

## ORDINANCE NO. 2024-01

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING CHAPTER 10.100 OF THE SAN BUENAVENTURA MUNICIPAL CODE TO CLARIFY DEFINITIONS OF SOLICITATION AND RELATED TOPICS AND IMPLEMENT REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS ON SOLICITATION BEHAVIOR

The Council of the City of San Buenaventura does ordain as follows:

#### Section 1. FINDINGS

The City Council of the City of San Buenaventura hereby finds, determines and declares that:

- A. Solicitations made in an aggressive manner are unsafe and disruptive to persons in the City of San Buenaventura and are a threat to public health, safety, and general welfare. Aggressive solicitations typically include approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic.
- B. An increase in aggressive solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation, and disorder.
- C. Aggressive 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, detracts from the rights of persons in the City to quietly enjoy public facilities, 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 gas stations.
- D. The presence of individuals who solicit money from persons at or near banks or automated teller machines is especially threatening and dangerous. Such activity often carries with it an implicit threat to both person and property. Restricting solicitation in such places will provide 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 unavoidable confrontations.

- E. Aggressive solicitation on roadway median strips, at traffic intersections and in the public roadway, and lingering and loitering on a median are unsafe and hazardous for solicitors, drivers, pedestrians, and the general public. Aggressive soliciting on roadway median strips – essentially all of which in the City are high traffic zones - at traffic intersections, and in the public roadway increases the risk of drivers becoming distracted from their primary duty to safely operate their motor vehicle and watch traffic. This may result in traffic collisions, congestion and blockage of streets, and delay the free flow of travel, all of which constitute substantial traffic safety concerns.
- F. The Council's intent in enacting this chapter is not to interfere with the exercise of First Amendment rights of those engaged in solicitation on roadway median strips, at traffic intersections, and in the public roadway, and lingering and loitering on the medians. This is meant to minimize the safety hazards of those in such areas as well as the drivers and passengers in vehicles sharing the roadway.
- G. The practice of aggressive 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 the driver's ability to safely enter and exit. Drivers also become distracted from their duty to operate their motor vehicle and watch traffic, which may result in traffic collisions, congestion and blockage of streets, and delay the free flow of travel, all of which constitute substantial traffic safety concerns.
- H. While the restrictions of this chapter are content-neutral they are both narrowly tailored and necessary to achieve a compelling governmental interest, but still provide alternative avenues of communication.
- I. The reasonable time, place and manner restrictions in this chapter avoid the negative effects of aggressive solicitation and solicitation in unsafe places and will not unreasonably restrict free speech of people engaged in solicitation.

Section 2. AMENDMENT TO CODE. Chapter 10.100, "Solicitation," is hereby amended to read as follows:

## Chapter 10.100 Solicitation<sup>1</sup>

### **Sections**

Sec. 10.100.010. Definitions.

Sec. 10.100.020. Prohibited solicitation at specified locations.

Sec. 10.100.030. Manner of solicitation.

Sec. 10.100.040. Penalty.

Sec. 10.100.050. Severability.

Sec. 10.100.060. Non-Exclusivity.

### **Sec. 10.100.010. Definitions.**

For purposes of this chapter 10.100 the following definitions shall apply:

“Aggressive manner” means 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, or
  - 2. damage to or loss of property, or
  - 3. 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;

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<sup>1</sup>Cross reference(s)—Business regulations, div. 6.

- 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 or 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.

"Intimidate" means to engage in conduct which would make a reasonable person fearful or feel threatened. *Person* includes both individual persons and organizations.

"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, the right-of-way of any freeway, including any on ramp, off ramp, or roadway shoulder which lies within the right-of-way of the freeway, highway, sidewalk, median, parking lot, parking structure, 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.

"Solicitation, solicit, ask, or beg" shall include 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.

#### **Sec. 10.100.020. Prohibited solicitation at specified locations.**

It shall be unlawful for any person to solicit, ask, or beg in any of the following places, or for any person to solicit, ask, or beg when the person solicited is in any of the following places:

- A. Within 25 feet of any bus stop or train stop;
- B. While in any public transportation vehicle, including a trailer bus, designed, used, or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire;
- C. On private property, unless the solicitor has permission from the owner or tenant;

- D. 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 (ATM) during the time it is available for customers' use. Provided, however, that when an ATM is located within an ATM facility, such distance shall be measured from the entrance or exit of the ATM facility. Provided further that no person shall solicit, ask, or beg within an ATM 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 paragraph shall be construed to prohibit the lawful vending of goods and services within such areas, unless the ATM is 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;
- E. Within any dining area of restaurants or other dining establishments serving food for immediate consumption;
- F. Within 25 feet of a queue waiting to gain admission to a place or vehicle, or waiting to purchase an item or admission ticket;
- G. Within 25 feet of a driveway providing vehicular access to a shopping center, retail, or business establishment;
- H. While standing on any median on any street or highway, or on any entrance or exit to any freeway as defined by the California Vehicle Code;
- I. While operating or occupying a motor vehicle while the vehicle is located in a public place, or in any public parking lot or parking structure, or the vehicle is located in a gasoline station or near a fuel pump unless the solicitation, beg, or ask is related to (1) the business which is being conducted on the premises by the property owner, business owner, or employees of the business, (2) the lawful towing of a vehicle, or (3) to emergency repairs requested by the operator or other occupant of a vehicle; or,
- J. Within 25 feet of a parking pay station or parking meter.

**Sec. 10.100.030. Manner of solicitation.**

It shall be unlawful for a person to solicit, ask, or beg in an aggressive manner in any public place.

**Sec. 10.100.040. Penalty.**

A violation of this Chapter is punishable as a misdemeanor or infraction, chargeable at the city attorney's discretion.

**Sec. 10.100.050. Severability.**

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

**Sec. 10.100.060. Non-Exclusivity.**

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

Section 3. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. CEQA FINDINGS.

EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council further finds that the enactment of regulations pursuant to this Ordinance is determined to be exempt under Section 15061(b)3 of the of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that the adoption of these regulations merely implements a regulatory process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

At a regular meeting of the City Council of San Buenaventura on January 9, 2024, this Ordinance was introduced by the following vote:

Ayes: Councilmembers Duran, McReynolds, Johnson, Halter, Campos, Deputy Mayor Dr. Sánchez-Palacios, and Mayor Schroeder

Noes: None

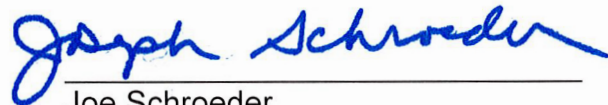
Absent: None

The foregoing Ordinance was adopted by the City Council of San Buenaventura on January 23, 2024 and ordered published by posting the following vote:

Ayes: Councilmembers Duran, McReynolds, Johnson, Halter, Campos, Deputy Mayor Dr. Sánchez-Palacios, and Mayor Schroeder

Noes: None

Absent: None



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Joe Schroeder  
Mayor

ATTEST:

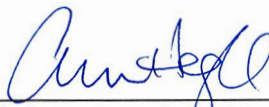


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Michael B. MacDonald, CMC  
City Clerk

APPROVED AS TO FORM:

Andrew Heglund  
City Attorney

By:

 for 2/6/24

\_\_\_\_\_  
Christopher de la Vega  
Assistant City Attorney

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Date