

ORDINANCE NO. 998 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
ADDING CHAPTER 9.50 TO THE MUNICIPAL CODE
REGARDING AGGRESSIVE SOLICITATION

WHEREAS, subject to the limitations imposed by the United States and California Constitutions, the City of El Paso de Robles has the authority to regulate solicitation; and

WHEREAS, these limitations generally require that regulations be narrowly tailored to regulate solicitation that specifically interferes with the City's stated interests; and

WHEREAS, the City has a lawful interest in ensuring traffic safety and traffic flow and in protecting its citizens from the fear and intimidation accompanying certain kinds of solicitation; and

WHEREAS, the City wishes to prohibit certain forms of solicitation as set forth in this Ordinance; and

WHEREAS, these regulations are based on the following findings:

1. 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.

2. 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.

3. The City Council finds as abusive the solicitation of 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. Restricting solicitation in such places will provide a 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.

4. Actively soliciting vehicles within the roadway and near the entrance and exit of parking lots and structures creates traffic hazards, including impeding the safe, orderly flow of traffic. These hazards cannot be mitigated through the enforcement of existing regulations, including those contained in the Vehicle Code.

5. Permitting active solicitation in most sidewalks ensures persons have an adequate opportunity and avenue to engage in constitutionally protected activities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are incorporated as though set forth in this section.

SECTION 2. Amendment. Chapter 9.50 is hereby added to the El Paso de Robles Municipal Code to read in full as set forth in the attached Exhibit A, incorporated by this reference.

SECTION 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 5. Publication. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California and cause the same to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on December 3rd, 2013, and passed and adopted by the City Council of the City of El Paso de Robles on the 7th day of January, 2014, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

EXHIBIT A

Chapter 9.50 PROHIBITION ON AGGRESSIVE SOLICITATION

Sections:

- 9.50.010 Definitions.
- 9.50.020 Prohibition of aggressive soliciting.
- 9.50.030 Prohibition of solicitation from specified locations.
- 9.50.040 Demand for services.
- 9.50.050 Free speech.
- 9.50.060 Violation—Penalty.

9.50.010 Definitions.

A. “Aggressive manner” shall mean any of the following:

1. 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
 - (i) fear bodily harm to oneself or to another, damage to or loss of property, or
 - (ii) otherwise be intimidated into giving money or other thing of value;
2. 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;
3. 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;
4. Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging;
5. 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 of value to the solicitor; or
6. Using profane, offensive or abusive language which is inherently likely to provoke an immediate violent reaction, either before, during, or after solicitation.

B. “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, highway, sidewalk, parking lot, 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.

C. "Public transportation vehicle" shall mean any vehicle designed, used, or maintained for carrying eight or more passengers for hire.

D. "Solicit" 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.

E. "Solicitor" is one who solicits as defined in subsection (D) of this section.

9.50.020 Prohibition of aggressive soliciting.

It shall be unlawful for any person on the streets, sidewalks and other public places, whether publicly or privately owned, to solicit in an aggressive manner.

9.50.030 Prohibition of solicitation from specified locations.

A. In order to promote the safe and orderly flow of traffic and to prevent the harassment and intimidation of citizens and visitors in the vicinity of cash dispensing institutions or facilities, and commercial and retail establishments, no person may solicit, unless expressly permitted to do so by applicable state law:

1. Within twenty-five feet of any ATM or similar cash machine, bank, or savings and loan; or
2. By approaching an operator or occupant of a motor vehicle while such vehicle is located on any public street, any median of a public street, any parking lot or structure, or within six feet of any vehicular entrance or exit of any parking lot or structure, provided, however, that this subsection shall not apply to services rendered in connection with emergency services or repairs requested by the operator or passenger of such vehicle.
 - (i) Parked Vehicle Exemption. This subsection shall not apply to vehicles lawfully parked within a public street.
 - (ii) Sidewalk Exemption. This subsection shall not apply to any sidewalk or walkway unless located within ten feet of the vehicular entrance or exit of any parking lot or structure.
3. Within any public transportation vehicle.
 - (i) Exemption. This subsection shall not apply to public transportation vehicles operated by the federal or the state government.
4. In any non-public places except with the property owner's or lawful occupant's written consent which shall be produced upon request.

B. This section shall not apply to soliciting within a commercial parking area with the permission of the owner or lawful occupant, provided such activity does not interfere with the safe

and orderly flow of traffic entering or exiting the parking area onto city streets and all necessary permits have been obtained.

9.50.040 Demand for services.

This chapter is not intended to proscribe any demand for payment for services rendered or goods delivered.

9.50.050 Free speech.

This chapter is not intended to restrict the exercise of protected free speech.

9.50.060 Violation—Penalty.

Any person who violates any provision of this chapter is guilty of an infraction.