



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 3/7/2023

Agenda Item: 9B

Department: Community Development
Prepared By Adam Atamian, Deputy Community Development Director

Subject:
INITIATION OF PEDESTRIAN STREET ENCROACHMENT ORDINANCE

Fiscal Impact:
There is a fiscal impact resulting from legal counsel to draft an ordinance.

Summary:
Staff seeks direction whether to initiate an amendment to the San Clemente Municipal Code to regulate pedestrian encroachment on streets and highways.

Background:
At the September 20, 2022 City Council meeting staff was directed to submit to the Public Safety Committee for consideration a potential ordinance to regulate panhandling and solicitation adjacent to public streets. At the Public Safety Committee meeting of November 22, 2022, the Committee voted 5-0 to recommend that City Council initiate a municipal code amendment to regulate such solicitation activities. Consultation with the City Attorney suggests that a safety-focused ordinance on all unsafe pedestrian encroachments on the right-of-way would be a stronger platform to regulate this activity.

Regardless of local enactments, the California Vehicle Code (“CVC”) includes regulations: (1) requiring pedestrians to use a crosswalk when crossing between two adjacent controlled intersections (CVC, § 21955); (2) requiring pedestrians outside crosswalks to yield the right of way to vehicles (CVC, § 21954(a)); (3) prohibiting pedestrians from standing in a roadway to solicit a ride (CVC, § 21957); (4) prohibiting pedestrians from “suddenly leav[ing] a curb or other place of safety and walk[ing] or run[ning] into the path of a vehicle that is so close as to constitute an immediate hazard (CVC, § 21950(b)); and (5) prohibiting pedestrians from “unnecessarily” stopping or delaying traffic while in a marked or unmarked crosswalk. (Id.) We share these CVC sections not to encourage or dissuade any City action but rather to illuminate that law enforcement currently has a variety of CVC tools at its disposal to cite pedestrians in roadways.

Discussion:
The Public Safety Committee discussed the potential to amend the San Clemente Municipal Code to address street-side solicitation, with input from the Chief of San Clemente Police Services and the Deputy Community Development Director, who oversees Code Compliance Division and Park Rangers. The discussion was facilitated by a review of ordinances adopted by cities that regulate pedestrian encroachments on street medians and travelways that expose them to danger. These ordinances are provided for reference as Attachments 1, 2, 3, and 4.

The Public Safety Committee's discussion identified dangers associated with these encroachments on public streets is an issue occurring in the City of San Clemente. Additionally, discussion indicated that enforcement of regulations to address such issues would benefit the efforts of local law enforcement in protecting the public health and safety, and general welfare and would provide municipal code citations as an alternate platform for enforcement. The Committee voted unanimously to recommend the City proceed to consideration of an ordinance regulating these dangers tailored for San Clemente.

Because these regulations can have First Amendment ramifications, staff recommends that the City Attorney's office (1) provide input to the City Council on potential regulations and (2) assist in reviewing related provisions of the current SCMC with an eye toward assisting the City Council in repealing or updating any existing provisions that are Constitutionally unenforceable.

Recommended Actions:

Staff Recommendation

THE PUBLIC SAFETY COMMITTEE AND STAFF RECOMMEND THAT THE CITY COUNCIL INITIATE AN AMENDMENT TO THE SAN CLEMENTE MUNICIPAL CODE TO REGULATE DANGEROUS PEDESTRIAN ENCROACHMENTS ON PUBLIC STREETS.

Attachment:

1. Laguna Niguel Ordinance.
2. Aliso Viejo Ordinance.
3. Laguna Hills Ordinance.
4. Lake Forest Ordinance.

Notification:

None.

Laguna Niguel

Sec. 13-1-19. - Vending and commercial solicitation.

No person shall solicit primarily for commercial purposes in any manner, or sell or offer for sale any goods, wares, merchandise or food products, or otherwise engage in sidewalk vending, without a sidewalk vending permit issued pursuant to article 2 of division 7 of title 5 of this Code. No person shall distribute or pass out any primarily commercial handbill or advertising material, without a written permit from the manager. However, this section does not apply to any concession operated under authority granted by the city council, or to any activity specifically exempted by order or resolution of the city council.

