

Red-line changes from Version 2

Peter Harris
LEG aggressive solicitation ORD v3.docx
3/29/10
Version #3

ORDINANCE _____

1
2 AN ORDINANCE relating to conduct in public places; establishing aggressive solicitation as a
3 civil infraction, creating a new section 15.48.050 of the Seattle Municipal Code, and
4 amending section 15.48.900 relating to penalties for aggressive solicitation and sitting or
lying on public sidewalks.

5 WHEREAS, Seattle Municipal Code Section 12A.12.015 defines aggressive begging as begging
6 with the intent to intimidate another person into giving money or goods, and establishes it
as one form of the crime of pedestrian interference, a misdemeanor; and

7 WHEREAS, aggressive solicitation in a form that is less serious than aggressive begging also
8 reduces public safety; and

9 WHEREAS, assigning more police to walking beats and on bicycles will increase police
10 presence and discourage aggressive begging and aggressive solicitation; and

11 WHEREAS, the City is working in concert with King County, social service providers, housing
12 providers, law enforcement, local businesses, residents and courts to improve public
13 health and safety on public streets; and

14 WHEREAS, research on deterrence shows that the speed and certainty of a penalty are often
15 more important than severity, suggesting that aggressive solicitation can be effectively
16 treated as a civil infraction if enforcement is prompt and thorough; and

17 WHEREAS, the Seattle Municipal Court should have clear authority to require someone who
18 fails to respond to a notice of civil infraction for aggressive solicitation to perform
19 community service, or to require assessment and accept treatment or other services
20 appropriate to the underlying cause of the infraction (~~(or perform community service)~~);

21 NOW, THEREFORE,

22 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

23 Section 1. Findings.

24 The Seattle City Council Finds and Declares as follows:

25 A. The City of Seattle protects free speech.

26 The City recognizes and protects the free speech rights of all citizens, including the right
27 to solicit donations in public places. Threatening or intimidating people while soliciting is not
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1 protected. People should be able to use and enjoy streets and other public places in Seattle
2 without fear for their personal safety.

3 B. Aggressive solicitation is a serious public safety problem in Seattle.

4 Residents of and businesses in the greater downtown area in Seattle believe aggressive
5 solicitation is a serious problem in their home neighborhoods, and many residents ~~((ef))~~ from the
6 rest of the city agree. A 2009 survey of residents of Downtown, South Lake Union, Belltown,
7 Pioneer Square and International District/Chinatown found that two-thirds of residents are
8 concerned about aggressive solicitation and fewer than half believe the City is adequately
9 addressing the problem (see Attachment A). A 2009 survey of residents of the entire city found
10 that nearly one-quarter of residents avoid Downtown because of fear for personal safety, an
11 increase from 2007 (see Attachment B). Many recent communications from citizens to the City
12 Council indicate that citizens believe the problem of aggressive solicitation has increased
13 substantially within the last year. These communications relate incidents in which people
14 requesting or demanding donations verbally abused their victims, followed them, refused to take
15 no for an answer, aggressively confronted those attempting to use automated teller machines or
16 pay parking fees, or otherwise threatened or intimidated the victim (see Attachment C).

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20 C. Aggressive solicitation threatens the economic vitality of Seattle.

21 In addition to making Seattle a less desirable place to live, fear for personal safety created
22 by aggressive solicitation also damages the city's economic health. When city residents and
23 others avoid Downtown, businesses in Downtown suffer. Seattle's Conventions & Visitors
24 Bureau reports that many visitors from other large cities feel unsafe on Seattle's streets. When a
25 large convention group decides to not return to Seattle because many of its members were
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1 victims of aggressive solicitation, the economic impact to the city is in the millions of dollars

2 (see Attachment D).

3 D. Prohibiting aggressive solicitation is reasonably necessary and appropriately balances
4 individual rights and the public interest.

5 Prohibiting people from engaging in intimidating conduct while soliciting is reasonably
6 necessary for public safety in Seattle. Given the documented public fear for personal safety
7 created by aggressive solicitation, and the impact of this fear on the livability and economic
8 vitality of the city, it is reasonable and appropriate to set a minimum standard for behavior that
9 will reduce this fear.
10

11
12 **Section 2.** A new Section 15.48.050 of the Seattle Municipal Code is added as follows:

13 **SMC 15.48.050 Aggressive Solicitation**

14 A. The following definitions apply in this section:

15 1. “Solicitation” means the act of asking another for money or other items of value,
16 whether or not in exchange for a service or item of value.
17

18 2. “Intimidating conduct” means conduct that ~~((puts a reasonable person in immediate~~
19 ~~fear of harm or loss))~~ makes a reasonable person fearful or feel compelled to give money or
20 another item of value. The mere act of solicitation is not intimidating conduct.
21

22 3. “Public place” has the same meaning as in SMC 12A.12.015.

23 4. “Aggressive solicitation” means the act of engaging in intimidating conduct towards
24 another person in a public place when such conduct is accompanied by an act of solicitation.

