

ORDINANCE 2013-01

SHORT TITLE:

An ordinance amending Chapter 9.70 of the Provo City Code prohibiting certain forms of aggressive solicitation.

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	MOTION	SECOND	FOR	AGAINST	OTHER	
CW 1	LAURA H. CABANILLA			✓			
CW 2	GARY GARRETT		✓	✓			
CD 1	GARY WINTERTON			✓			
CD 2	RICHARD D. HEALEY	✓		✓			
CD 3	HAL MILLER			✓			
CD 4	KAY VAN BUREN			✓			
CD 5	STERLING BECK			✓			
				TOTALS	7	0	0

This ordinance was passed by the Municipal Council of Provo City, on the 8th day of January, 2013 on a roll call vote as described above. Signed this 8th day of January, 2013.


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 14th day of January, 2013.

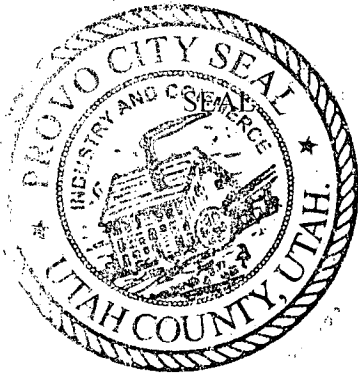

Mayor

ORDINANCE 2013-01

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was recorded in the office of the Provo City Recorder on the 22nd day of January 2013, with a short summary being published on the 19th day of January 2013, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2013-01.



Signed this 22nd day of January 2013.

Janeve Swiss
City Recorder

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ORDINANCE 2013-01.

AN ORDINANCE AMENDING CHAPTER 9.70 OF THE PROVO CITY CODE
PROHIBITING CERTAIN FORMS OF AGGRESSIVE SOLICITATION. (13-
002)

WHEREAS, aggressive solicitation is a problem within the City and includes conduct by solicitors who (i) repeatedly solicit despite refusals, (ii) use abusive or profane language to cause fear and intimidation, (iii) cause unwanted physical contact, or (iv) block pedestrian and vehicular traffic; and

WHEREAS, aggressive solicitation has become very disturbing and disruptive to residents and businesses, and has reduced the quality of life, and contributed to the loss of access and enjoyment of public places and to an increased sense of fear, intimidation and disorder; and

WHEREAS, it is proposed that an ordinance be adopted to regulate the conduct of aggressive solicitors; and

WHEREAS, on January 8, 2013, the Municipal Council held a duly noticed public meeting to ascertain the facts regarding this matter, which facts and comments are found in the meeting record; and

WHEREAS, the Municipal Council finds that individuals who aggressively solicit actions or money from persons (i) at or near banks or automated teller machines, (ii) in other public places, or on private property after being trespassed, (iii) in public transportation vehicles, or (iv) from persons in confined spaces, such as rest rooms, or in a motor vehicle stopped at drive up windows or traffic intersections, despite explicit indications not to solicit, are especially troublesome because of (i) the disruption to vehicular or pedestrian traffic, (ii) negative impact on businesses, and (iii) the implicit threat to both persons and property causing fear of violence; and

WHEREAS, the Municipal Council finds that aggressive solicitation in some cities has been linked to increased risk of robbery, harassment of pedestrians, unlicensed vending, loss of commercial traffic to businesses; and

WHEREAS, this ordinance is not intended to limit any persons from exercising Constitutional rights to solicit funds, picket, protest or engage in other constitutionally protected activity; rather, its objective is to establish reasonable limits on the time, place, and manner of certain kinds of solicitation in order to protect citizens from harassment, fear, intimidation, and criminal activity; and

WHEREAS, after considering the proposed ordinance, and facts and comments presented to the Municipal Council, the Council finds that the ordinance, as set forth below, reasonably furthers the health, safety and general welfare of the citizens of Provo City.

46 NOW THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as
47 follows:

48
49 PART I.

