

LEGAL TEXT OF PROPOSITION M

Ordinance repealing sections 120, 120-1 and 121 of the San Francisco Police Code regulating begging, aggressive solicitation and loitering near ATM machines and adding section 120-2 regulating aggressive solicitation, solicitation in certain areas and establishing a substance abuse and mental health diversion program for eligible violators.

Note: Additions are underlined.
Deletions are ~~strikethrough~~.

Be it ordained by the People of the City and County of San Francisco:

~~SEC. 120. BEGGING IN PUBLIC STREETS, ETC., PROHIBITED.~~

~~It shall be unlawful for any person to beg or practice begging in or on any public street or in any public place. (Added by Ord. 1,075, App. 10/11/38)~~

~~SEC. 120.1. AGGRESSIVE SOLICITING PROHIBITED.~~

~~(a) Findings. The people of the City and County of San Francisco find that aggressive solicitation for money directed at residents, visitors, and tourists in areas of the City open to the public imperils their safety and welfare. This conduct in turn jeopardizes the City's economy by discouraging visitors and prospective customers from coming to San Francisco for business, recreation, and shopping. This conduct also threatens to drive City residents out of the City for their recreational and shopping activities. Further, the people find that aggressive solicitation undermines the public's basic right to be in and enjoy public places without fear that they will be pursued by others seeking handouts. The people further find that no state laws address or protect the public from these problems.~~

~~(b) Prohibition. In the City and County of San Francisco, it shall be unlawful for any person on the streets, sidewalks, or other places open to the public, whether publicly or privately owned, including parks, to harass or hound another person for the purpose of inducing that person to give money or other thing of value.~~

~~(c) Definitions. For the purpose of this ordinance, an individual (solicitor) harasses or hounds another (solicitee) when the solicitor closely follows the solicitee and requests money or other thing of value, after the solicitee has expressly or impliedly made it known to the solicitor that the solicitee does not want to give money or other thing of value to the solicitor.~~

~~(d) Penalties.~~

~~(1) Any person violating any provision of this section shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the District Attorney. If charged as an infraction, upon conviction, the violator~~

~~shall be punished by a fine of not less than \$50 or more than \$100, and/or community service, for each provision violated. If charged as a misdemeanor, upon conviction, the violator shall be punished by a fine of not less than \$200 or more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. In any accusatory pleading charging a violation of this section, if the defendant has been previously convicted of a violation of this section, each such previous violation and conviction shall be charged in the accusatory pleading. Any person violating any provision of this section a second time within a thirty day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$300 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Any person violating any provision of this section a third time, and each subsequent time, within a thirty day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$400 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.~~

~~(e) Severability. If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any part thereof. The voters hereby declare that they would have adopted this Section notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words. (Added by Proposition J, 11/3/92)~~

~~SEC. 121. LOITERING AT OR NEAR CASH DISPENSING MACHINES PROHIBITED.~~

~~(a) Findings. The People of the City and County of San Francisco find that persons who loiter or linger at or near cash dispensing machines imperil the public's safety and welfare. Cash dispensing machines have become the site of robberies and assaults. Prohibiting loitering or lingering at or near such machines may decrease the incidence of these crimes by providing law enforcement officers with an additional crime fighting tool that does not infringe on any person's basic rights.~~

~~In addition, the People find that persons making legitimate use of cash dispensing machines have become intimidated and fearful for their safety because of the presence of persons loitering at or near the machines. No state law addresses this type of behavior or protects the public from these problems.~~

~~(b) Prohibition. In the City and County of~~

~~San Francisco, it shall be unlawful for any person to loiter or linger at or near any cash dispensing machine located on the exterior of any building.~~

~~(c) Definitions.~~

~~(1) For the purpose of this ordinance, a person loiters or lingers at or near a cash dispensing machine when the person remains within 30 feet of such a machine for a period of over one minute, while another person is conducting lawful business by using the cash dispensing machine.~~

~~(2) For the purpose of this ordinance, a cash dispensing machine is any machine at which a person may obtain cash by inserting a coded card. Cash dispensing machines include what are commonly referred to as automatic teller machines.~~

~~(d) Application. This ordinance is not intended to prohibit any person from engaging in any lawful business that must be conducted within 30 feet of a cash dispensing machine, such as (1) conducting a transaction at a cash dispensing machine; (2) waiting in line to conduct a transaction at a cash dispensing machine; (3) accompanying or assisting another person, with that person's permission, in conducting a transaction at a cash dispensing machine; or (4) activities such as waiting for a bus at a bus stop or waiting in line to enter a theater or other business where the bus stop or line is within 30 feet of a cash dispensing machine. Lawful business does not include any activity that can be conducted more than 30 feet from a cash dispensing machine.~~

~~Before any law enforcement officer may cite or arrest a person under this ordinance, the officer must warn the person that his or her conduct is in violation of this ordinance and must give the person an opportunity to comply with the provisions of this ordinance.~~

~~(e) Penalties.~~

~~(1) First Conviction. Any person violating any provision of this Section shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the District Attorney. If charged as an infraction, upon conviction, the violator shall be punished by a fine of not less than \$50 or more than \$100, and/or community service, for each provision violated. If charged as a misdemeanor, upon conviction, the violator shall be punished by a fine of not less than \$200 or more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.~~

~~(2) Subsequent Convictions. In any accusatory pleading charging a violation of this Section, if the defendant has been previously convicted of a violation of this Section, each~~

(Continued on next page)



LEGAL TEXT OF PROPOSITION M (CONTINUED)

~~such previous violation and conviction shall be charged in the accusatory pleading. Any person violating any provision of this Section a second time within a 30 day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$200 or more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Any person violating any provision of this Section a third time, and each subsequent time, within a 30 day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$400 and not more than \$500, and/or community service, for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.~~

~~(f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any part thereof. The People hereby declare that they would have adopted this Section notwithstanding the unconstitutionality, invalidity or ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words.~~

~~After July 1, 1995, the Board of Supervisors shall have the power to amend or repeal this Ordinance if the Board finds that such amendment or repeal is in the best interest of the People of the City and County of San Francisco. (Added by Proposition J, 6/7/94)~~

SEC. 120-2 Aggressive Solicitation Ban/Substance Abuse and Mental Health Diversion Program

(a) Findings

The people of San Francisco find that the problems of aggressive and improper solicitation are among the most difficult and vexing faced by the City and that prior approaches mostly have failed.

