

CITY OF ROLLINGWOOD, TEXAS

ORDINANCE NO. 2019-09-18-30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROLLINGWOOD, TEXAS, AMENDING CHAPTER 12, "TRAFFIC AND VEHICLES", TO ADD ARTICLES 12.08, "SOLICITATIONS AT STREET INTERSECTIONS", AND 12.09 "AGGRESSIVE SOLICITATION" OF THE CODE SOLICITATIONS OR PANHANDLING AT STREET INTERSECTIONS; AGGRESSIVE PANHANDLING OR SOLICITATION IN PUBLIC PLACES AND PROHIBITING PANHANDLING OR SOLICITING ON PRIVATE PROPERTY IF INDICATED BY THE PROPERTY OWNER; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rollingwood, Texas is a General Law Type A City under the statutes of the State of Texas; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, Section 282.002 of the Texas Local Government Code provides that a general law municipality has exclusive control over the public grounds and may abate or remove an encroachment or obstruction on the public grounds of the municipality; and

WHEREAS, Section 311.002 of the Texas Transportation Code provides that a general law municipality has exclusive control over the highways, streets, and alleys of the municipality and may abate or remove an encroachment or obstruction on a highway, street, or alley of the municipality; and

WHEREAS, panhandling or soliciting ("Solicitation") on or near public roads, sidewalks and rights-of-way impedes the orderly flow of traffic and endangers both operators of motor vehicles and persons engaged in Solicitation; and

WHEREAS, the City Council of the City of Rollingwood, Texas ("City Council") has determined that it is dangerous and hazardous to distract the driver of a motor vehicle from focusing on safely controlling the motor vehicle and that such dangers and hazards are dramatically increased if a Solicitation occurs while a motor vehicle is stopped in compliance with a traffic control device and the driver is forced to stop and/or proceed with driving when a light turns green, etc., and the driver is distracted or involved in the Solicitation; and

WHEREAS, the City Council has determined that it is dangerous, hazardous and life

threatening for a person to solicit funds within any public street, right-of-way, median, traffic island, parkway, or other public right-of-way within the City when the person is focused on attracting the attention of another person in a motor vehicle and thus distracted from paying attention to the total circumstances around the person and the movement of vehicles other than the vehicles whose occupants he or she is attempting to attract the attention of or communicate with and that the public sidewalks designed for pedestrian use are available for such activities in accordance with this Ordinance; and

WHEREAS, the solicitation of people in places and situations where it is impossible or difficult for them to exercise their own right to decline to listen or to avoid Solicitation, such as motor vehicles, indoor and outdoor dining areas, crowded sidewalks, parking lots and structures, and in the vicinity of an entrance to a commercial or public facility is abusive, intimidating, and potentially dangerous; and

WHEREAS, the United States Supreme Court has observed that "requests for immediate payment of money create a strong potential for fraud or undue pressure, in part because of lack of time for reflection." Intern. Soc. For *Krisna Consciousness v. Lee*, 112 S.Ct. 2722 (1992) (concurrence by Justice Kennedy); and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference; and

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved; and

WHEREAS, Aggressive Solicitation, as defined herein, is disruptive to 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; and

WHEREAS, prohibiting the act of aggressively soliciting money or services while in certain places addresses the possible hazard, which can include assaults, thefts, harassment, limitation on commerce, vehicular collisions involving a pedestrian on the median, vehicles involved in the Solicitation, or other vehicles not directly involved in the Solicitation; and

WHEREAS, restricting Solicitation in such places and situations will provide a balance between the rights of solicitors and panhandlers and the rights of persons who wish to decline or avoid the Solicitation and will help avoid or diminish the threat of violence in such unwarranted and unavoidable confrontations and provide for the safety and security of the commuting public, tourists, and those citizens wishing to use public places and commercial facilities; and

WHEREAS, this Ordinance is timely and appropriate because current laws and City regulations are insufficient to address the aforementioned problems, and the proposed restrictions contained herein are neither over broad nor vague and are narrowly tailored to serve a substantial government interest; and

WHEREAS, the City has a compelling interest to protect citizens from the fear, harassment and intimidation accompanying panhandling, which has become an unwelcome, overwhelming and dangerous presence in certain parts of the City and to protect citizens from certain dangerous devices that, when used in a public street or sidewalk, pose a significant health and safety concern; and

WHEREAS, City Council finds that the presence of panhandlers near banks or automatic teller machines in specified "captive audience locations" or at night can be especially threatening to person; and

WHEREAS, 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, it is the intent of the City Council to impose reasonable time, place and manner restrictions on Solicitation while respecting the constitutional rights of all citizens to beg, panhandle or solicit funds, picket, protest or engage in other constitutionally protected activity in a peaceful and non-threatening manner; and

WHEREAS, there are many locations throughout the City that are zoned for commercial activity or are a public forum for expression; and

WHEREAS, the City Council seeks to protect the public safety, preserve the quality of life, and promote the health, safety and welfare of the citizens of the City of Rollingwood and the general public by adopting regulations that prohibit or limit the ability of a person to use streets and sidewalks in a manner inconsistent with their core purpose or intended use or the use of the streets or sidewalks in such a way that presents safety concerns to individuals using the streets or sidewalks.

