



# AUSTIN POLICE DEPARTMENT

## TRAINING BULLETIN

Date: May 10, 2021

### COA: Solicitation Ordinance

*This bulletin is intended to provide guidance to officers on enforcing the revised City Code § 9-4-13 (Solicitation).*

*This bulletin replaces all prior training bulletins regarding § 9-4-13.*

On May 1, 2021 voters approved a significant change to City Code § 9-4-13 (*Aggressive Confrontation Prohibited*). The revised ordinance will take effect on Tuesday, May 11, 2021.

#### **The Prohibited Behavior:**

The new ordinance prohibits “solicitation in an aggressive manner in a public area” in all circumstances.

The ordinance also prohibits any “solicitation” in limited areas or circumstances. Specifically, the ordinance prohibits solicitation:

- In a bus or bus station/stop;
- Within 25 feet of
  - an ATM;
  - the entrance or exit to a bank;
  - the entrance or exit to a check cashing business;
- at a marked crosswalk;
- on either side of the street on a block where there is an entrance/exit for a school attended by minors or a child care facility;
- at an authorized sidewalk café or the patio area of a bar/restaurant;
- anywhere in the City between 7pm and 7am.

The ordinance does not prohibit a demand for payment in exchange for goods delivered or services rendered.

#### **Definitions:**

The ordinance contains several defined terms with lengthy definitions. Officers should consult with the ordinance for precise definitions of all terms (see below). Two key definitions are highlighted and summarized here:

- “Solicit” means a request for an immediate donation or transfer of money or other thing of value from one person to another. Solicitation can occur through oral speech, written or printed words, or other means of communication. Solicitation may occur regardless of the solicitor’s purpose or intended use of the money.
  
- “Aggressive Manner” includes:
  - Intentionally or recklessly touching a person without consent while soliciting;
  - Following the person being solicited in a way that is likely or intended to cause fear of imminent bodily harm or commission of a crime, or likely to intimidate the person into giving money;
  - Continuing to solicit the person within 5 feet after being told “no”;
  - Blocking passage of a person being solicited, or requiring a person to take evasive action to avoid making contact with the person soliciting;
  - Using obscene or abusive language towards the person being solicited; or
  - Approaching the person being solicited in a way that is likely or intended to cause fear of imminent bodily harm or commission of a crime, or likely to intimidate the person into giving money.

### **Other Offenses:**

Officers should note that several instances of soliciting in an “aggressive manner” may overlap with other offenses, including Disorderly Conduct (Penal Code § 42.01), Obstructing Highway or Other Passageway (Penal Code § 42.03), or Assault (Penal Code § 22.01). If officers find that a person’s conduct meets the elements of another offense, and there is probable cause, officers should pursue enforcement of the other offense, rather than the Solicitation Ordinance.

### **Outreach, Education, Warnings, and Enforcement:**

For an initial 30-day period, officers should focus their efforts on outreach, education, and warnings for solicitation that is not aggressive. Officers should always attempt to gain voluntary compliance whenever possible. Moving forward, officers should focus on people who are soliciting or behaving in an aggressive manner that violates the law and jeopardizes public order and safety, or that is reasonably likely to cause fear and intimidation.

The ordinance itself notes that it is not intended to limit constitutionally protected activity. As a general matter, asking others for money is constitutionally protected speech. Therefore, officers should avoid enforcement against people who are merely asking for money in a manner that is not aggressive, intimidating, or dangerous.

Officers should be prepared to work with the HOST team, Integral Care, and other resources, whenever appropriate.

## **Personal Property:**

Officers generally will not be making arrests for violations of § 9-4-14. In the event that an arrest is necessary, officers must ensure that a person's personal property, including their tent, working bicycle, backpack, clothes, medications, identification documents, important papers, and other essential personal items are preserved and stored in a manner that the person can later retrieve those items.

## **Documentation:**

Officers shall document the conditions that result any enforcement action on the citation, or in a report (if one is written). The documentation shall include the approximate amount of time elapsed between the time of any warning, as applicable, and the time of enforcement action (citation or arrest).

## **This is the relevant language of the new ordinance:**

### **§ 9-4-13 - SOLICITATION**

(A) The council finds that:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

(B) In this section:

(1) **AGGRESSIVE MANNER** means:

- (a) intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (b) 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;
- (c) continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;

- (d) 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;
  - (e) using obscene or abusive language or gestures toward the person being solicited;
  - (f) 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.
- (2) AUTOMATED TELLER MACHINE means a device, linked to a bank's account records, which is able to carry out banking transactions.
- (3) 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.
- (4) BANK includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.
- (5) BUS means a vehicle operated by a transit authority for public transportation.
- (6) CHECK CASHING BUSINESS means a person in the business of cashing checks, drafts, or money orders for consideration.
- (7) 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, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.
- (8) 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.
- (C) A person commits an offense if the person solicits:
- (1) in an aggressive manner in a public area;
  - (2) in a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;
  - (3) within 25 feet of:
    - (a) an automated teller facility;
    - (b) the entrance or exit of a bank; or
    - (c) the entrance or exit of a check cashing business; or
  - (4) at a marked crosswalk.
  - (5) 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;

- (6) at a sidewalk café authorized under Chapter 14-4 ( *Sidewalk Cafés* ) or the patio area of a bar or restaurant; or
- (7) within the boundaries of the City of Austin between 7:00 p.m. and 7:00 a.m.
- (D) A culpable mental state is not required, and need not be proved, for an offense under Subsection (C)(2), (3), or (4).
- (E) This section is not intended to proscribe a demand for payment for services rendered or goods delivered.

**Consult with your supervisor for additional guidance.**