

**City Council
Agenda Memo**



**City Council
Meeting Date: 11/21/2013**

TO: Larry D. Gilley, City Manager

FROM: Stan Standridge, Chief of Police

SUBJECT: Final Reading of Ordinance Deleting Chapter 29 “Streets and Sidewalks”, Article I “General”, Section 29-5 “Begging, peddling, etc., prohibited in roadway” and Amending Chapter 28 “Solicitations” of the Abilene Code of Ordinances.

GENERAL INFORMATION

Annually the Police Department investigates more than 3,400 collisions in the city. Most collisions occur in or near intersections, thus making intersections more dangerous for pedestrians. The purpose of the proposed changes to the solicitations ordinance is to increase public safety by identifying the most dangerous intersections in Abilene and prohibiting solicitation from roadways at or near those intersections. In order to ensure the new provisions are narrowly tailored and with viable locations available for solicitation from the roadway, various factors were used in identifying the prohibited intersections including accident numbers, traffic counts, and the complexity of traffic patterns.

The ordinance also prohibits minors under the age of 17 from soliciting in any roadway, and it requires reflective vests for all persons soliciting at non-prohibited locations. Additionally, aggressive panhandling is defined and prohibited, also with the intent of safeguarding our citizens.

City staff understands this ordinance will impact local newspaper vendors by eliminating circulation at prohibited locations. As a result, Police Administration met with the newspaper to discuss the proposed ordinance and its intended purpose as it relates to the safety of their independent vendors.

Chapter 29 “Streets and Sidewalks”, Article I “General”, Section 29-5 “Begging, peddling, etc., prohibited in roadway” will be deleted to avoid conflict with the new provisions.

FUNDING/FISCAL IMPACT

There is no anticipated funding or fiscal impact to the City of Abilene.

STAFF RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

Ordinance and map depicting prohibited roadways

Prepared by: Name ___Stan Standridge_____ Title ___Chief of Police _____	Item No. ___ _____	Disposition by City Council <input type="checkbox"/> Approved Ord/Res# _____ <input type="checkbox"/> Denied _____ <input type="checkbox"/> Other _____ City Secretary
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE DELETING CHAPTER 29 “STREETS AND SIDEWALKS”, ARTICLE I “GENERAL”, SECTION 29-5 “BEGGING, PEDDLING, ETC., PROHIBITED IN ROADWAY”; AMENDING CHAPTER 28, “SOLICITATION,” OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, there is a duty to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, annually the Police Department investigates more than 3,400 collisions in the city; and

WHEREAS, most collisions occur in or near intersections, thus making intersections more dangerous for pedestrians; and

WHEREAS, after a review of accident reports, traffic counts, and the complexity of road patterns in certain areas of Abilene the most dangerous intersections in Abilene were identified; and

WHEREAS, banning solicitations and panhandling at or near the most dangerous intersections will protect the health, safety, and welfare of the citizens of Abilene by reducing distraction and opportunity for serious injury at those intersections.

WHEREAS, panhandling in an aggressive manner disrupts the peace and security of persons raising a health, safety, and welfare concern for the citizens of the City of Abilene; and

WHEREAS, banning aggressive panhandling will increase the safety of the citizens of the City of Abilene.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 29, “Streets and Sidewalks”, Article I, “General”, Section 29-5, “Begging, peddling, etc., prohibited in roadway” is hereby deleted in its entirety.

PART 2: That Chapter 28, "Solicitations" of the Code of Ordinances, City of Abilene, Texas, is hereby amended as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 3: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 4: That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

PART 5: Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 7th day of November, 2013.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on XX day of XXXXX, 2013, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 21st day of November, 2013, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 21st day of November, 2013.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Delete CHAPTER 29 “STREETS”, ARTICLE I “GENERAL”, SECTION 29-5 “BEGGING, PEDDLING, ETC., PROHIBITED IN ROADWAY”.

Amend CHAPTER 28, SOLICITATIONS, of the Abilene City Code with the following:

CHAPTER 28. SOLICITATION

ARTICLE III. ROADWAYS

Section 28-31. Location

(a) No solicitor, peddler or canvasser shall have any exclusive right to any location in the public roadways, nor shall any be permitted a stationary location, nor shall they be permitted to operate in any congested areas where their operations might impede or inconvenience the public. For the purpose of this is article, the judgment of a police officer exercised in good faith, shall be deemed conclusive as to whether the area is congested or public impeded.

