

RECOMMENDED BY THE PLANS AND POLICIES COMMITTEE

Pub. Imp. _____
Govt. Grnt. _____
Emer. _____
P. Hrngs. _____
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Sponsored by: Wilson, Gerdes,
Griggs, Hacker

First Reading: January 22, 1996

Second Reading: February 5, 1996

COUNCIL BILL NO. 96 - 17

GENERAL ORDINANCE NO. 4582

AN ORDINANCE

AMENDING Chapter 26 of the Springfield City Code, Offenses and Miscellaneous Provisions, by repealing Section 26-1, Begging in public places, and enacting a new Section 26-1 to prohibit aggressive solicitation in certain public places.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows:

Section 1 - Chapter 26 of the Springfield City Code, Offenses and Miscellaneous Provisions, is hereby amended by repealing in its entirety Section 26-1, Begging in public places, and enacting a new Section 26-1 to be known as Section 26-1, Aggressive solicitation, which section shall read as follows:

"Sec. 26-1. Aggressive Solicitation.

.1 Legislative Intent.

(a) This ordinance is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that are unwelcome. 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 intentional blocking of pedestrian and vehicular traffic. The Council finds that the presence of individuals who solicit money from persons at or near banks, automated teller machines or in public transportation vehicles is especially troublesome because of the enhanced fear of crime in those confined environments. Such activity carries with it an implicit threat to both persons and property.

(b) The law is not intended to limit any person from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity.

.2 Definitions.

(a) Solicit means 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. The solicitation may be, without limitation, by the spoken, written or printed word or by other means of communication.

(b) Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent with the intent to intimidate;
- (2) Following the person being solicited, if that conduct is: (i) 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 (ii) 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 (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) 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 (ii) is intended to or is reasonably 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 with intent to intimidate, or requiring the person or the driver of a vehicle to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to City Code, shall not constitute obstruction of pedestrian or vehicular traffic;
- (5) Intentionally or recklessly using obscene or abusive language or gestures: (i) 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 (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or
- (6) Approaching the person being solicited in a manner that: (i) is 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 (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

(c) Automated teller machine means 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.

(d) Automated teller machine facility means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

(e) Bank means any banking corporation, credit union or savings and loan licensed by the State of Missouri or the United States of America.

(f) Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

(g) Intimidate means to engage in conduct which would make a reasonable person fearful or feel compelled.

.3 Prohibited Acts.

It shall be unlawful for any person to solicit money or other things of value or to solicit the sale of goods or services:

(a) In an aggressive manner in a public area;

(b) In any public transportation vehicle or bus;

(c) Within fifteen (15) feet of any entrance or exit of any bank or check cashing business or within fifteen (15) feet of any automated teller machine during the hours of operation of such bank or automated teller machine without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

(d) 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.

.4 Construction and Severability.

(a) This Ordinance is not intended to proscribe any demand for payment for services rendered or goods delivered.

(b) This Ordinance is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The Ordinance should be held inapplicable in any cases where its application would

be unconstitutional under the Constitution of the State of Missouri or the Constitution of the United States of America."

Note: Underlined language has been added.

Section 2 - Penalty Clause. Any person found guilty of violating this ordinance shall be penalized in accordance with Section 1-7 of the Springfield City Code. In lieu of, or in addition to the penalty provided in this Section, a person in violation of this Ordinance may be required to perform community service work as described by the court.

Section 3 - Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 4 - This ordinance shall be in full force and effect from and after passage.

Passed at meeting: February 5, 1996

Leland L. Barnaway
Mayor

Attest: Burd M. Carty, City Clerk

Approved as to form: J. H. Wright, City Attorney

Approved for Council Action: Franklin, City Manager

Aff. Agcy. Noticed _____
Emergency Required _____
P. Hrngs. Required _____
Fiscal Note Required _____
Bd. Action Required _____

EXPLANATION TO COUNCIL BILL NO. 96 -

ORIGINATING DEPARTMENT: Law

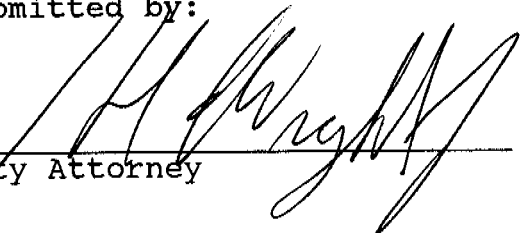
PURPOSE: Repeal Section 26-1 of the Springfield City Code pertaining to begging and enact a new ordinance to prohibit aggressive solicitation in public areas.

BACKGROUND: In recent years, court cases have held that an ordinance which simply prohibits begging under any and all circumstances could constitute a violation of a person's constitutional rights. In response to these decisions, municipalities have revised their ordinances by passing legislation which prohibits what is commonly referred to as aggressive solicitation. The report prepared on Civility and Recovery by the American Alliance for Rights and Responsibilities recommends that consideration be given to an aggressive solicitation ordinance.

REMARKS: The staff agrees that it is important to have on the books an ordinance that prohibits aggressive solicitation which is defined to include a number of activities which fall in a category of "in your face" solicitation, including touching, following or continuing the act of solicitation in a manner where the person would fear imminent bodily harm or to intimidate the person. The bill also prohibits solicitations that occur in a bus or within 15 feet of a automatic teller machine or bank. City staff recommends to the City Council passage of an aggressive solicitation ordinance.

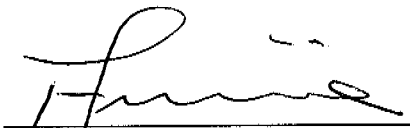
The Plans and Policies Committee considered this bill at a public meeting attended by service providers and residents who live in the midtown area. The Plans and Policies Committee recommended that the full City Council adopt this bill.

Submitted by:



City Attorney

Approved by:



City Manager