

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1996**

No. 80

Introduced by Council Members Sabini, Leffler, the Speaker (Council Member Vallone), Council Members Eristoff, Pagan, Abel, Fossella, Albanese, Miller, Ognibene, Weiner, White, Koslowitz, Spigner, Fisher, DeMarco, McCaffrey, Dear, Lasher and Stabile (by the request of the Mayor).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to a prohibition against certain forms of aggressive solicitation.

Be it enacted by the Council as follows:

Section 1. Legislative findings. The council recognizes a constitutional right to beg or solicit in a peaceful and non-threatening manner. The council finds, however, 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.

Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. The council further finds that the presence of individuals who solicit money from persons at or near banks or automated teller machines is especially troublesome. 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 persons 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.

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 law is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Its goal is instead to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the city.

§2. The administrative code of the city of New York is amended by adding a new section 10-136 to read as follows:

§10-136 *Prohibition against certain forms of aggressive solicitation. a. Definitions. For purposes of this section:*

(1) "Aggressive manner" shall mean:

(a) *Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to (i) fear bodily harm to oneself or to another, damage to or loss of property, or the commission of any offense as defined in section ten of the penal law upon oneself or another, or (ii) otherwise be intimidated into giving money or other thing of value, or (iii) suffer unreasonable inconvenience, annoyance or alarm;*

(b) *Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;*

(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; or*

(d) *Using violent or threatening gestures toward a person solicited.*

(2) "Solicit, ask or beg" shall include using the spoken, written, or printed word, or 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.

(3) "Public place" shall mean a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any hallway, lobby and other portion of an apartment house or hotel not constituting a room or apartment designed for actual residence.

(4) "Bank" shall mean any banking corporation as defined in section 11-164 of the code.

(5) "Check cashing business" shall mean any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of article 9-A of the banking law.

(6) "Automated teller machine" shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(7) "Automated teller machine facility" shall mean the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

b. *Prohibited acts. (1) No person shall solicit, ask or beg in an aggressive manner in any public place.*

(2) *No person shall solicit, ask or beg within ten feet of any entrance or exit of any bank or check cashing business during its business hours or within ten feet of any automated teller machine during the time it is available for customers' use. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. Provided further that no person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.*

(3) No person shall approach an operator or other occupant of a motor vehicle while such vehicle is located on any street, for the purpose of either performing or offering to perform a service in connection with such vehicle or otherwise soliciting the sale of goods or services, if such approaching, performing, offering or soliciting is done in an aggressive manner as defined in paragraph one of subdivision a of this section. Provided, however, that this paragraph shall not apply to services rendered in connection with the lawful towing of such vehicle or in connection with emergency repairs requested by the operator or other occupant of such vehicle.

c. Exemptions. The provisions of this section shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

d. Penalties. Any violation of the provisions of this section shall constitute a misdemeanor punishable by imprisonment for not more than sixteen days or by a fine not to exceed one hundred dollars, or by both.

§3. This local law shall take effect 30 days after its enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on September 11, 1996, and approved by the Mayor on September 26, 1996.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 80 of 1996, Council Int. No. 456-B) contains the correct text and:

Received the following vote at the meeting of the New York City Council on September 11, 1996: 34 for, 12 against.

Was approved by the Mayor on September 26, 1996.

Was returned to the City Clerk on September 26, 1996.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel