

Office of the City Manager

City of Richland Hills, Texas

## Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council  
From: Barbara Childress, Chief of Police  
Date: July 30, 2014  
Subject: Amendment to Chapter 56, Article VI, Solicitors Ordinance, RH City Code

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### **Council Action Requested:**

Consider adopting the amendment to the Solicitors Ordinance.

### **Background Information:**

The Richland Hills Police Department has received a number of complaints and calls from citizens, merchants and rail service riders about being accosted by people asking for such things as money, food, rides and employment (not an all-inclusive list) near the train station, McDonalds, the Shell station and in or alongside the roadway on Handley-Ederville near 121. The city's current solicitor's ordinance does not preclude these actions, so the city attorney's office was asked to incorporate language that would address this issue.

The purpose of the amendment is to provide standards and regulations which meet constitutional guidelines for free speech through the distribution of literature while regulating the solicitation of money or other items or goods on or near roadways, on private property without the permission of the owner, near public pay phones, automated teller machines, self-service car washes or fuel pumps or public transportation facilities. The amendment accomplishes these purposes and also provides for the establishment of solicitation free zones.

**Board/Citizen Input:** N/A

**Financial Impact:** N/A

**Staff Contacts:**

Barbara Childress

Chief of Police

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**Attachments:**

Draft of ordinance amendment

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS AMENDING CHAPTER 58 "OFFENSES AND MISCELLANEOUS PROVISIONS" OF THE CITY OF RICHLAND HILLS CODE, AS AMENDED, BY ADDING A NEW ARTICLE "SOLICITATION" AND SECTION 58-130, "SOLICITATION IN AGGRESSIVE OR INTIMIDATING MANNER; SOLICITATION NEAR DESIGNATED LOCATIONS AND FACILITIES; SOLICITATION AFTER SUNSET; SOLICITATION-FREE ZONES; SOLICITATION IN ROADWAY;" DEFINING TERMS; ESTABLISHING BUSINESS/RETAIL SOLICITATION-FREE ZONES; BANNING OUTDOOR SOLICITATIONS IN SOLICITATION-FREE ZONES, WITH CERTAIN DEFENSES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Richland Hills, Texas is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, the City Council finds that solicitations conducted in outdoor areas of high pedestrian traffic create a safety hazard and an increased potential for criminal activity against persons using businesses, stores, shopping centers, restaurants, clubs, performance halls, parking lots and other venues and facilities associated with retail or entertainment, since those persons often have their attention distracted from their surroundings, sometimes with cash conspicuously in their possessions, thereby making them more vulnerable to and intimidated by solicitors; and

**WHEREAS**, solicitations conducted in outdoor areas of high pedestrian traffic discourage persons from coming to the areas, thereby hindering the city's goal of promoting tourism, pedestrian traffic, economic development, and residential development, and

**WHEREAS**, the City Council finds that businesses, stores, shopping centers, restaurants, clubs, performance halls, parking lots and other venues and facilities associated with retail sales or entertainment in the City should be declared as solicitation-free zones to encourage tourism, pedestrian traffic, economic development, and residential development in those areas and to otherwise further public health, safety, and welfare.

**WHEREAS**, the City Council has determined that solicitations and sales by persons standing within the roadway or on medians and traffic islands of streets and

highways within the City endangers such persons and the motoring public and greatly increases traffic congestion within the City; and

**WHEREAS**, the City Council has determined that solicitations and sales by persons directed towards the occupant of any vehicle on any street or highway within the City endangers such persons and the motoring public and also greatly increases traffic congestion within the City and distracts drivers from their primary duty of observing their surroundings; and

**WHEREAS**, the City Council has determined that it is necessary to prohibit solicitations and sales within the roadway, and on medians and traffic islands of streets and highways and that it is also necessary to prohibit solicitations and sales directed at the occupants of any vehicle on any highway or street within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS THAT:**

### **SECTION 1.**

Article VI "Solicitation" of Chapter 58 "Offenses and Miscellaneous Provisions" is hereby added to read as follows:

#### **Article VI. SOLICITATION**

**Sec. 58-130. Solicitation in aggressive or intimidating manner; solicitation near designated locations and facilities; solicitation after sunset; solicitation-free zones; solicitation in roadways.**

(a) *Definitions.* In this section:

(1) *Aggressive or intimidating manner* means:

- a. to approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:
  1. imminent bodily injury; or
  2. the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;
- b. to persist in a solicitation after the person solicited has given a negative response; or

- c. to block, either individually or as part of a group of persons, the passage of a solicited person.
- (2) *Automated teller machine* means a machine, other than a telephone:
- a. that is capable of being operated by a customer of a financial institution;
  - b. by which the customer may communicate to the financial institution a request to withdraw a benefit for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and
  - c. the use of which may or may not involve personnel of a financial institution.
- (3) *Curb* means the line adjacent to the edge of the roadway which may be either a raised or lowered or a marked or unmarked surface.
- (4) *Exterior public pay telephone* means any coin or credit card reader telephone that is:
- a. installed or located anywhere on a premise except exclusively in the interior of a building located on the premise; and
  - b. accessible and available for use by member of the general public.
- (5) *Roadway* means that portion of a street or highway designed, improved or ordinarily used for vehicular travel, typically delineated by curbs, edgelines or the edge of pavement.
- (6) *Public transportation stop* means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, or any other public transportation vehicle that is operated on a scheduled route with passengers paying fares on an individual basis.
- (7) *Self-service car wash* means a structure:
- a. at which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine or a station of vacuums used in the cleaning a vehicle whether coin-operated or not; and

