

ORDINANCE NO. 1164

AN ORDINANCE AMENDING CHAPTER 130, SECTION 130.11(B), OF THE TOWN OF SILVER CITY MUNICIPAL CODE, RELATING TO AGGRESSIVE BEGGING AND PROHIBITED SOLICITATIONS UPON TOWN-OWNED STREETS AND PUBLIC RIGHTS-OF-WAY WITHIN THE TOWN LIMITS OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO.

SPONSORED BY MAYOR JAMES R. MARSHALL AND COUNCILOR CYNTHIA ANN BETTISON.

WHEREAS, the Town Council of the Town of Silver City finds that aggressive begging is a practice which interferes with the rights of persons within the Town to move about unmolested; and

WHEREAS, the Town Council finds that persons engaged in acts of solicitation of money or other property at roadsides and certain other locations within the Town are likely to cause distractions to motorists using public roads, thus increasing the likelihood of accidents involving damage to persons and property within the Town; and

WHEREAS, the Town Council finds that these amendments to the Town's Municipal Code are necessary for the health, safety, and general welfare of the Town, and its inhabitants and visitors;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

Chapter 130, Section 130.11 (B) is deleted in its entirety,

The Town's Municipal Code shall be amended to include a new Section to be numbered 130.16, which shall state as follows:

Sec. 130.16 AGGRESSIVE BEGGING AND PROHIBITED SOLICITATIONS.

(A) DEFINITIONS.

As used in this section, the following terms shall have the following meanings ascribed to them:

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;

(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 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 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 shall not constitute obstruction of pedestrian or vehicular traffic;

(5) Intentionally or recklessly using obscene or abusive language or gestures:

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. 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:

a. 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

b. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

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.

Automated teller machine facility means the area comprising one or more automatic teller machines, and any adjacent space which is made available to banking customers.

Bank means any banking corporation as defined under the laws of the state.

Check cashing business means 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.

Night depository drop means a receptacle owned and operated by a bank and located on property under the control of a banking institution for the convenience of after-hour depositors.

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.

Solicit means to request an immediate payment, 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) PROHIBITED SOLICITATIONS.

(1) It shall be unlawful for any person, in person, to solicit money or other things of value, or to solicit the sale of goods or services in the manner described in subparagraphs (a) through (e) as follows:

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

(b) In any public transportation vehicle, or bus station or stop;

(c) Within 15 feet of any entrance or exit of any bank or check cashing businesses or within 15 feet of any automated teller machine or night depository drop during or after the hours of operation of such bank, or check cashing business 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 any 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; or

(e) From any occupant of a motor vehicle that is in traffic on a public street, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the occupants or passengers of such vehicle.

(C) SOLICITATION ON OR NEAR STREET OR HIGHWAY.

(1) The purpose of this section is to prevent dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic flow. Roadways that have center medians often are designed to handle specific traffic flow problems. Any delay or distraction may interfere with traffic planning. Sometimes persons stand near intersections and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights.

(2) It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, from the occupant of any vehicle traveling upon any street or highway when the solicitation or collection:

(a) Causes the person performing the activity to enter onto the traveled portion of street or highway.

(b) Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions.

(c) Involves the person performing the activity to be located in the right-of-way which contains a traveled portion of a street or highway.

(d) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.

(3) It shall be unlawful for any person to solicit or attempt to solicit employment, business, or contributions of any kind from the occupant of any vehicle on any highway included in the interstate system including any entrance to or exit from the highway.

(4) For purposes of this section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.

(D) PENALTIES.

(1) A violation of this section may be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed ninety days, or by both. Persons violating this section shall be immediately removed from the area.

(2) In lieu of, or in addition to the penalty provided in subsection (a), a person convicted of a violation of this article may be required to perform community service work as described by the court. Imposition of community service work in lieu of, or in addition to the penalty in subsection (a) is at the discretion of the Municipal Court Judge.

(E) CONSTRUCTION AND SEVERABILITY.

(1) Severability is intended throughout and within the provisions of this article. If any section, sentence, clause, or phrase of this article is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this article.

(2) This article is not intended to prohibit any demand for payment for services rendered or goods delivered.

(3) This article is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The article should be held inapplicable in any such cases where its application would be unconstitutional under the Constitution of the state or the Constitution of the United States of America.

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**PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Silver City,
Grant County, New Mexico, this 11th day of May, 2010.**

(Seal)

TOWN OF SILVER CITY

/s/

James R. Marshall, Mayor

ATTEST:

/s/

Ann L. Mackie, Town Clerk