.

9.36.070 Violation--Penalty. A person convicted of a violation of this chapter shall be guilty of a misdemeanor and shall be fined not to exceed one hundred dollars.

Section 8.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any

one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a vote _____ and APPROVED on this _____ day of _____, 2009.

ATTEST:

APPROVED:

Martha L. Rehbein

John Engen