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

Section 1. FINDINGS INCORPORATED

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. AMENDMENTS

2.01. Chapter 12, "Traffic and Vehicles", of the Code of Ordinances of the City of Rollingwood, Texas, is hereby amended to add Article 12.08, "SOLICITATIONS AT STREET INTERSECTIONS", to read as follows:

“ARTICLE 12.08 SOLICITATIONS AT STREET INTERSECTIONS

Sec. 12.08.001 *General.* Notwithstanding any other provisions of the City's Code of Ordinances and except as permitted by state law, a person 18 years of age or older may solicit contributions while standing on a traffic median, shoulder, improved shoulder, sidewalk, or the improved portion of the roadway from occupants of any vehicle on a roadway, street or thoroughfare

under the following terms and conditions:

- (1) All solicitors must be 18 years of age or older;
- (2) No solicitor may block any intersection of streets, or to do any act which impedes traffic at or near an intersection of streets;
- (3) All solicitors must enter or remain in a roadway, street or thoroughfare only while the controlling traffic signal prohibits vehicular movement;
- (4) All solicitors must remain within 100 feet of or from the intersection approved under a permit issued by the City;
- (5) No person may solicit without the required insurance coverage as outlined in subsection 12.08.004 of this section;
- (6) All solicitors must wear a City approved florescent orange or yellow vest at all times while soliciting;
- (7) No person may solicit until:
 - a. A sign approved by the City is posted, no less than 500 feet from the intersection, in the right parkway for each approaching lane of traffic up to two lanes wide; or
 - b. Two signs approved by the City are posted, no less than 500 feet from the intersection, in both the left and right-side parkway of approaching lanes of traffic of three or more lanes;
- (8) No person may solicit until a permit is issued from the City per the terms of this section.

Sec. 12.08.002 *Signs and vests.* Prior to the issuance of a permit, applicant must obtain approval from the City of all signs and vests to be used by the solicitors. All signs must be removed from each intersection at the end of each day of the permit period. Signs shall not block or impede traffic at or near any intersection, nor otherwise violate any Federal, State or local law.

Sec. 12.08.003 *Permits.*

- (1) Each person or organization, whose application meets the requirements of this Article, may be issued one permit per calendar year at no charge, for no more than two specified days. Each permit shall allow solicitation only between the hours of 9:00 a.m. and one hour before sunset, as determined by the official newspaper or a paper of general circulation in the city.
- (2) Only one permit will be issued for an intersection on any given day. Permits will be issued on a first come basis to those applicants who submit a completed application form, required certificate of insurance and approval by the City of the signs and vests to be used by the solicitors.
- (3) The application for a solicitation permit shall state the name, mailing address and telephone number of the person or organization registering to solicit and the location(s) and times the solicitation will take place.
- (4) Permit applications must be accompanied by a certificate of insurance as outlined in subsection 12.08.004 of this Article.
- (5) The city administrator or his or her designee shall review the application and issue a permit to a person or organization whose application meets the requirements of this section.

Sec. 12.08.004 *Insurance.* The certificate of insurance must be signed by an agent authorized to bind coverage and indicate that the applicant has obtained, at his or her sole

expense, the following insurance coverage:

- (1) That is written by an insurance company with an A- or better rating by AM Best and that is admitted or approved to do business in the State of Texas;
- (2) That is in full force and effect for the duration of the permit period;
- (3) That provides \$1,000,000 of liability coverage per occurrence with no deductible;
- (4) That insures the applicant and all persons who will be soliciting;
- (5) That names the City of Rollingwood, its officers, agents, employees and elected representatives as an additional insured;
- (6) That provides that any insurance maintained by the City shall apply in excess of and not contribute with it;
- (7) That is written on an occurrence basis; and
- (8) That is otherwise acceptable to and approved by the City of Rollingwood.

Sec. 12.08.005 *Offense.*

(1) It shall be unlawful for any person:

- a. to engage in activity described in this section without first obtaining a permit pursuant to the provisions of this section;
- b. to block any intersection of streets, or to do any act which impedes traffic at or near an intersection of streets;
- c. to enter or remain in a roadway, street or thoroughfare when the controlling traffic signal allows vehicular movement; or
- d. to violate any other provision of this section.

(2) It is a defense to prosecution under subsection (f)(1) that the person impeding a roadway, as defined by Texas Transportation Code Section 552.0071(g) is authorized to do so under an authorization issued by the City as required by Texas Transportation Code Section 552.0071(a).

Sec. 12.08.006 *Penalty.* Any person who violates any provision of this Article shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine not to exceed five hundred dollars (\$500.00). A culpable mental state is not required, and need not be proved, for an offense under this Article.”

