



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-28

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November 8, 2011

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 9.35 relating to aggressive solicitation read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION:

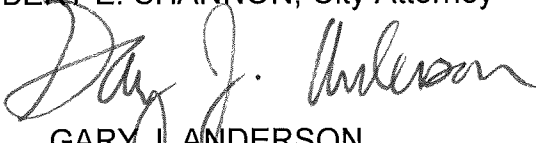
Pursuant to your request, this ordinance has been prepared and is submitted for your consideration.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By 
GARY J. ANDERSON
Deputy City Attorney

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 9.35,
RELATING TO AGGRESSIVE SOLICITATION

WHEREAS, the City of Long Beach (the "City") is a municipal corporation
and Charter City duly organized and existing under its Charter (the "Charter") and the
Constitution of the State of California; and

WHEREAS, it is the intent of the City Council in enacting this Ordinance
to improve the quality of life and economic vitality of the City, and to protect the safety of
the general public against certain abusive conduct of persons engaged in solicitation, by
imposing reasonable manner and place restrictions on solicitation while respecting the
constitutional rights of free speech for all citizens; and

WHEREAS, the City Council finds that 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; and

WHEREAS, aggressive solicitation usually includes approaching or
following pedestrians, the use of abusive language, unwanted physical contact, or the
intentional blocking of pedestrian and vehicular traffic. The City Council further finds that
the presence of individuals who solicit money from persons at or near banks or
automated teller machines is especially threatening and dangerous; and

WHEREAS, the City Council further 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. Such
places include buses, parking lots and structures, and outdoor dining areas. Restricting

1 solicitation in such places will provide a balance between the rights of solicitors and the
2 rights of persons who wish to decline or avoid such solicitations, and will help avoid or
3 diminish the threat of violence in such unwarranted and unavoidable confrontations; and

4 WHEREAS, this law is timely and appropriate because current laws and
5 City regulations are insufficient to address the aforementioned problems. The restrictions
6 contained herein are neither overbroad nor vague and are narrowly tailored to serve a
7 substantial governmental interest. Furthermore, in enacting this legislation, the City
8 Council recognizes the availability of community service and other sentencing
9 alternatives, which may be appropriate remedies for violations of this law. The goal of
10 this law is to protect citizens from the fear and intimidation accompanying certain kinds of
11 solicitation that have become an unwelcome and overwhelming presence in the City; and

12 WHEREAS, the City Council now desires to amend the Long Beach
13 Municipal Code by adding Chapter 9.35;

14
15 NOW, THEREFORE, the City Council of the City of Long Beach ordains
16 as follows:

17
18 Section 1. The Long Beach Municipal Code is amended by adding
19 Chapter 9.35 to read as follows:

20 Chapter 9.35

21 Aggressive Solicitation

22
23 9.35.010 Aggressive solicitation prohibited.

24 A. It shall be unlawful for any person to solicit by threatening,
25 harassing, intimidating or aggressively coercing another person on a
26 public street or sidewalk or any place open to the general public. This
27 Chapter does not regulate solicitation on private property.

28 B. "Solicitation" means any verbal request, or any non-verbal

1 request made with a sign, by a person seeking an immediate donation of
2 money, food, cigarettes or items of value. Purchase of an item for an
3 amount far exceeding its value, under circumstances where a
4 reasonable person would understand that the purchase is in substance a
5 donation, is a donation for purposes of this Chapter.

6 C. "Solicit" means to be engaged in the act of solicitation.

7 D. For purposes of this Section, a person aggressively
8 coerces, threatens, harasses or intimidates another person when:

9 1. The solicitor's conduct would cause a reasonable
10 person in the position of the solicitee to fear for his or her safety; or

11 2. The solicitor intentionally blocks the path of the
12 solicitee; or

13 3. The solicitor persists in following the solicitee closely,
14 and continues to demand money or other things of value after the solicitee
15 has rejected the solicitation by words or conduct.

16 E. For purposes of this Section, the following facts, among
17 others, are relevant in deciding whether a reasonable person would have
18 cause to fear for his or her safety:

19 1. The solicitor makes physical contact with the solicitee
20 or the solicitor uses verbally abusive language;

21 2. The proximity of the solicitor to the solicitee; or

22 3. The duration of the solicitation; or the solicitor makes
23 threatening gestures or other threatening conduct, including closely
24 following the solicitee.

25
26 9.35.020 Prohibited locations.

27 A. It shall be unlawful for any person to solicit another person
28 who is in or at any of the following locations:

- 1 1. In a public transportation bus or public transportation
- 2 bus stop;
- 3 2. Within twenty feet (20') of an automated teller
- 4 machine that is adjacent to a public sidewalk or street;
- 5 a. “automated teller machine” shall mean any
- 6 electronic information processing device which accepts or
- 7 dispenses cash in connection with a credit, deposit or convenience
- 8 account;
- 9 3. In a City-owned parking structure or surface lot;
- 10 4. In the outdoor dining area of a restaurant, café or similar
- 11 establishment which serves food or drinks for immediate consumption.

12
13 9.35.030 Exception.

14 The prohibitions listed in Section 9.35.020 shall not apply to

15 solicitations related to business which is being conducted on the subject

16 premises or location by the owner or responsible party.

17
18 9.35.040 Penalty.

19 Violation of, or failure to comply with, any provision of this Chapter

20 9.35 constitutes a criminal offense punishable as an infraction for the first

21 offense, and a misdemeanor for any subsequent offense committed within

22 a twelve (12) month period, with criminal penalties set forth in Chapter

23 1.32 of this Code.

24
25 9.35.50 Severability.

26 In the event any portion of Chapter 9.35 is deemed to be

27 unenforceable, or is in conflict with applicable law, the remainder of

28 Chapter 9.35 will be enforced and will remain in full force and effect.

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Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20__, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____

(Date)

Mayor