ORDINANCE NO. 1791

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE, TITLE 9 – PUBLIC PEACE, MORALS, AND WELFARE – TO ADD CHAPTER 9.15, "PROHIBITION AGAINST CERTAIN FORMS OF AGGRESSIVE SOLICITATION"

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 9 – Public Peace, Morals, and Welfare – is hereby amended by adding Chapter 9.15, "Prohibition Against Certain Forms of Aggressive Solicitation," to read as follows:

Chapter 9.15, "Prohibition Against Certain Forms of Aggressive Solicitation"

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| Section 9.15.010 | Definitions |
| Section 9.15.020 | Certain Aggressive Solicitation Prohibited |
| Section 9.15.030 | All Solicitation Prohibited at Specified Locations |
| Section 9.15.040 | Penalty |

9.15.010 Definitions.

For purposes of this chapter:

A. "Public place" means 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.

B. "Solicit, ask or beg" means 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.

9.15.020 Aggressive Solicitation Prohibited.

A. No person shall solicit, ask, or beg in an aggressive manner in any public place.

B. "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 of 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;

6. Using profane, offensive, or abusive language, which is inherently likely to provoke an immediate violent reaction, either before, during, or after solicitation; or

7. 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.

9.15.030 All Solicitation Prohibited at Specified Locations.

All solicitation shall be prohibited at the following specified locations:

A. Banks and Automated Teller Machines. No person shall solicit, ask, or beg within fifteen feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within fifteen feet of any automated teller machine during the time it is available for customers' use. 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. Provided further that no person shall solicit, ask, or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.

1. Definitions. For purposes of this section:

a. "Automated teller machine" shall mean any electronic information processing device, which accepts or dispenses cash in connection with a credit deposit or convenience account.

b. "Automated teller machine facility" shall mean 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.

c. "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

d. "Check cashing business" means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with Section 12000.

e. "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

f. "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

2. Exemptions. The provisions of Section 9.15.030(A) shall not apply to any unenclosed automated teller machine located within any building, structure, or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports, and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

B. Motor Vehicles and Parking Lots.

1. Motor Vehicles. No person shall solicit, ask, or beg from an operator or occupant of a motor vehicle while such vehicle is located with one hundred feet of any intersection that is controlled by an official traffic signal of the type set forth in Vehicle Code Section 21450, unless such person has received training in accordance with the Work Area Traffic Control Handbook ("WATCH") and evidence of such training is on file with the City of Lodi. No person shall approach an operator or occupant of a motor vehicle for the purpose of soliciting, asking, or begging while such vehicle is in a public place, unless such person has received training in accordance with the Work Area Traffic Control Handbook ("WATCH") and evidence of such training is on file with the City of Lodi.

2. Parking Lots. No person shall solicit, ask, or beg in any public parking lot or structure any time after dark. "After dark" means any time from one-half hour after sunset to one-half hour before sunrise.

3. Exemptions. Section 9.15.030(B) shall not apply to any of the following:

a. To solicitations related to business, which is being conducted on the subject premises by the owner or lawful tenants;
b. To solicitations related to the lawful towing of a vehicle; or
c. To solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

C. Public Transportation Vehicles and Stops.

1. Any person who solicits, asks, or begs in any public transportation vehicle, or within ten feet of any designated or posted public transportation vehicle stop, is guilty of a violation of this section if:

a. He or she remains there after being asked to leave by the owner, driver, or operator of a public transportation vehicle; the agent of the owner, driver, or operator of a public transportation vehicle; the owner or manager of a public transportation facility; the agent of the owner or manager of a public transportation facility; a member of a security force employed by the public transportation facility; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Pen. Code, § 830); or

b. Within the immediately preceding thirty days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Section 9.15.030(C)(1)(a), above.

c. Section 9.15.030(C)(1)(a) is not violated if a person who has been requested to leave enters the property within the immediately preceding thirty days and solicits, asks, or begs with the express authorization of a person specified in Section 9.15.030(C)(1)(a).

2. For purposes of this section, "public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used, or maintained for carrying ten or more persons, including the driver; or a passenger vehicle designed for carrying fewer than ten persons, including the driver, and used to carry passengers for hire.

D. Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

1. He or she remains there after being asked to leave by the owner, manager, or supervisor of the restaurant or other food establishment; the agent of the owner, manager, or supervisor of the restaurant; a member of a security force employed by the restaurant; or by a peace officer, as defined in Chapter 4.5 of Title 3 of the California Penal Code (commencing with Pen. Code, § 830), acting at the request of any of the persons specified in this subdivision; or

2. Within the immediately preceding thirty days, he or she engaged in a solicitation at that location and had been asked to leave by a person specified in Section 9.15.030(D)(1), above.

3. Section 9.15.030(D)(1) is not violated if a person who has been requested to leave enters the property within the immediately preceding thirty days and solicits, asks, or begs with the express authorization of a person specified in Section 9.15.030(D)(1).

9.15.040 Penalty.

A violation of this chapter is punishable as a misdemeanor.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 17th day of January, 2007

BOB JOHNSON
Mayor

Attest:

RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1791 was introduced at a regular meeting of the City Council of the City of Lodi held January 3, 2007, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held January 17, 2007, by the following vote:

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|---|---|
| AYES: | COUNCIL MEMBERS – Hitchcock, Katzakian, and Mayor Johnson |
| NOES; | COUNCIL MEMBERS – None |
| ABSENT: | COUNCIL MEMBERS – Hansen and Mounce |
| ABSTAIN: | COUNCIL MEMBERS – None |

I further certify that Ordinance No. 1791 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By _____
Janice D. Magdich
Deputy City Attorney