

ORDINANCE NO. 2011-03

AN ORDINANCE OF THE CITY OF MILANO, TEXAS, PROHIBITING AGGRESSIVE SOLICITATION; PROVIDING DEFINITIONS; PROVIDING A MAXIMUM PENALTY OF \$500.00 FOR FAILURE TO COMPLY WITH SUCH ORDINANCE; PROVIDING A FINDINGS, EFFECTIVE DATE, SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Milano (the "City") is permitted by State law to establish ordinances that protect the health, safety and general welfare of its residents;

WHEREAS, the City Council finds that aggressive acts associated with solicitation tend to interfere with the free flow of pedestrian and vehicular traffic and intimidate persons in public places, and can lead to disruption and disorder in public places; and can cause persons to avoid public places and lead to declining patronage of commercial establishments and tourism;

WHEREAS, aggressive solicitation usually includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic;

WHEREAS, the City Council further finds that solicitation in certain public places is inconsistent with the use of those places, is inherently intimidating, targets persons who are captive audiences or constitutes an invasion of privacy as persons are not able to simply move on if they do not wish to speak to the person soliciting;

WHEREAS, the City Council further finds that solicitation in proximity to bank entrances, check-cashing businesses, automated teller machines, or bus shelters or bus stops is inherently intimidating because of the enhanced fear of crime in those confined environments and should be restricted;

WHEREAS, this ordinance is reasonable and necessary to protect persons from threatening, intimidating or harassing behavior, to keep public places safe and attractive for use by all members of the community and to maintain and preserve public places where all of the community can interact in a peaceful manner;

WHEREAS, this ordinance is reasonable and necessary to provide for the free flow of pedestrian and vehicular traffic on streets and sidewalks in the City, to promote tourism and business and preserve the quality of urban life;

WHEREAS, this ordinance is reasonable and necessary to promote the health, safety and welfare of the citizens and visitors to the City;

WHEREAS, this law is timely and appropriate because current laws and City regulations are insufficient to address the aforementioned problems; and

WHEREAS, this ordinance is not intended to limit any persons from exercising their constitutional right to picket, protest or engage in other constitutionally protected activity;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILANO, TEXAS:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Definitions. Whenever the following words and phrases are used in this section, they shall have the following meanings:

AGGRESSIVE MANNER

(1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation, or approaching within an arm's length of the person, except with the person's consent;

(2) Following the person being solicited, if that conduct is:

- (a) 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
- (b) Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(3) Continuing to solicit within five feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:

- (a) 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
- (b) Is intended to or is likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;

(5) Intentionally or recklessly using words:

- (a) Intended to or 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
- (b) Intended or likely to intimidate the person into responding affirmatively to the solicitation; or

(6) Approaching the person being solicited in a manner that is:

- (a) 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
- (b) Intended to or is likely to intimidate the person being solicited into responding affirmatively to the solicitation.

AUTOMATED TELLER MACHINE. A device, linked to a financial institution's account records, which is able to carry out transactions, including but not limited to account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

AUTOMATED TELLER MACHINE FACILITY. The area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

CHECK CASHING BUSINESS. Any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of the banking laws.

PERSON. Means and include an individual human, partnership, co-partnership firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, trust, estate, governmental entity, association or corporation or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

PUBLIC PLACE. Any area or building owned, leased, operated or controlled by or on behalf of any government, municipality, public authority or public corporation in the City which is generally accessible by the public, including but not limited to any street, including the sidewalk portion thereof, bridge, park, playground, recreation area, cemetery, school or school grounds, building, facility, driveway, parking lot or parking garage, and the doorways and entrances to buildings and dwellings.

SOLICIT. To request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. Shall include, without limitation, the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or any other thing of value.

Section 3. Soliciting Prohibited.

- (a) No person shall solicit in an aggressive manner in a public place.
- (b) No person shall solicit within 20 feet of an automated teller machine or an entrance or exit of an automated teller machine facility during the time the automated teller machine is available for customers' use; or within 20 feet of an entrance or exit to a banking organization or check cashing business during its business hours.
- (c) No person shall solicit when either the person soliciting or the person being solicited is in a bus shelter or at a bus stop.
- (d) No person shall solicit on private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;

(e) No person on a sidewalk or alongside a roadway shall solicit from any occupant of a motor vehicle that is on a street or other public place.

Section 4. Penalty. Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein. Evidence and allegations of a culpable mental state is not required to establish a violation of this ordinance unless specifically required herein.

Section 5. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

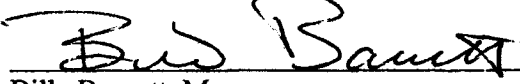
PASSED AND APPROVED on the 15 day of August, 2011

ATTEST:



Carolyn Vinton, City Secretary

CITY OF MILANO, TEXAS



Billy Barnett, Mayor