

ORDINANCE NO. 05-__

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF COSTA MESA, CALIFORNIA,
AMENDING TITLE 10, CHAPTER XIX OF THE
COSTA MESA MUNICIPAL CODE REGARDING SOLICITATION OF
EMPLOYMENT, BUSINESS OR CONTRIBUTIONS FROM STREETS AND
CERTAIN COMMERCIAL PARKING LOTS**

WHEREAS, the City Council previously enacted an ordinance precluding the solicitation of employment, business or contribution in certain places and in a certain manner, in order to address secondary effects of such solicitation, and has modified that ordinance from time to time; and

WHEREAS, the ordinances enacted and modified by the Council are codified in Sections 10-354 through 10-354.2 of the Costa Mesa Municipal Code; and

WHEREAS, the City Council's prior amendments of these code sections have been in an effort to ensure that the sections are reasonable time, place and manner restrictions, designed to address certain adverse secondary effects of active solicitation addressed to persons in moving vehicles and by persons in moving vehicles, including but not limited to, creation of safety hazards to persons in vehicles traveling on City streets, pedestrians using sidewalks, driveways and crossing streets located in the City, disruption, delay and congestion of traffic, blocking of egress to and from parks, residential property, parking lots and businesses, and interfering with use of sidewalks by other pedestrians; and

WHEREAS, the City has recently been threatened with litigation regarding its solicitation ordinance in light of recent federal court decisions concerning other cities' solicitation ordinances; and

WHEREAS, the City Council wishes to ensure that its solicitation ordinance on its face reflects the actual intent of the Council and the manner of its current enforcement, and is consistent with existing law; and

WHEREAS, the City Council has considered evidence presented to it since 1988 concerning the secondary effects of individuals or groups of solicitors who have directed their solicitation activities at persons traveling in vehicles on City streets and of the secondary effects of solicitation by occupants of moving vehicles or those persons who were in moving vehicles which illegally stop or park in order to engage in business transactions with persons occupying the public sidewalk or parkway adjacent to the public street. The City Council also

takes official notice of the experiences of other cities in California and elsewhere, including the City of Phoenix, Arizona and the City of Agoura Hills, California that hazards to occupants of vehicles and pedestrians have been or could be endangered by solicitation directed at occupants of moving vehicles and vehicles stopped at traffic lights, and that such solicitation also leads to traffic congestion, increased risk of accidents, delays and blocking of ingress and egress to properties adjacent to streets where such solicitation occurs. The City Council finds that the evidence before it demonstrates that such conduct can cause accidents, safety hazards to the solicitors themselves, traffic congestion, blocking of driveways, interference with passage on public sidewalks, streets and driveways which intersect with public streets and sidewalks, harassment and intimidation of pedestrians and occupants of vehicles, and other negative impacts which result from the conduct of drivers and solicitors and not from the content or viewpoint of any speech activity in which any of them may be engaged; and

WHEREAS, the City Council takes official notice of the fact that its solicitation ordinance has helped ameliorate the secondary effects of active solicitation conduct directed at or from moving vehicles and that reported incidents of traffic hazards and congestion and interference with egress and ingress, as well as harassment of pedestrians has decreased as a result of the ordinance; and

WHEREAS, the City Council declares that its intent in enacting the ordinance, and this revision thereto, is not to interfere with the exercise of first amendment rights of those who seek to enter into business transactions, obtain employment or seek solicitations of charitable or other contributions, but only to control the negative secondary effects of solicitation in a particular place and manner which causes those secondary effects; and

WHEREAS, the City Council finds and declares that the ordinance as enforced heretofore, and as amended herein, leaves open significant and reasonably available channels of communication to those who wish to communicate their desire to obtain employment, contributions or business, and to those who wish to make contributions, purchase goods and services, and hire those who are available for employment, including but not limited to the right to use door to door solicitation, telephone solicitation, mail solicitation, distribution of flyers or similar literature or advertisements, passive solicitation on City sidewalks directed at pedestrians and occupants of lawfully parked vehicles, distribution of flyers and similar materials to other pedestrians and occupants of lawfully parked vehicles, use of the City's Job Center and any other communication facilitation method which the City may hereafter implement, the availability of free employment placement services through the State of California Employment Development Department, job training and placement programs available through the Coast Community College District, private and non-profit job placement and employment services, and use of commercial parking lots

made available by property owners and tenants for exercise of first amendment rights, including such solicitation; and

WHEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 10, Chapter XIX, section 10-354 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 10-354. Prohibition of solicitation in public streets.

(a) It shall be unlawful for any person to stand on a street and actively solicit employment, business, or contributions from any person in a motor vehicle traveling along a street.

(b) It shall be unlawful for any person in a motor vehicle traveling along a street to solicit employment of any person standing on a street, to solicit from or make contributions to any such person, or to solicit or engage in a business transaction with such person.

