



## City Council Report

915 I Street, 1<sup>st</sup> Floor

Sacramento, CA 95814

[www.cityofsacramento.org](http://www.cityofsacramento.org)

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**File ID:** 2019-00522

May 14, 2019

**Consent Item 39**

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**Title: Ordinance Deleting Sacramento City Code chapter 8.134, Relating to Aggressive or Intrusive Solicitation (Two-Thirds Vote Required)**

**Location:** Citywide

**Recommendation:** 1) Pass a Motion by two-thirds vote waiving the Council Rules of Procedure requirement that ordinances go to the Law and Legislation Committee (Rule 7.K and 13.B) prior to council approval; and 2) adopt an Ordinance deleting Sacramento City Code chapter 8.134, relating to aggressive or intrusive solicitation, and publish the ordinance in its entirety per City Charter section 32(d) in lieu of pass for publication.

**Contact:** Sean Richmond, Senior Deputy City Attorney, (916) 808-5346, Office of the City Attorney; Justin Eklund, Police Captain, Central Command, (916) 808-4500, Police Department

**Presenter:** None

**Attachments:**

- 1-Description/Analysis
- 2-Ordinance (Clean)
- 3-Ordinance (Redlines)

## Description/Analysis

**Issue Detail:** The city's aggressive or intrusive solicitation ordinance was passed in 2017. The ACLU filed a lawsuit in the United States District Court for the Eastern District of California, challenging the ordinance as being in violation of the First Amendment to the United States Constitution. Thereafter, the ACLU moved the court for a preliminary injunction banning enforcement of the ordinance. The court granted the preliminary injunction.

**Policy Considerations:** Under United States Supreme Court precedent, solicitation (i.e., panhandling) is a free speech right under the First Amendment and any proposed law affecting that right must be viewed under a strict scrutiny analysis: the law must further a compelling government interest and must be narrowly tailored to achieve that interest. Strict scrutiny is the highest standard of review a court will use to evaluate the constitutionality of government regulation and the district court has ruled that the subject city code chapter does not pass strict scrutiny.

**Economic Impacts:** None.

**Environmental Considerations:** None.

**Sustainability:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** The city seeks to avoid further litigation and costs. Prompt resolution of the lawsuit requires deletion of chapter 8.134.

**Financial Considerations:** None.

**Local Business Enterprise (LBE):** Not applicable.

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE DELETING SACRAMENTO CITY CODE CHAPTER 8.134, RELATING TO  
AGGRESSIVE OR INTRUSIVE SOLICITATION**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1.**

Chapter 8.134 of the Sacramento City Code is hereby deleted.

Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Passed for Publication:

Published:

Effective:

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**SECTION 1.**

Chapter 8.134 of the Sacramento City Code is hereby deleted.

~~Chapter 8.134 AGGRESSIVE OR INTRUSIVE SOLICITATION~~

~~8.134.010 Purpose and intent.~~

~~———— The purpose of this chapter is to protect the safety and welfare of the public and improve the quality of life and economic vitality of the city of Sacramento by imposing reasonable time, place, and manner restrictions on aggressive and intrusive solicitation while respecting the constitutional rights of free speech for all citizens.~~

~~———— Aggressive or intrusive solicitation typically includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. Aggressive or intrusive solicitation can contribute to the loss of access to, and enjoyment of, places open to the public, and can create an enhanced sense of fear, intimidation, and disorder.~~

~~———— Solicitation from people in places where they are a “captive audience” because it is difficult or impossible for them to exercise their own right to decline to listen to or avoid solicitation from others, presents a risk to the health, safety, and welfare of the public. The presence of individuals who solicit money from persons at or near banks or automated teller machines can be intimidating or threatening. Such activity often carries with it an implicit threat to both person and property. Other “captive audience” locations include public transportation vehicles, their designated locations for stops, outdoor dining areas, and gasoline stations. Restricting solicitation in such places will provide a balance between the rights of solicitors and the rights of persons who wish to decline or avoid such solicitations and will help to diminish or avoid the threat of violence in such unwarranted and unavoidable confrontations.~~

~~———— Solicitation on roadway median strips and in the public roadway is unsafe and hazardous for solicitors, drivers, pedestrians, and the general public. Soliciting on roadway median strips and in the public roadway increases the risk of drivers becoming distracted from their primary duty to watch traffic, which may result in automobile accidents, congestion, blockage of streets, and delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems.~~

~~———— The practice of solicitation near driveways accessing shopping centers, retail establishments, and business establishments is unsafe and hazardous for solicitors, drivers, pedestrians, and the general public. The location of a solicitor near a driveway compromises a solicitor's safety, impedes visibility, and impairs a driver's ability to safely enter and exit. Drivers also become distracted from their duty to watch traffic which may result in automobile accidents, congestion, blockage of streets, and delay and obstruction of the free flow of travel, all of which constitute substantial traffic safety problems. (Ord. 2017-0054 § 3)~~