(b) No solicitor, peddler, or canvasser may locate in the roadway at any of the following locations:

All intersections, access roads, and ramps adjacent to Winters Freeway from S. 1st Street to Buffalo Gap Road

All intersections adjacent to:

Buffalo Gap Road from S. 27th to Antilley Road

Southwest Drive from Winters Freeway to Catclaw Drive

Business I-20 from US-83 (Winters Freeway) to N. Judge Ely Blvd.

S. 14th Street from Willis Street to Butternut Street

Judge Ely Blvd. from ES 11th Street to EN 10th Street

Ambler Ave./SH 351 from Grape Street to East Lake Road

Treadaway Blvd. from E. Hwy 80 to S. 11th Street

Treadaway Blvd. from S. 27th Street to Industrial Blvd.

(c) No solicitor, peddler, or canvasser may locate in the median or traffic island of any street or roadway.

Sec. 28-32. Compliance generally

(a) It shall be unlawful for a person younger than seventeen (17) years of age to solicit, canvass, or peddle in the roadway under this Article.

(b) It shall be unlawful for any person to cause a child less than ten (10) years of age to solicit, canvass, or peddle in the roadway. For purposes of this section, the term “cause” shall mean to aid, direct, hire, encourage, permit or allow.

(c) It shall be unlawful for a solicitor, ~~or~~ peddler, or canvasser to fail to wear a reflective traffic safety vest while soliciting in the roadway.

Sec. 28-33. Definition of Roadway

For the purposes of this article, roadway is defined to include the roadbed, shoulder, median, curbs, traffic island, sidewalks, and utility easements located adjacent to or near the roadway.

Secs. 28-34 to 28-40 reserved.

ARTICLE IV. AGGRESSIVE PANHANDLING

Sec.28-41. Aggressive Panhandling.

In this section, the following definitions apply:

Aggressive manner means:

- (a) Making any physical contact with or touching another person in the course of the solicitation without the person's consent.
- (b) Touching, tapping or hitting any part of a motor vehicle occupied by a person being solicited unless such touching is with the express permission of the occupant.

- (c) Blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation.
- (d) Using obscene or abusive language or gestures toward the person being solicited;
- (e) Approaching the person being solicited in a manner that is:
 - 1. Likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - 2. Reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (f) Following the person being solicited in a manner that is:
 - 1. Likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - 2. Reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (g) Continuing to solicit a person after the person has made a negative response.

Automated teller machine means a device, linked to a bank's account records, which is able to carry out banking transactions.

Automated teller facility means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.

Bank includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

Check cashing business means an entity in the business of cashing checks, drafts, or money orders for consideration.

Panhandle means to solicit by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

Parking meter or pay station means a location on a street, parking lot or parking garage where persons pay for parking by either cash or credit to a person or at a machine or other device designed to accept payment.

Public area means an area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transportation facility, or shop.

Sec. 28-42. Offense.

A person commits an offense if the person panhandles:

- (a) In an aggressive manner in a public area; or
- (b) Within fifty (50) feet of the following areas where the public is considered vulnerable including:

1. An automated teller machine;
2. An automated teller facility;
3. The entrance or exit of a bank;
4. The entrance or exit of a check cashing business;
5. A parking meter or parking pay station on a street;
6. A public parking garage or parking lot pay station;
7. The entrance or exit of a restaurant or the service area of an outdoor eating establishment;
8. The street right of way adjacent to grocery stores or convenience stores;
9. In a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;

(c) Anywhere it would interfere with the safe and orderly movement of traffic or at the locations identified in Section 28-31(b).

(d) A culpable mental state is not required, and need not be proved, for an offense under this section.

(e) For the purpose of this section, the judgment of a police officer exercised in good faith, shall be deemed conclusive as to whether the panhandling is interfering with the safe and orderly movement of traffic.

(f) It shall be a defense to prosecution under Section 28-42(b) if the panhandler is on private property with the express permission of the property owner or manager.

Sec. 28-43. Penalty.

Any person who engages in any activity specified in Section 28-42, may be subject to prosecution for a Class C misdemeanor and a fine not to exceed five hundred dollars (\$500.00).

Secs. 28-44 to 28-50 reserved.