The people of San Francisco find that aggressive solicitation for money in public and private places threatens residents' and visitors' safety, privacy and quality of life. San Franciscans seek policies that preserve citizens' right to enjoy public spaces free from fear and harassment while protecting the free speech rights of individuals and groups, permitting appropriate and safe commercial activities of street artisans, performers and merchants and providing for the basic needs of indigent and vulnerable populations. Where appropriate, San Franciscans also seek to establish policies and programs that limit the ability of indigent and homeless substance abusers to use cash contributions for the purchase of alcohol and illegal drugs.

The people of San Francisco find that the City's existing laws regulating panhandling and

solicitation are outdated and unenforceable as a result of numerous court decisions and criminalize violators instead of diverting them to screening and assessment for eligibility in drug and alcohol dependency and mental health treatment programs.

The people of San Francisco find that people who aggressively or improperly solicit because of drug or alcohol dependency or mental illness should be diverted from the criminal court system to a program of screening, assessment and referral operated by the San Francisco Department of Public Health.

(b) Goals

This section: (1) replaces prior bans on panhandling, restrictions on aggressive solicitation, and solicitation near automatic teller machines (ATMs) rendered unenforceable by court rulings with a new aggressive solicitation prohibition; (2) establishes new specific prohibitions on solicitation near ATM machines, near residential property, in parking lots, on median strips and near freeway off-ramps and on the Municipal Railway and the BART system; (3) establishes a requirement that, as appropriate, violators of this ordinance be diverted from the criminal justice system to a screening and assessment program to identify candidates for alcohol and drug dependency treatment and mental health services administered by the Department of Public Health in order to clear their citations.

(c) 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 if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into giving money or other thing of value;

B. Continuing to solicit from a person after the person has given a negative response to such soliciting;

C. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;

D. 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;

E. Using violent or threatening gestures toward a person solicited; or

F. Following the person being solicited, with the intent of asking that person for money or other things of value.

2. "Soliciting" shall mean asking for money or objects of value, with the intention that the money or object be transferred at that time, and at that place. Soliciting shall include 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.

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

4. "Check cashing business" shall mean any person duly licensed by the Attorney General to engage in the business of cashing checks, drafts or money orders for consideration pursuant to Section 1789.31 of the California Civil Code.

5. "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.

6. "Automated teller machine facility" shall mean the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

(d) Prohibited acts

1. No person shall solicit in an aggressive manner in any public place.

2. No person shall solicit within twenty feet of any entrance or exit of any check cashing business or within twenty feet of any automated teller machine without the consent of the owner of the property or another person legally in possession of such facilities. 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 facility.

3. No person shall solicit an operator or other occupant of a motor vehicle while such vehicle is located on any street or highway on-ramp or off-ramp, for the purpose of performing or offering to perform a service in connection with such vehicle or otherwise soliciting donations or the sale of goods or services. Provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passenger of such vehicle.

4. No person shall solicit in any public transportation vehicle, or in any public or private parking lot or structure.

5. Before any law enforcement officer may cite or arrest a person under this ordinance, the officer must warn the person that his or her conduct is in violation of this ordinance and must give the person an opportunity to comply with the provisions of this ordinance.

(e) Penalties

Any person violating any provision of this section shall be guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the District Attorney. If charged

(Continued on next page)



LEGAL TEXT OF PROPOSITION M (CONTINUED)

as an infraction, upon conviction, the violator shall be punished by a fine not to exceed \$50, or by attending a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services. If charged as a misdemeanor, upon conviction, the violator shall be punished by a fine of not less than \$50 or more than \$100, and/or by attending a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services. Any person guilty of violating this ordinance three or more times in a twelve month period shall be guilty of a misdemeanor and shall be fined not less than \$300 or more than \$500, and/or referred to a screening, assessment and diversion program designed and administered by the Department of Public Health and approved by the San Francisco Public Health Commission to identify candidates for drug and alcohol dependency counseling and treatment and mental health services, and/or referred to a community service assignment, or imprisoned in the county jail for a period no longer than three months.

(f) Diversion Program

The Director of Public Health shall establish, administer and/or certify the assessment and screening programs set forth in subsection (e) of this section and shall establish guidelines for determining whether and under what circumstances violators may be eligible to participate in diversion programs. In addition, the Department of Public Health shall establish, administer and/or certify diversion programs appropriate for treatment of violators, and shall establish guidelines for determining whether the conditions of diversion have been satisfied. All rules and guidelines governing the diversion program shall be established by the Director of Public Health subject to the approval of the San Francisco Health Commission not later than six months after the Board of Supervisors has declared the results of the election at which this measure is passed. Individuals who are referred for treatment but fail to participate in such treatment shall be subject to the other penalties set forth in subsection (e) of this section.

(g) Effective Date

This law shall become effective six months after the Board of Supervisors has declared the results of the election at which this measure is passed.

(h) Severability

If any section, sentence, clause, or phrase of this law is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this law.