25 ~~((The mere act of solicitation without intimidation is not aggressive solicitation.))~~ Aggressive
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1 solicitation includes but is not limited to the following conduct, when the conduct would make a
2 reasonable person fearful or feel compelled to give money or another item of value:

3 a. intentionally blocking or interfering with a person by any means while making
4 a solicitation, including unreasonably causing the person to take evasive action to avoid
5 physical contact;

6 b. intentionally using threatening or aggressive physical gestures or profane or
7 abusive language (~~((that would cause fear or alarm to a reasonable person))~~) while making
8 a solicitation;

9 c. repeatedly soliciting a person who has given a negative response to a
10 solicitation (~~((while remaining within 15 feet of the person))~~);

11 d. following a person who has given a negative response to a solicitation while
12 repeatedly soliciting the person;

13 e. providing or delivering, or attempting to provide or deliver, unrequested or
14 unsolicited services prior to or without the consent of the person to whom the service is
15 provided; or

16 f. soliciting (~~((from within 15 feet))~~) any person who is using an automated teller
17 machine (ATM) or a public or private parking pay station. For purposes of this
18 paragraph, a person is using an ATM or parking pay station if the person:

19 i. is waiting in line for an ATM or parking pay station; or

20 ii. is conducting a transaction on an ATM or at a parking pay station; or
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1 iii. immediately before or after conducting a transaction at an ATM or parking
2 pay station, is handling in plain view any money, bank card, parking receipt,
3 check or other document related to the transaction.

4 The mere act of solicitation without engaging in intimidating conduct is not aggressive
5 solicitation.

6 B. Aggressive solicitation is a civil infraction.
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9 **Section 3.** Seattle Municipal Code 15.48.900, last amended by Ordinance 122789, is
10 amended as follows:

11 **SMC 15.48.900 Civil penalty.**

12 A. Each violation of Section 15.48.040 and Section 15.48.050 shall be a civil infraction
13 as contemplated by RCW Chapter 7.80 and deemed to be a Class 3 civil infraction under RCW
14 7.80.120(c), and shall subject to the violator to a maximum penalty and a default amount of
15 ~~((Fifty Dollars (\$50)))~~ \$50 plus statutory assessments. If the person is unable to pay the
16 monetary penalty, the court may order performance of a number of hours of community service
17 in lieu of a monetary penalty.
18

19 B. Each violation of Section 15.48.105 shall be a civil infraction as contemplated by
20 RCW Chapter 7.80 and deemed to be a Class 1 civil infraction under RCW 7.80.120(a), and shall
21 subject the violator to a maximum penalty and default amount of Two Hundred Fifty Dollars
22 (\$250) plus statutory assessments. The penalty for a civil infraction is in addition to the civil
23 liability of the person responsible for the posting to the City for the cost of removal under
24 Sections 15.48.120 and 15.48.130.
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1 C. As contemplated by RCW 7.80.160, a person who, after receiving a notice of civil
2 infraction that includes a statement of the options provided in RCW Chapter 7.80 for responding
3 to the notice and the procedures necessary for exercising these options, knowingly fails to
4 exercise one of the options within fifteen (15) days of the date of the notice is guilty of a
5 misdemeanor regardless of the disposition of the notice of civil infraction. A person who
6 willfully fails to pay a monetary penalty or perform community service as ordered by a court
7 may be found in contempt of court as provided in chapter 7.21 RCW. In addition to or in lieu of
8 the penalties set forth in Section 12A.02.070B, when sentencing or imposing conditions on a
9 person convicted of, or receiving a deferred sentence, deferred prosecution or statutory or
10 nonstatutory diversion agreement for a misdemeanor based on failing to respond to a notice of
11 civil infraction issued for a violation of Section 15.48.040 or 15.48.050, the court has the
12 authority to require the offender to (1) be evaluated and comply with treatment for alcohol, drug
13 or mental health problems, (2) contact and participate in housing, food, vocational counseling
14 and training and other social services provided by the court or other entities, (3) perform
15 community service and (4) not subsequently commit a violation of Section 15.48.040 or
16 15.48.050.

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20 D. An action for a civil infraction shall be initiated and process~~ed~~ in the manner
21 contemplated by RCW Chapter 7.80 and the Infraction Rules for Courts of Limited Jurisdiction.
22 For purposes of RCW 7.80.040, ~~enforcement officers authorized to enforce the provisions of~~
23 ~~SMC 15.48.050 shall include only commissioned officers of the Seattle Police Department. ((the~~
24 ~~"e))~~Enforcement officers~~s((("))~~ authorized to enforce ~~((the))~~ provisions of this title ~~((are))~~other
25 ~~than SMC 15.48.050 shall include~~: (1) as to park drives and boulevards, the Superintendent of
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1 Parks and Recreation, and as to other public places, the Director of the Seattle Department of
2 Transportation; (2) authorized representatives or assistants of either of them; and (3) ~~((a))~~
3 commissioned officers~~s~~ of the Seattle Police Department and ~~((a))~~ persons~~s~~ issued a Special Police
4 Officer Commission by the Chief of Police with authority to enforce this title.

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6 **Section 4.** The Chief of Police and City Attorney shall provide an annual report on the
7 implementation of this ordinance. The report shall describe the number of citations written by
8 police officers for aggressive solicitation, the number of these to which the cited offender failed
9 to respond, the number of offenders charged with failure to respond, and the outcomes of these
10 charges. The report shall also include brief assessments by the Chief of Police and City Attorney
11 on the overall effectiveness of the ordinance in reducing aggressive solicitation. The Chief and
12 City Attorney shall provide the report to the City Council in February of each year.
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16 **Section 5~~((4))~~.** The provisions of this ordinance are declared to be separate and
17 severable. If one or more of the provisions of this ordinance shall be declared by any court of
18 competent jurisdictions to be contrary to law, the provision shall be severed from the rest of the
19 ordinance and all other provisions shall remain valid.
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22 **Section 6~~((5))~~.** This ordinance shall take effect and be in force thirty (30) days from and
23 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
24 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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Passed by the City Council the ____ day of _____, 2010, and
signed by me in open session in authentication of its passage this
____ day of _____, 2010.

President _____ of the City Council

Approved by me this ____ day of _____, 2010.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2010.

City Clerk

(Seal)