

**CITY OF SEGUIN
STATE OF TEXAS**

ORDINANCE NO.:

AN ORDINANCE OF THE CITY COUNCIL OF SEGUIN, TEXAS AMENDING THE SEGUIN CODE OF ORDINANCES CHAPTER 90, STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES, BY REPEALING SECTION 90-5, SOLICITING IN PUBLIC ROADWAYS; AND CHAPTER 70, OFFENSES AND MISCELLANEOUS PROVISIONS, BY THE ADDITION OF A NEW ARTICLE VII, SOLICITATION AND CAMPING IN PUBLIC AREAS; PROVIDING FOR PUBLICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE FOR SUBMISSION AS A SUPPLEMENT TO THE CODE OF ORDINANCES

WHEREAS, one of the primary responsibilities of municipal government is to maintain health, order and safety for the citizens and others who utilize municipal facilities; and

WHEREAS, the City Council recognizes that all persons enjoy certain freedoms and constitutional protections including the use of public areas to solicit funds for themselves or for various organizations; and

WHEREAS, the City Council also recognizes that persons soliciting funds along a busy street, particularly during rush hour traffic can pose a hazard to themselves and others; and

WHEREAS, some people feel threatened or uneasy when approached by strangers soliciting funds; and

WHEREAS, camping on public property that has not sanitation facilities can be detrimental to general public health and well-being; and

WHEREAS, restrictions on the time, place, and manner for exercising constitutional rights are permitted where such restrictions are narrowly tailored to meet legitimate governmental interests; and

WHEREAS, restricting solicitation from street corners only during times of high traffic use allows individuals to exercise their constitutional rights while protecting the safety of the travelling public.

NOW THEREFORE BE IT ORDAINED by the City Council of Seguin, Texas:

SECTION ONE. The Seguin City Council hereby approves and adopts the above findings and recitals as part of this Ordinance.

SECTION TWO. The Seguin Code of Ordinances, Section 90-5, Soliciting on Public Roadways, is hereby repealed in its entirety.

SECTION THREE. The Seguin Code of Ordinances, Chapter 70, Offenses and Miscellaneous Provisions, is hereby amended by the addition of a new Article VII, to read as follows:

Article VII **Solicitation and Camping in Public Areas**

Section 70-120. Purpose.

The city council finds that:

- (a) Aggressive solicitation is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder.
- (b) Aggressive solicitation includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic.
- (c) The presence of individuals who solicit money from persons at or near banks, automated teller machines, public transportation facilities, and crosswalks is especially troublesome because of the enhanced fear of crime in a place that is confined, difficult to avoid, or where a person might find it necessary to wait.
- (d) The presence of individuals soliciting funds at busy street corners during rush hour and noon time traffic can be a safety hazard.
- (e) This section is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation, and not to limit a constitutionally protected activity.

Section 70-121. Definitions

In this section:

- (a) Aggressive Manner means:
 - (1) intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
 - (2) following the person being solicited, if that conduct is:
 - (i) intended to or 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
 - (ii) intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (3) continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
 - (4) intentionally or recklessly 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;
 - (5) using obscene or abusive language or gestures toward the person being solicited;
 - (6) approaching the person being solicited in a manner that:
 - (i) is intended to or is 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
 - (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (b) Automated Teller Machine means a device, linked to a bank's account records, which is able to carry out banking transactions.
- (c) 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.

- (d) Bank includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.
- (e) Bus means a vehicle operated by a transit authority for public transportation.
- (f) Camp means the use of a public area for living accommodation purposes including:
 - (1) storing personal belongings;
 - (2) making a camp fire;
 - (3) using a tent or shelter or other structure or vehicle for a living accommodation;
 - (4) carrying on cooking activities; or
 - (5) digging or earth breaking activities.
- (g) Check Cashing Business means a person in the business of cashing checks, drafts, or money orders for consideration.
- (h) Public Area means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, park, city facility, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.
- (h) Solicit means to request, 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.