Sec. 11-10-15. - Solicitation on public property.

It shall be unlawful for any person to solicit or for any officer or member of any association to solicit within the city any contribution, for any purpose whatsoever, by means of any box or receptacle, upon or in any public park, street or alley within the city, or upon or in any publicly owned or controlled place or premises within the city, except by written permission of the department.

Sec. 11-10-2. - Misrepresentation by solicitors.

It shall be unlawful for any person to make or perpetrate any misstatement, deception or fraud in connection with the solicitation within the city of any contribution for any charitable purpose or association.

ATTACHMENT 2

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA ADDING A NEW CHAPTER 4.16 TO TITLE 4 OF THE ALISO MUNICIPAL CODE RELATING TO SOLICITATION OF VEHICLE OCCUPANTS

WHEREAS, The City of Aliso Viejo (“City”) is authorized by California Constitution Article XI, Section VII to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations; and

WHEREAS, the City currently does not prohibit persons from approaching vehicles in public streets to sell goods and services and to solicit charitable contributions; and

WHEREAS, to prevent unsafe interference with vehicles in the right of way and to avoid distracting motorists from the operation of their vehicles, the City Council desires to regulate solicitation of vehicle occupants in public roadways.

THE CITY COUNCIL OF THE CITY OF ALISO VIEJO HEREBY ORDAINS AS FOLLOWS:

Section 1. CEQA. This Ordinance amends the City’s Municipal Code in order to promote health, safety, comfort and general welfare in the community. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) because the activity is not a project as defined in Section 15378 of the State CEQA Guidelines. Even if the Ordinance constituted a “project” within the meaning of CEQA, the activity is exempt under State CEQA Guidelines section 15061 for the reasons set forth in this Ordinance and the corresponding staff report. The Ordinance does not have the potential for resulting in physical change to the environment, directly or indirectly.

Section 2. A new Chapter 4.16 is added to Title 4 of the Aliso Viejo Municipal Code to read as follows:

CHAPTER 4.16

SOLICITATION OF VEHICLE OCCUPANTS

4.16.010 SOLICITATION PROHIBITED.

A. It is unlawful for any person to be upon or go upon the roadway of any public street and solicit or attempt to solicit employment, business, or charitable contributions or alms from the occupant of any vehicle which is in transit upon a

public street, regardless of whether such vehicle is moving or temporarily stopped in traffic.

B. It is unlawful for any person to be upon or go upon the roadway or any public street and engage in any business with, or accept any charitable contribution or alms from, the occupant of any vehicle which is in transit upon a public street, regardless of whether such vehicle is moving or temporarily stopped in traffic.

C. Nothing contained in this section shall prohibit solicitations of employment, business or charitable contributions or alms from or by the occupants of any vehicle which either is lawfully parked upon a public street, or which is not upon a public street, at the time of such solicitation.

The words, terms and phrases used in this chapter shall have the following meanings:

"Business" means any sale of or offer to sell, or purchase of or offer to purchase, any product, commodity, item or service of any kind or nature.

"Charitable contributions or alms" means the obtaining of an immediate donation of money or other thing of value, whether for personal use, or as a contribution to a charitable organization, or for any other purpose.

"Roadway" means that area within any public street right-of-way which is designed, improved or ordinarily used for vehicular traffic and traffic related improvements, including without limitation any median islands, traffic divider areas, bicycle lanes, safety zones, crosswalks and curbs.

"Solicit or attempt to solicit" means and includes any act of requesting, offering or announcing by any means including, without limitation, any oral or written communication or gesture.

"Street" means and includes any public street, highway or alley within the City of Aliso Viejo.

"Vehicle" means as defined in Section 670 of the California Vehicle Code or any successor provision thereto.

4.16.030 EXEMPTIONS.

A. This chapter shall not apply to or prohibit:

1. Any acts prohibited by Section 22520.5 of the Vehicle Code of the State of California or any acts otherwise prohibited or preempted by any other provision of state law.

