

**ORDINANCE NO. 1643**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SAN CLEMENTE, CALIFORNIA AMENDING  
CHAPTER 9.04 OF THE SAN CLEMENTE MUNICIPAL  
CODE (OFFENSES AGAINST PUBLIC PEACE AND  
DECENCY) TO PROHIBIT AGGRESSIVE SOLICITATION**

**WHEREAS**, it is the intent of the Council in enacting this Ordinance to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against certain abusive conduct of persons engaged in solicitation, by imposing reasonable manner and place restrictions on solicitation while respecting the constitutional rights of free speech for all citizens; and

**WHEREAS**, the Council finds that an increase in aggressive solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation and disorder; and

**WHEREAS**, the Orange County Sheriff's Department receives numerous calls for service relating to solicitation incidents within the City, many of which involve aggressive or dangerous behavior on the part of the solicitor or intimidation experienced by the target of the solicitation; and

**WHEREAS**, the Council finds that aggressive panhandling usually includes approaching or following pedestrians, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic; and

**WHEREAS**, motorists also find themselves confronted by persons who, without permission, wash their automobile windows at traffic intersections, despite explicit indications by drivers not to do so. Such activity often carries with it an implicit threat to both person and property. People driving or parking on city streets frequently find themselves faced with panhandlers seeking money by offering to perform "services" such as opening car doors or locating parking spaces; and

**WHEREAS**, this law is timely and appropriate because current laws and city regulations are insufficient to address the aforementioned problems. The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to serve a substantial governmental interest. Furthermore, in enacting this legislation, the Council recognizes the availability of community service and other sentencing alternatives, which may be appropriate remedies for violations of this law. The goal of this law is to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the City; and

**WHEREAS**, the City Council has reviewed and considered the agenda reports prepared in connection with those hearings, including the policy considerations discussed therein, and the written and oral testimony received in those hearings; and

**WHEREAS**, California Environmental Quality Act ("CEQA") Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a "project" as defined by the CEQA Guidelines (14 C.C.R. § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE DOES ORDAIN AS FOLLOWS:**

**Section 1.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**Section 2.** Municipal Code title 9 (Public Peace, Morals and Welfare), chapter 9.04 (Offenses Against Public Peace and Decency) is amended to add section 9.04.095 (Aggressive Solicitation) as follows:

**9.04.095 - Aggressive and other prohibited solicitation.**

- A. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section. When not inconsistent with the context, words used in the present tense include the future, words used in the singular form, include the plural form, and words used in the plural form include the singular form. The word "shall" is always mandatory and not merely directory.

"Public place" means a place where a governmental entity has title or to which the public or a substantial group of persons has access, including, but not limited to, any street, highway, parking lot, transportation facility, school, place of amusement, park, playground.

"Public transportation vehicle" means any vehicle, including a trailer bus, designed, used or maintained for carrying ten (10) or more persons, including the driver; or a passenger vehicle designed for carrying fewer than ten (10) persons, including the driver, and used to carry passengers for hire.

"Solicit" means using the spoken, written, or printed word, bodily gestures, signs, or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

- B. Prohibited solicitation.

1. Aggressive solicitation. No person shall solicit in an aggressive manner in any public place. A person solicits in

an aggressive manner by engaging in any of the following before, during, or after solicitation:

- a. Approaching, speaking to, or following a person, if that conduct is intended or is likely to cause a reasonable person to
  - i. Fear bodily harm to oneself or to another person, damage to or loss of property; or
  - ii. Otherwise be intimidated into giving money or other thing of value;
- b. Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent; or
- c. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact.

- 2. Public transportation vehicles. No person shall solicit in any public transportation vehicle.

- C. Nothing in this section shall be construed to prohibit the lawful vending of goods and services within such areas described herein.

**Section 3.** All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

**Section 4.** If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**Section 5.** Based upon all the evidence presented in the administrative record, including but not limited to the staff report for this Ordinance, the City Council hereby finds and determines that this Ordinance is not a "project" for purposes of CEQA and is exempt from further CEQA review pursuant to CEQA Guidelines sections 15378(b)(2) and 15378(b)(5).

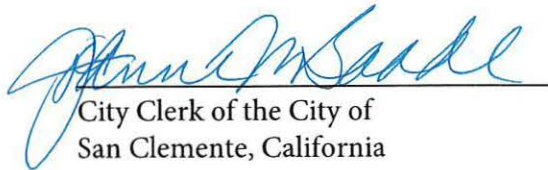
**Section 6.** The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

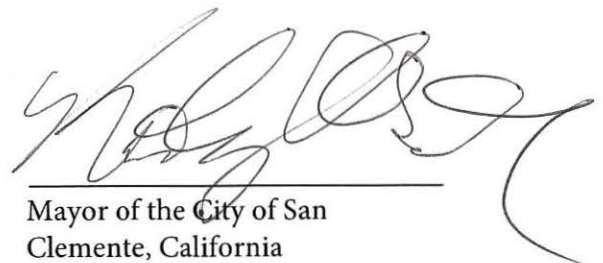
**Section 7.** The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at San Clemente City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

**Section 8.** The City Clerk shall certify the adopt of this ordinance and cause it, or a summary of it, to be published as required by law.

APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Clemente this 18th day of July, 2017.

ATTEST:

  
City Clerk of the City of  
San Clemente, California

  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA           )  
COUNTY OF ORANGE         ) ss.  
CITY OF SAN CLEMENTE       )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1643 having been regularly introduced at the meeting of June 20, 2017, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 18th day of July, 2017, and said ordinance was adopted by the following vote:

AYES:     BROWN, DONCHAK, HAMM, SWARTZ, MAYOR WARD

NOES:     NONE

ABSENT:   NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 26<sup>TH</sup> day of JULY, 2017.

  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

/s/ SCOTT SMITH  
CITY ATTORNEY

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