Section 70-122. Solicitation

- (a) A person commits an offense if the person solicits:
 - (1) at or within 50 feet of any street corner between the hours of 6:00 a.m. to 9:30 a.m., 11:a.m. to 1:00 p.m., and 4:00 p.m. to 6:00 p.m.
 - (2) in an aggressive manner in a public area;
 - (3) in a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;
 - (4) within 25 feet of:
 - (i) an automated teller facility;
 - (ii) the entrance or exit of a bank; or
 - (iii) the entrance or exit of a check cashing business; or
 - (5) at a marked crosswalk.
 - (6) on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
 - (7) at a sidewalk café or the patio area of a bar or restaurant; or
 - (8) in the downtown historic area between 7:00 p.m. and 7:00 a.m.
 - (9) without a valid permit.
- (b) A culpable mental state is not required, and need not be proved, for an offense under Subsection (2), (3), or (4).
- (c) This section is not intended to proscribe a demand for payment for services rendered or goods delivered.

(d) This section does not proscribe solicitation permitted pursuant state law, by or for a program sponsored by a public service agency, or in accordance with a valid solicitation permit issued by the Seguin Police Department.

Section 70-123. Solicitation Permit

(a) Notwithstanding the other provisions of this Division or any other provision in the City Code, a person 17 years of age or older may solicit employment, business or charitable contributions while standing on a traffic media, shoulder, improved shoulder, sidewalk, or the improved portion of the roadway from occupants of any vehicle on a roadway provided said person wears a florescent orange visibility vest, does not impede traffic, enters or remains in a roadway only while the controlling traffic signal prohibits vehicle movement, and has obtained a permit to do so, or who is a member of an organization which has obtained a permit to do so, from the chief of police.

(b) Permits may be issued to any person or organization no more than once every six-months. Permits shall be valid for no more than two consecutive days, and for times from 1 hour after sunrise until 1 hour prior to sunset.

(c) The Police Department shall issue a solicitation permit upon application provided said application states the name and address of the person or organization for whom solicitations are made, the names and addresses of the persons soliciting, the locations at which soliciting will take place, the times during which the soliciting will take place, and includes any insurance required below in subsection (d).

(d) Permit applications must be accompanied by a certificate of insurance signed by an agent authorized to bind coverage indicating that the applicant has obtained, at his sole expense, insurance coverage that:

(1) Is written by an insurance company with an A- or better rating by AM Best and that is admitted and licensed to do business in the State of Texas;

(2) Is in full force and effect for the duration of the permit period;

(3) Provides \$1,000,000.00 of liability coverage per occurrence with no deductible;

(4) Insures the applicant and all persons who will be soliciting;

(5) Names the City of Seguin, Texas, its officers, employees and elected representatives as additional insureds;

(6) Provides that any insurance or self-insurance maintained by the city shall apply in excess of and not contribute with it;

(7) Is written on an occurrence basis; and

(8) Is otherwise acceptable to; and approved by, the risk manager of the City of Seguin, Texas.

(9) Law enforcement agencies soliciting funds for annual campaigns are exempt from the insurance requirements.

Section 70-124. Public Camping.

(a) Except as provided in Subsection (c), a person commits an offense if the person camps in a public area that is not designated as a camping area by the Parks and Recreation Department.

(b) A person is camping if the person engages in any of the activities listed in Section 70-121(f) if it reasonably appears, based on the totality of the circumstances, that the person conducting the activity is using a public area for living accommodation purposes, regardless of the person's intent or engagement in other activities.

(c) This section does not apply to permitted camping or cooking in a park in compliance with park regulations.

(d) It is an affirmative defense to prosecution that a person owns the property or has secured the permission of the property owner to camp in a public area.

SECTION FOUR. In accordance with Section 3.10 of the Seguin City Charter, this Ordinance shall become effective upon ten (10) days following passage on second reading and shall be published in a newspaper of general circulation.

SECTION FIVE. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

SECTION SIX. City staff is authorized to prepare this Ordinance for submission as a supplement to the Seguin Code of Ordinances.

PASSED AND APPROVED on first reading this 19th day of April, 2016.

PASSED AND APPROVED on second reading this 3rd day of May 2016.

DON KEIL, Mayor

ATTEST:

Thalia Stautzenberger, City Secretary