2. Any act of soliciting or attempting to solicit an occupant of a vehicle by another occupant of the same vehicle.

3. Any act of soliciting or attempting to solicit transportation upon or within a vehicle which act is engaged in between the driver or other occupant of such vehicle and any other person.

4. Any act of soliciting or attempting to solicit contributions or alms by a bonafide charity or non-profit corporation, organization or association.

B. Any qualified charitable or non-profit corporation, organization or association as set forth in Section A.4 above, shall obtain a certificate of exemption from the Aliso Viejo City Manager or his designee. Such certificate shall be issued within 72 hours following the submittal of a written application therefor provided such application and the proposed solicitation conforms to the following requirements:

1. That the applicant submits proof that it is qualified by the Internal Revenue Service as a charitable or non-profit corporation, organization or association exempt from taxation under applicable provisions of the Internal Revenue Code;

2. That the application is accompanied by a plan for review and approval by the Aliso Viejo City Manager or his designee (1) demonstrating that its solicitors will wear distinctive and highly visible attire (such as garments or devices containing reflective materials or composed of vivid and highly visible colors) for the purpose of increasing visibility of such persons to motorists; and (2) providing a plan or methodology for minimizing interference with traffic.

3. All solicitation of vehicles while engaged in transit on the public streets shall be limited to between the hours of 10:00 a.m. to 3:00 p.m.

4. All solicitations by the charitable or non-profit corporation, organization or association pursuant to such

certificate of exemption shall be limited to one (1) day per calendar year.

5. Not more than one charitable or non-profit corporation, organization or association shall be scheduled at the same location on the same date.

A violation of any provision of this chapter shall be punishable as an infraction as provided in Section 36900 of the Government Code of the State of California or any successor provision thereto.

Section 3. Conflicting Regulations. Upon the effective date of this Ordinance, all former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed and declared to be of no further force and effect.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

Section 6. Publication. The City Clerk shall publish this Ordinance within fifteen (15) days of its adoption in accordance with California Government Code Section 36933.

Section 7. Notice of Exemption. The City Council hereby directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption within five (5) working days of first reading of this Ordinance.

Section 8. Location and Custodian of Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which these findings are based are located at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, California 92656. The City Clerk is the custodian of the record of proceedings.

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2015.

Laguna Hills

12-42.010 Findings and purpose.

The City Council finds that pedestrians are stepping and standing upon city-owned median islands located in the center of streets, distracting drivers, placing themselves in harm's way, and trampling landscaping. Such median islands have been installed for safety reasons to separate opposing lanes of traffic and are often landscaped for aesthetic purposes to beautify city arterials. There is no intended pedestrian use of such medians. Pedestrians may cross a street at marked crosswalks and do not need to step, stand, sit, or lie on these median islands for any purpose.

The purpose of this chapter is to protect the public safety of drivers and pedestrians and preserve the aesthetics of the city's landscaped median islands. (Ord. 2005-12 § 1 (part))

12-42.020 Median island defined.

For purposes of this chapter, a median island is a raised and curbed area owned by the city, of variable width, located in the approximate center of the street, parallel to the travel lanes, separating opposing lanes of traffic and channelizing the location of the motor vehicle traffic. (Ord. 2005-12 § 1 (part))

12-42.030 Pedestrians prohibited on city median islands.

Pedestrians are prohibited from stepping, standing, sitting, or lying upon any median island as defined in Section 12-42.020 above. Pedestrians do not include city employees or contractors who are maintaining the median island or emergency personnel or other persons who must temporarily use the median island because of an accident or vehicular emergency. (Ord. 2005-12 § 1 (part))

6-08.010 Obstructing sidewalks and highways.