2.02. Chapter 12, "Traffic and Vehicles", of the Code of Ordinances of the City of Rollingwood, Texas, is hereby amended to add Article 12.09, "AGGRESSIVE SOLICITATION", to read as follows:

“AGGRESSIVE SOLICITATION

Sec. 12.09.001 *Definitions.* In this section:

Aggressive Manner, Aggressive Behavior or Aggressively. As related to soliciting, begging and panhandling means:

- a. Using violent or threatening gestures toward a person solicited;
- b. Continuing to solicit from a person after the person has given a negative response to such soliciting;
- c. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;
- d. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;
- e. Soliciting money from anyone who is waiting in line for tickets, for entry to a building or for any other purpose;
- f. Approaching or following a person for solicitation individually or as part of a group of two or more persons, in a manner and with conduct, words, or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be harassed or intimidated into giving money or other thing of value; or
- g. Soliciting, begging or panhandling of minors less than 16 years of age.

Automated Teller Machine. A device, linked to a bank or 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 which are made available to banking customers.

Bank. A bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

Check Cashing Business. An entity in the business of cashing checks, drafts, or money orders for consideration.

Parking Meter or Parking Pay Station. A location on a street, parking lot or parking garage where persons pay, for parking by either cash or credit, to a person or at a machine or other device designed to accept payment for parking.

Private Building. Shall be deemed to include, but is not limited to, retail or service establishments, such as restaurants, convenience food stores, laundromats, service stations, hotels, offices, and similar privately-owned establishments open to the public. This term does not include any building owned, leased or operated by the federal or state government, political subdivisions thereof, municipalities, special districts, any public administration board or authority of the state.

Public Area. An area to which the public has access and includes, but is not limited to, the common area of a hospital, apartment house, office building, transport facility, shop, basement, building entrance or doorway, lobby, hallway, stairway, mezzanine, elevator, foyer, public restroom or sitting room or any other place used in common by the public, tenants, occupants or guests situated in any private building.

Public Place. A place to which a governmental entity has title to which the public has access, including, but not limited to: any street, highway, sidewalk, walkway, parking lot, plaza,

transportation facility, school, place of amusement, park, or playground.

Solicit, Ask, Beg or Panhandle. To request, by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

Sec. 12.09.002 *Offense.* A person commits an offense if the person solicits:

- (1) In an aggressive manner in a public area or public place; or
- (2) Within 20 feet of the following areas where the public is considered vulnerable or where solicitation would interfere with the flow of pedestrian or motor vehicle traffic:
 - a. An automated teller machine;
 - b. The entrance or exit of a bank;
 - c. The entrance or exit of a check cashing business;
 - d. An authorized charitable contribution activity;
 - e. A parking meter or parking pay station on a street;
 - f. A public parking garage or parking lot pay station;
 - g. The entrance or exit of a restaurant or the service area of an outdoor eating establishment;
 - h. In a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers including but not limited to any school bus stop;
 - i. A marked crosswalk; or
 - j. An entrance of a commercial or government building.
- (3) Within five feet of a curb or edge of a street;
- (4) Within 50 feet from any land owned by a public or private school and used in whole or in part for providing education services to elementary age children;
- (5) Within ten feet of a gas station, liquor store, or convenience store property;
- (6) In a public restroom; or
- (7) At a public event that is operating by permit issued by the City at city parks as defined in the City's Code of Ordinances.

(b) For purposes of subsection 12.09.002 in this Article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest point at which an unlawful act is conducted to the nearest portion to the items listed in section 12.09.002.

(c) The solicitation of contributions while standing on a traffic median, shoulder, improved shoulder, sidewalk, or the improved portion of the roadway from occupants of any vehicle on a roadway, street or thoroughfare shall only be permitted in compliance with the terms and conditions set out in Section 12.008, "Solicitation at Street Intersections" of the City's Code of Ordinances, provided they are not in an aggressive manner as defined in this section.

(d) Any person who engages in any activity specified in subsection (b), maybe subject to prosecution for a Class C misdemeanor and a fine not to exceed five hundred dollars (\$500.00). A culpable mental state is not required, and need not be proved, for an offense under this section.”

Section 3. PENALTY CLAUSE

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed Five Hundred and no/100 Dollars (\$500.00) for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City of Rollingwood from filing suit to enjoin the violation. The City of Rollingwood retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 4. SAVINGS/REPEALING CLAUSE

All provisions of the ordinances of the City of Rollingwood in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and all other provisions of the ordinances of the City of Rollingwood not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 5. SEVERABILITY CLAUSE

Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 6. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

Section 7. OPEN MEETINGS

That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Article 551.041, Texas Government Code.

APPROVED, PASSED AND ADOPTED by the City Council of the City of Rollingwood, Texas, on the ____ day of _____, 2019.

APPROVED:

Michael Dyson, Mayor

ATTEST:

Amber Lewis, Acting City Secretary