50
51 Chapter 9.70 of the Provo City Code is hereby amended as follows:

52
53 **Chapter 9.70. Aggressive Solicitation.**

- 54
55 9.70.010. Definitions.
56 9.70.020. Prohibited Acts.
57 9.70.030. Penalties.
58 9.70.040. Construction and Severability.
59

60 **9.70.010. Definitions.**

61 For the purposes of this Chapter the following definitions shall apply:

62 **“Aggressive manner”** means and includes:

63 (a) Intentionally or recklessly making any physical contact with or touching another
64 person in the course of the solicitation without the person’s consent;

65 (b) Following the person being solicited, if that conduct is:

66 (i) intended to or is likely to cause a reasonable person to fear imminent bodily
67 harm or the commission of a criminal act upon property in the person’s
68 possession; or

69 (ii) intended to, or is reasonably likely to, intimidate the person being solicited
70 into responding affirmatively to the solicitation;

71 (c) Continuing to solicit within five (5) feet of the person being solicited after the
72 solicited person has given a negative response, if continuing the solicitation is:

73 (i) intended to, or is likely to, cause a reasonable person to fear imminent bodily
74 harm or the commission of a criminal act upon property in the solicited person’s
75 possession; or

76 (ii) intended to, or is reasonably likely to, intimidate the person being solicited
77 into responding affirmatively to the solicitation;

78 (d) Intentionally or recklessly blocking the safe or free passage of the person being
79 solicited or requiring the solicited person ~~or the driver of a vehicle~~ to take evasive action
80 to avoid physical contact with the person making the solicitation;

81 (e) Intentionally or recklessly using obscene or abusive language or gestures that are:

82 (i) intended to, or likely to, cause a reasonable person to fear imminent bodily
83 harm or the commission of a criminal act upon property in the solicited person’s
84 possession; or

85 (ii) intended to, or is reasonably likely to, intimidate the person being solicited
86 into responding affirmatively to the solicitation; ~~and~~

87 (f) Approaching the person being solicited in a manner that is:

88 (i) intended to, or is likely to, cause a reasonable person to fear imminent bodily
89 harm or the commission of a criminal act upon property in the person’s
90 possession; or

91 (ii) intended to, or is reasonably likely to, intimidate the person being solicited into
92 responding affirmatively to the solicitation; ~~or~~ (g) Entering a street or roadway to solicit,
93 or soliciting in a manner that disrupts or impedes traffic, or creates a traffic safety hazard.

94 ~~“Automated Teller Machine” means a device, linked to a financial institution’s~~
95 ~~account records, which is able to carry out transactions, including but not limited to account~~
96 ~~transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.~~

97 ~~“Automated Teller Machine Facility” means the area comprised of one (1) or more~~
98 ~~automatic teller machines, and any adjacent space which is made available to banking customers~~
99 ~~after regular banking hours.~~

100 ~~“Bank” means any business establishment authorized to perform one (1) or more of the~~
101 ~~following services: receive and safeguard money and other valuables; lend money at an interest;~~
102 ~~execute bills of exchange, such as checks and drafts; purchase and exchange foreign currency;~~
103 ~~and issue notes of circulation or currency.~~

104 ~~“Check Cashing Business” means any person duly licensed by the superintendent of~~
105 ~~banks to engage in the business of cashing checks, drafts or money orders for consideration~~
106 ~~pursuant to the provisions of the banking laws.~~

107 ~~“Public Area” means an area to which the public or a substantial group of persons has~~
108 ~~access, and includes, but is not limited to, alleys, bridges, buildings, driveways, drive-up window~~
109 ~~areas, automated teller machine areas, parking lots, parks, playgrounds, plazas, sidewalks, rest~~
110 ~~rooms, and streets open to the general public, and the doorways and entrances to buildings and~~
111 ~~dwellings and the grounds enclosing them.~~

112 ~~“Solicit” means to request an immediate donation of money or other thing of value from~~
113 ~~another person, regardless of the solicitor’s purpose or intended use of the money or other thing~~
114 ~~of value; to request another person to purchase goods or services; or to request another person to~~
115 ~~perform any action requested by the solicitor, including but not limited to, listening to the~~
116 ~~solicitor’s message, or signing a petition. The solicitation may be, without limitation, by the~~
117 ~~spoken, written, or printed word, or by other means of communication.~~

118
119 **9.70.020. Prohibited Acts.**

120 (1) It shall be unlawful for any person to solicit, in an aggressive manner ~~money or other~~
121 ~~things of value, or to solicit the sale of goods or services:~~

122 (a) ~~In an aggressive manner in a public area;~~

123 (b) ~~In any public transportation vehicle or passenger terminal for such vehicles;~~

124 (c) ~~Within thirty (30) feet of any entrance or exit of any bank or check cashing~~
125 ~~business or within thirty (30) feet of any automated teller machine during the hours of~~
126 ~~operation of such bank, automated teller machine or check cashing business without the~~
127 ~~consent of the owner or other person legally in possession of such facilities;~~

128 (i) ~~When an automated teller machine is located within an automated teller~~
129 ~~machine facility, such distance shall be measured from the entrance or exit of the~~
130 ~~automated teller machine facility.~~

131 (d) ~~On private property if the person has been previously trespassed from the property, or~~
132 ~~if the owner, tenant, or lawful occupant has asked the person not to solicit on the~~
133 ~~property, or has posted a sign clearly indicating that solicitations are not welcome on the~~
134 ~~property;~~

135 (e) ~~From any operator or occupant of a motor vehicle that is in traffic on a public~~
136 ~~street, whether in exchange for: (i) cleaning the vehicle’s windows, (ii) blocking,~~

137 occupying, or reserving a public parking space, or (iii) directing the occupant to a public
138 parking space.