- b. that is accessible and available for use by the general public.
- (8) *Self-service fuel pump* means a fuel pump:
- a. from which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, without the aid of an employee or attendant of the premises at which the fuel pump is located; and
  - b. that is accessible and available for use by the general public.
- (9) *Solicitation* means to ask, beg or plead, whether orally or in written or printed manner or with an object for the purpose of receiving contributions, alms, charity, or gifts of items of value for oneself or another person.
- (10) *Solicitation-free zone* means any area or structure which provides any service, retail sales or entertainment for the general public and includes any parking lot used for customer parking associated with those areas or structures.
- (11) *Sunrise* means the time of day published by the United States Naval Observatory as the time for sunrise on a particular day in the city.
- (12) *Sunset* means the time of day published by the United States Naval Observatory as the time for sunset on a particular day in the city.
- (b) *Offenses.*
- (1) A person commits an offense if he conducts a solicitation in an aggressive or intimidating manner.
  - (2) A person commits an offense if he conducts a solicitation in any outdoor area in the city at any time after sunset and before sunrise on any day of the week. It is a defense to prosecution under this subsection if the solicitation:
    - a. consists exclusively of passive, nonverbal acts; or
    - b. was being conducted on the property with the advance written permission of the owner, manager or other person in control of the property.
  - (3) A person commits an offense if he conducts solicitation at any time within a solicitation-free zone. It is an affirmative defense to prosecution under this subsection if the solicitation was being conducted on property with

advanced written permission of the owner, manager, or other person in control of the property.

- (4) A person commits an offense if he conducts a solicitation of any person within 50 feet of:
  - a. an automated teller machine;
  - b. an entrance or exit of a bank, credit union, or other similar financial institution;
  - c. an exterior public pay phone;
  - d. a self-service car wash;
  - e. a self-service fuel pump;
  - f. a public transportation stop; or
  - g. an outdoor dining area of a fixed food establishment.
  
- (c) For the purpose of Subsection (b)(4) measurement will be made in a straight line, without regard to intervening objects or structures, from the nearest point at which a solicitation is being conducted to whichever is applicable of the following:
  - (1) the nearest entrance or exit of a facility in which an automated teller machine is enclosed or, if the machine is not enclosed in a facility, to the nearest part of the automated teller machine;
  - (2) the nearest entrance or exit of a bank, credit union, or other similar financial institution;
  - (3) the nearest part of an exterior public pay phone;
  - (4) the nearest part of a structure of a self-service car wash;
  - (5) the nearest part of a self-service fuel pump;
  - (6) the nearest point of any sign or marking designating an area as a public transportation stop; or
  - (7) the nearest part of any table in an outdoor dining area or, if the outdoor dining area is contained within an open air enclosure, the nearest part of that enclosure.

- (d) It shall be unlawful for any person to conduct a solicitation or distribute, sell or offer for sale or distribution any goods, wares, merchandise or service, or solicit a ride, employment, donations, contributions or business within a roadway, or on any median or traffic island within the right-of-way of any street or highway within the City.
- (e) *Solicitations and Sales in Roadway; Occupants of Vehicles.*
  - (A) It shall be unlawful for any person to conduct a solicitation or distribute or sell or offer for sale or distribution any goods, wares or merchandise, or solicit a ride, employment, donations or contributions by a direct transaction or exchange with the occupant of any vehicle stopped or traveling on any street or highway within the City.
  - (B) An offense under this section occurs when the offer, solicitation or distribution is made regardless of whether a transaction is completed.
- (f) In addition to any enforcement action by a peace officer for a violation of this section, any person who is a victim of a solicitation prohibited under Subsection (b), or who witnesses a violation of Subsection (b) may file a complaint with the police chief.
- (g) An offense under this section is punishable by a fine not to exceed \$500.

## **SECTION 2.**

This ordinance shall be cumulative of all provisions of the City of Richland Hills, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

## **SECTION 3.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if a phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of the unconstitutional phrase, clause, sentence, paragraph, or section.

## **SECTION 4.**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance

shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 5.**

All rights and remedies of the City of Richland Hills, Texas, are expressly saved as to any and all violations of the provisions of any ordinances of the City of Richland Hills which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.**

The City Secretary of the City of Richland Hills is directed to publish the caption and penalty clause of this Ordinance in the official newspaper of the City of Richland Hills, Texas, as required by Section 52.011 of the Texas Local Government Code.

**SECTION 7.**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

EFFECTIVE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CITY ATTORNEY