#### **~~8.134.020 Definitions.~~**

~~———— The following definitions apply in this chapter:~~

~~———— “Aggressive” means any of the following types of conduct:~~

~~———— 1. ———— Conduct intended or likely to cause a reasonable person to fear bodily harm to oneself or to another, to fear damage to or loss of property, or otherwise to 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 consent;~~

~~———— 3. ———— Closely following or approaching a person, after the person has indicated they do not want to be solicited or do not want to give money or any other thing of value;~~  
~~or~~

~~———— 4. ———— Making violent gestures toward a person.~~

~~———— “Automated teller machine” means any electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.~~

~~———— “Automated teller machine facility” means an area comprised of one or more automated teller machines, and any adjacent space made available to banking customers.~~

~~———— “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 with deposits which are insured by the Federal Deposit Insurance Corporation.~~

~~———— “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.~~

~~———— “Credit union” means any federal credit union and any state chartered credit union with accounts insured by the Administrator of the National Credit Union Administration.~~

~~———— “Donation” means a gift of money or other item of value.~~

~~———— “Financial institution” means any bank, savings and loan association, credit union, or check cashing business.~~

~~———— “Intrusive” means any of the following types of conduct:~~

~~———— 1. Thrusting or forcing oneself close to another person without invitation, permission, or welcome;~~

~~———— 2. Physically contacting another person;~~

~~———— 3. Blocking a person’s path of travel; or~~

~~———— 4. Behaving in a threatening manner towards another person.~~

~~———— “Median strip” means a paved or planted area of public right of way that divides a street or highway.~~

~~———— “Public place” means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, a street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground; or any doorway, entrance, hallway, lobby and other portion not constituting a room or apartment designed for actual residence, of any business establishment, apartment house, or hotel.~~

~~———— “Public transportation vehicle” means any vehicle designed, used, or maintained for carrying 10 or more persons, including the driver; or a vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.~~

~~“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 and any federal credit union as defined in section 1752 of the Federal Credit Union Act.~~

~~“Solicit” or “solicitation” means to ask, beg, request, or panhandle for an immediate donation of money or other thing of value or for the direct and immediate sale of goods or services. Solicitation can be accomplished by using the spoken, written, or printed word, or bodily gestures, signs, or other means. (Ord. 2017-0054 § 3)~~

### ~~8.134.030 Prohibited solicitation.~~

~~A. No person shall solicit in an aggressive or intrusive manner in any public place.~~

~~B. Financial institutions and automated teller machines.~~

~~1. No person shall solicit within an automated teller machine facility without the express permission of the owner or other person lawfully in possession of the facility.~~

~~2. No person shall solicit within 30 feet of any financial institution during its business hours.~~

~~3. No person shall solicit within 30 feet of any automated teller machine during the time it is available for customers’ use. If the automated teller machine is located within an automated teller machine facility, the 30 feet shall be measured from the entrance or exit of the automated teller machine facility.~~

~~4. Subsections 1 and 3 do not apply to any unenclosed automated teller machine located within any building, structure, or space that has a primary purpose or function that is unrelated to banking activities, including but not limited to supermarkets, airports, and school buildings; provided that the automated teller machine is available for use only during the regular hours of operation of the building, structure, or space in which the machine is located.~~

~~C. Median strips. No person shall solicit on a median strip or in any manner or location that is inconsistent with the provisions of the California Vehicle Code.~~

~~D. Driveways accessing shopping centers, retail establishments, and business establishments. No person shall solicit from an operator or occupant traveling in a motor vehicle while the vehicle is located within 30 feet of a driveway providing vehicular access to a shopping center, retail establishment, or business establishment.~~

~~\_\_\_\_\_ E. \_\_\_\_\_ Public transportation vehicles and stops. No person shall solicit in any public transportation vehicle or within 30 feet of any designated or posted public transportation vehicle stop.~~

~~\_\_\_\_\_ F. \_\_\_\_\_ Gasoline stations and fuel pumps. No person shall solicit from an operator or occupant of a motor vehicle while the vehicle is stopped in a gasoline station or at a gasoline pump.~~

~~\_\_\_\_\_ G. \_\_\_\_\_ Outdoor dining area. No person shall solicit from a person within the outdoor dining area of a restaurant, café, or similar establishment that serves food or drinks for immediate consumption.~~

~~\_\_\_\_\_ H. \_\_\_\_\_ Subsections B through G do not apply to solicitations authorized or conducted by the property owner, business owner, or employees on the premises. (Ord. 2017-0054 § 3)~~

**~~8.134.040 Violations.~~**

~~\_\_\_\_\_ A. \_\_\_\_\_ Any person who violates this chapter is guilty of an infraction.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Any person who violates this chapter more than two times within a six-month period is guilty of a misdemeanor.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.~~

~~\_\_\_\_\_ D. \_\_\_\_\_ All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.~~

Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:



MAYOR

Attest:

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City Clerk

Passed for Publication:

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