

ORDINANCE NO. 07-5411

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING ARTICLE 18-1000 AND SECTION 18-1001; LIMITING PLACES FOR COMMERCIAL SOLICITATION; PROHIBITING AGGRESSIVE SOLICITATION, NIGHTTIME COMMERCIAL SOLICITATION, AND FALSE OR MISLEADING SOLICITATION; AND AMENDING THE PENALTY.

NOW, WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Article 18-1000 of the Billings, Montana City Code be amended so that such section shall read as follows:

ARTICLE 18-1000. AGGRESSIVE SOLICITATION

WHEREAS, the City of Billings wants to protect the well-being of its citizens, tourists and visitors and provide substantive services to those in need; and

WHEREAS, the City of Billings is a vital citizen, tourist, and visitor attraction area; and

WHEREAS, the City of Billings wants to protect and enhance the City's attractions to citizens, tourists and visitors; and

WHEREAS, the City of Billings wants to continue to attract businesses to, and retain the current businesses in Billings; and

WHEREAS, aggressive solicitation causes a sense of fear and intimidation, particularly at night or in confined areas; and

WHEREAS, aggressive solicitation, through solicitation despite refusals, obscene behavior and language, unwanted physical contact or obstruction of traffic, vehicular or pedestrian, creates fear in visitors and residents of Billings; and

WHEREAS, aggressive and commercial solicitation in Billings impacts tourism and retail business and causes a decrease in generated revenues to the City and its business community; and

WHEREAS, aggressive and commercial solicitation has a negative impact on the retention of businesses in Billings; and

WHEREAS, aggressive and commercial solicitation contributes to the negative perceptions of the City of Billings, which discourages tourism and retail and contributes to the lack of enjoyment of public places; and

WHEREAS, aggressive and commercial solicitation throughout Billings is a common presence, especially in the Central Business District, and disturbance to residents and businesses; and

WHEREAS, aggressive and commercial solicitation drives customers away from businesses in Billings, affecting business transactions and threatening potential economic growth; and

WHEREAS, in other cities that rely heavily on tourism for generating revenues, aggressive and commercial solicitation have been restricted; and

WHEREAS, the City is cognizant of the need to make available alternate channels for communication for commercial solicitation and will permit such activity as set forth below; and

WHEREAS, the City of Billings is sensitive to the plight of individuals who must commercially solicit and has been actively engaged in providing support services to address homelessness in Billings; and

WHEREAS, the City of Billings is committed to protecting the rights and freedoms of all, including the First Amendment rights, and

WHEREAS, with due regard to protecting the rights and freedoms of all, the City of Billings is also committed to providing a safe and livable community, and seeks to address the problems associated with commercial and aggressive solicitation.

Sec. 18-1001. Commercial Solicitation, Aggressive sSolicitation, and pPenalty.

~~(a) *Criminal offense.* A person commits the offense of aggressive solicitation if he knowingly disturbs the peace by aggressively soliciting.~~

(1) **Definitions:**

- a. "Commercial Solicitation" or "to commercially solicit" is any request made in person on a street, sidewalk, or public place, asking for an

immediate donation of money or other things of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation. Commercial Solicitation shall not include passively standing or sitting with a sign or other indication that one is seeking donations without addressing the request to any specific person.

~~Aggressively soliciting means to beg with the intent to intimidate another person into giving money or goods. It shall not include the act of passively standing or sitting with a sign or other indication that a donation is being sought, without any vocal request other than in response to an inquiry to another person.~~

~~Soliciting means to ask for money or goods as a charity, whether by words, bodily gestures, signs, or other means. (b~~

~~Intimidate means to engage in soliciting by following or pursuing a person, to continue to solicit a person who has made a negative response, either verbally or by physical sign, or to engage in other conduct that would cause a reasonable person to feel compelled or to be fearful.~~

- (2) **Commercial Solicitation in Certain Areas.** It shall be unlawful for any person to commercially solicit when the person solicited is in any of the following places within the City of Billings:
- a. On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;
 - b. Within 20 feet of the entrance to or exit from any public toilet facility, which includes any temporary use site (port-a-toilet);
 - c. Within 20 feet of an automatic teller machine (ATM), provided 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;
 - d. Within 20 feet of any parking lot pay box;
 - e. Within 20 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;
 - f. In any public transportation vehicle, or in any bus, or within 20 feet of any bus stop or taxi;
 - g. From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this paragraph shall not apply to services

rendered in connection with emergency repairs requested by the owner for passengers of such vehicle;

- h. In a parking lot or garage owned or operated by the City of Billings, including entryways or exits and pay stations connected therewith;
- i. Within 20 feet of any vendor's location when the vendor has a valid permit under Articles 19-400 or 7-1200 location.

(3) **Nighttime Commercial Solicitation.** It shall be unlawful for any person to commercially solicit after sunset and before sunrise.

(4) **Aggressive Solicitation.** It shall be unlawful for any person to commercially solicit in any of the following manners:

- a. By blocking the path of the person solicited; or
- b. By following or walking alongside the person solicited; or
- c. By using profane or abusive language, either during the solicitation or following refusal; or
- d. By accosting or forcing oneself upon the company of another;
- e. By continuing to solicit a person who has made a negative response, either verbally or by physical sign;
- f. By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.
- g. By engaging in any conduct that would cause a reasonable person to feel compelled or to be fearful.

(5) **False or misleading Solicitation.** It shall be unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

- a. Stating that the solicitor is from out of town and stranded when such is not true;
- b. Stating or suggesting falsely that the solicitor is either a present or former member of the armed service indicated;
- c. Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;
- d. Stating that the solicitor is homeless, when he or she is not.

(6) **Exemption.** The city council may by resolution temporarily suspend the requirements and restrictions imposed by this section in order to accommodate charitable fund raising events. The granting of such an exemption is

discretionary with the City Council, may include conditions, and is limited to a duration of 24 hours.

(7) *Penalty.* A person convicted of ~~aggressive solicitation~~ a violation of this section shall be punished by a fine of not more than \$500 or by imprisonment not to exceed 6 months, or by both such fine and imprisonment. ~~not to exceed one hundred dollars (\$100.00) or be imprisoned in the county jail for a term not to exceed three (3) days, or both.~~

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 23rd day of April, 2007.

PASSED, ADOPTED and APPROVED on second reading this 14th day of May, 2007.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____
Cari Martin, City Clerk