139 ~~(i) (This Subsection (e) shall not apply to services rendered in connection with
140 emergency repairs requested by the operator or passengers of a disabled vehicle.); or~~

141 ~~(f) From any person sitting in a parked motor vehicle, or in a public rest room, or
142 other confined space.~~

143 (2) It shall be unlawful to solicit, in an aggressive manner, from a person at a location or
144 time, not specified in (1) above, that would place any person in a reasonable fear of, or at
145 unreasonable risk for, injury to their person or damage to their property.
146

147 **9.70.030. Penalties.**

148 (1) A violation of this Chapter shall be a Class C Misdemeanor may be punishable by a
149 fine not to exceed ~~one seven~~ hundred fifty dollars (\$~~750~~100.00) or by imprisonment for a term
150 not to exceed ninety~~thirty~~ (90~~30~~) days, or by both. ~~If the person has been convicted of a violation~~
151 ~~of this Chapter within the previous one (1) year, the person shall be fined not more than two~~
152 ~~hundred and fifty (\$250.00) or imprisoned for not more than ninety (90) days, or both.~~

153 (2) ~~In lieu of, or in addition to the penalty provided in this Section, a person in violation~~
154 ~~of this Chapter may be required to perform community service work as described by a court of~~
155 ~~competent jurisdiction. (Enacted 1997-69)~~
156

157 **9.70.040. Construction and Severability.**

158 (1) Severability is intended throughout and within the provisions of the Chapter. If any
159 section, sentence, clause, or phrase of this Chapter is held invalid or unconstitutional by a court
160 of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the
161 remaining portions of this Chapter.

162 (2) This Chapter is not intended to prescribe any demand for payment for services
163 rendered or goods delivered.

164 (3) This Chapter is not intended to create a result through enforcement that is absurd,
165 impossible or unreasonable. The Chapter shall be held inapplicable in any such cases where its
166 application would be unconstitutional under the Constitution of the State of Utah or the
167 Constitution of the United States of America.
168

169 PART II.
170

171 A. If a provision of this Ordinance 2013-__ conflicts with a provision of a previously
172 adopted ordinance concerning the same title, chapter, and/or section number amended herein, the
173 provision in this ordinance shall prevail.
174

175 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to
176 be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid,
177 the remainder of the ordinance shall not be affected thereby.
178

179 C. The Municipal Council hereby directs that the official copy of the Provo City Code be
180 updated to reflect the provisions enacted by this ordinance.
181

182 D. This ordinance shall take effect immediately after being posted or published as

183 required by law.

184

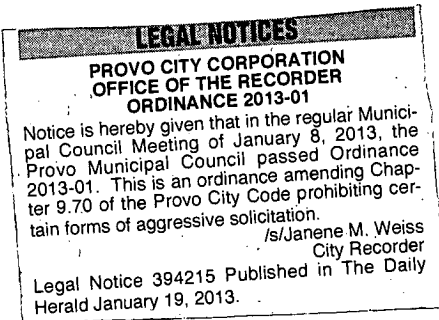
185 END OF ORDINANCE

PROOF OF PUBLICATION

from

The Daily Herald

STATE OF UTAH } SS.
Utah County }



I, Lisa Llewelyn, being first duly sworn depose and say that I am the Legal Billing Clerk of the Daily Herald, a newspaper of general circulation, published seven times each week at Provo, Utah, County of Utah; that the notice attached hereto, 394215- ORDINANCE 2013-01, and which is a copy, was published in said newspaper, the first publication having been made on the 19th day of January, 2013, and the last on the 19th day of January, 2013; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and the same was published in the newspaper proper and not in the supplement.

Same was also published online at utahlegals.com, according to Section 45-1-101, Utah Code Annotated beginning on the first date of publication and for 30 days thereafter.

Lisa Llewelyn

Subscribed and sworn before me this 21st day of January, 2013.

Debbie L Chandler

Notary Public

Residence: Debbie Chandler

My commission expires 06/05/2013