It is unlawful for any person to loiter, stand or sit in or upon any public highway, alley, sidewalk or crosswalk so as to in any manner hinder or obstruct the free passage therein or thereon of persons or vehicles passing or attempting to pass along the same, or so as to in any manner annoy or molest persons passing along the same. (OCC § 3-4-14)

ATTACHMENT 4

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LAKE FOREST, CALIFORNIA, AMENDING THE LAKE
FOREST MUNICIPAL CODE TO ADD CHAPTER 11.68
REGARDING SOLICITATION IN NO STOPPING ZONES**

WHEREAS, individuals as well as large groups of people congregate in certain areas within the City of Lake Forest (“City”) on a daily basis to solicit from persons driving vehicles in and along public rights-of-way where stopping and parking is prohibited (“no stopping zones”); and

WHEREAS, the activity of soliciting from drivers in no stopping zones distracts drivers from their primary duty to watch traffic and potential hazards in the road, to observe all traffic control signals and warnings and to prepare to move safely through streets and intersections; and

WHEREAS, the practice of soliciting from drivers in no stopping zones impedes the flow of traffic on streets and results in the delay and obstruction of the public’s free flow of travel and results in congestion and blockage of the streets, driveways, parking areas and sidewalks; and

WHEREAS, distracted drivers in no stopping zones are more prone to automobile accidents, and accidents on the public streets constitute a substantial traffic safety problem, which further impedes and prevents the orderly flow of traffic and is unsafe for persons engaging in solicitation, pedestrian traffic and traffic generally; and

WHEREAS, the practice of soliciting by occupants of moving vehicles in no stopping zones from persons standing on public streets and sidewalks also presents potential safety hazards for the reasons set forth above; and

WHEREAS, the cumulative impact of this type of activity on streets, highways and sidewalks on a daily basis within the City has created a potential safety hazard and poses a significant and substantial risk to the interest of the public in the free flow of travel; and

WHEREAS, the potential safety hazards created by the solicitation activity in and along public rights-of-way in no stopping zones pose a threat to the public peace, health and safety;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST DOES ORDAIN AS FOLLOWS:

SECTION 1. Division IX, Chapter 11.68 of the Lake Forest Municipal Code is hereby added to read as follows:

“Division IX. Solicitation

Chapter 11.68 Solicitation in No Stopping Zones

11.68.010 Legislative Findings.

11.68.020 Definitions.

11.68.030 Prohibitions.

11.68.010 Legislative Findings.

The City Council finds that the practice of soliciting to and from occupants of vehicles on City thoroughfares where stopping and parking is prohibited impedes the flow of traffic on streets and results in the delay and obstruction of the public’s free flow of travel and results in congestion and blockage of the streets, driveways, parking areas and sidewalks. The City Council further finds that the activity of soliciting to and from occupants of vehicles where stopping and parking is prohibited distracts drivers from their primary duty to watch traffic and potential hazards in the road, to observe all traffic control signals or warnings and to prepare to move safely through streets and intersections. The City Council finds that the safety hazards resulting from the solicitation to and from vehicles present a threat to public health, safety and welfare requiring the prohibition of this activity.

11.68.020 Definitions.

For purposes of this Chapter the following definitions shall apply:

A. “City Street” means all portions of a roadway used by vehicles for travel, stopping or parking, including any medians lying within such roadways.

B. “No Stopping Zone” means a segment of City street, highway, driveway, parkway, sidewalk or public right-of-way where stopping or parking of vehicles is prohibited.

C. “Solicitation” or “Solicit” means and includes any request, including verbal, printed or written signs and gestures, to purchase goods, property or services, or to offer, entice or purchase goods, property or services, or to seek or make contributions of money or property. Solicitation shall be deemed complete whether or not an actual service is used, a transaction is completed, or an exchange of money or other property takes place.

11.68.030 Prohibitions.

A. No person shall engage in solicitation that requires a motor vehicle to stop in a No Stopping Zone.

B. This Chapter shall not be interpreted to relieve any person from obtaining a permit to engage in those solicitation activities governed by Chapter 5.16 of this code. ”

SECTION 2. Compliance with California Environmental Quality

Act

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. Effective Date

This Ordinance shall become effective thirty (30) days from its adoption.

SECTION 5. Publication

The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Lake Forest.

PASSED AND APPROVED this ___ day of _____ 2009.

Mark Tettemer, Mayor

ATTEST:

Sherry A.F. Wentz, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Scott C. Smith, City Attorney