(c) This section does not apply to freeway oriented solicitation prohibited by California Vehicle Code section 22520.5.

Section 2. Title 10, Chapter XIX, section 10-354.1 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 10-354.1. Prohibition of solicitation in commercial parking areas.

(a) No person in a commercial parking area shall solicit employment, business or contributions of money where the owner has posted a sign on the premises complying with this section giving notice of the prohibition. This prohibition does not apply to walkways, plazas, or other areas adjacent to a parking area which are primarily intended for the congregation of persons and communication between persons of any kind, does not apply to premises which are intended or required by law to be open to the public for communicative purposes pursuant to Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), and does not apply to only distribution of literature.

(b) The sign shall comply with each of the following requirements:

(1) Be posted in a conspicuous place making it easily viewable by persons entering or standing in the commercial parking area. Where necessary to be easily viewable due to the size or configuration of the area, more than one sign shall be posted.

(2) Have a size of not less than eighteen by twenty-four (24) inches and not exceeding a total area of six (6) square feet.

(3) Contain a notice with lettering not less than one (1) inch in height in substantially the following form:

"It is prohibited and illegal to solicit employment, business or contributions of money anywhere in this parking area without the owner's written authorization by order of the owner. CMMC 10-354.1"

The notice may be written in English or in English and Spanish, at the owner's discretion.

(c) Where a sign (or signs) is posted in a commercial parking area complying with this section, there is a presumption it was posted by the owner.

(d) An owner who has posted such a sign in a commercial parking area shall send written notification of the prohibition to the Chief of Police containing a map showing the legal boundaries of the owner's property and of the commercial parking area thereon and the name, address and telephone number of the owner or the owner's property manager agent.

Section 3. Title 10, Chapter XIX, section 10-354.2 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 10-354.2. Definitions.

As used in this chapter:

(1) *Actively solicit* shall mean solicitation accompanied by action intended to attract the attention of a person in a vehicle traveling in the street such as waving arms, making hand signals, shouting to someone in a traveling vehicle, jumping up and down, waving signs pointed so as to be readable by persons in traveling vehicles, quickly approaching nearer to vehicles which are not lawfully parked, and entering the roadway portion of a street. *Actively solicit* does not include peaceably standing on a sidewalk, or on a parkway on any street segment without a sidewalk, with a sign seeking employment, contributions or business; distribution of literature to pedestrians or occupants of legally parked vehicles; or verbally communicating desire or availability for employment, contributions or business to pedestrians or to persons in lawfully parked vehicles

(2) *Commercial parking area* shall mean privately owned property open to the public and used primarily for the parking of vehicles of customers, guests, and/or employees of nearby business establishments.

(3) *Curb* shall mean the lateral boundary of the roadway, whether or not such curb is marked by curbing construction; however, the word "curb" shall not include the line dividing the roadway of a street from parking strips in the center of a street, nor from tracks or rights-of-way of public utility companies.

(4) *Employment* shall mean and include services, industry or labor performed by a person for wages, or other compensation or under any contract of hire, written, oral, express or implied.

(5) *Median* shall mean a paved or planted area separating a street, or highway, into two (2) or more lanes or directions of travel.

(6) *Owner* shall mean the fee owner of a commercial parking area, the lessee of an entire commercial parking area, or the property manager agent of such fee owner or lessee.

(7) *Parkway* shall mean the area of a public street that lies between the curb and the adjacent property line or physical boundary definition (such as a sidewalk), which is used for landscaping and/or passive recreational purposes.

(8) *Sidewalk* shall mean that portion of the public right of way which is between the curbface and the parallel edge of the pavement furthest from the curb but still within the public right of way where the sidewalk is contiguous with the curb, or that portion of the public right of way which is a paved area between a parkway and adjacent private or public property, which is generally used by pedestrians and persons in non-motorized vehicles. Sidewalk does not include median.

(9) *Solicit* shall mean and include any request, offer, enticement, or action which announces the availability for or of employment, the sale of goods, or other request for funds; or any request, offer, enticement or action which seeks to purchase or secure goods or employment, or to make a contribution of money. As defined herein, a solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money takes place.

(10) *Street* shall mean all of the area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, medians, alleys, sidewalks, driveways, curbs, and public ways.

(11) *Traveling along a street* shall mean a vehicle being operated on a street, excluding vehicles lawfully parked at the edge of a street or temporarily, lawfully stopped at a marked passenger loading zone.

Section 4. Severability.

If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5. Effective Date and Publication.

The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect thirty (30) days after its final passage.

PASSED AND ADOPTED this ____ day of _____, 2005

Mayor

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk of the
City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 05-__ was introduced and considered section by section at a special meeting of said City Council held on the 26th day of April, 2005, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2005, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2005.

Deputy City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa