

Brother, Can You Spare A Dime?:
High Point's Aggressive Solicitation Ordinance
Legal Question of The Week
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Welcome to the Thanksgiving Edition of Legal Question of the Week! There will not be a legal update next Friday, as I will be too stuffed to extend my arms in order to type on the keyboard. Instead, in a tryptophan induced coma, I will relax comfortably in my easy chair with gravy still dripping from my chin thinking fondly of those crazy enough to venture out to the shopping centers on the busiest shopping day of the year.¹

Of course, with Thanksgiving upon us, we know that Christmas² is right around the corner. It is a season marked with joy, warmth, more turkey, and the spirit of generosity and goodwill towards your fellow men and women. So it is in keeping with this spirit that the High Point City Council has passed a new ordinance designed to stop people from harassing you for money as you merrily spend it all on Christmas presents that you don't need and can't afford anyway.

Our newest ordinance is Section 12-1-13 of the High Point City Code and is entitled "Aggressive Solicitation Prohibited." It went into effect immediately after the votes were cast this past Tuesday, and it not only prohibits "aggressive" solicitation, but also solicitation of any kind in certain places. It is now the law in the City of High Point and you need to know about it so that you can enforce it.

First, let's figure out what it means to "solicit." Under our new ordinance, solicit means "to request, by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered." To paraphrase all the lawyer-speak here, "solicit" means to ask for anything of value. It doesn't matter who you are, what you are asking for (as long as it has some value), why you are asking for it, or whether you are offering something in return. A Southside prostitute solicits, a

¹ Recently referred to as "Black Friday," the Friday after Thanksgiving is the busiest shopping day of the year. If you ever see me shopping on Black Friday, take me immediately to HP Regional for a Psych evaluation. I'd rather spend 21 straight days in jury selection or practice tax law than go shopping on the day after Thanksgiving.

² "Or your winter holiday of choice." Sincerely, the Political Correctness Police.

Salvation Army bell-ringer solicits, a panhandler solicits, a carnival barker³ solicits, a Furniture Market shoe-shine boy solicits, and so on, and so on.

BUT LISTEN UP! SOLICITING IS NOT ILLEGAL! WHAT IS ILLEGAL IS DOING IT “AGGRESSIVELY” OR IN A CERTAIN LOCATION! Please reread those last two sentences several times, then close your eyes and repeat them to yourself. Got it? Okay, let’s move on...

High Point’s new ordinance makes it illegal to solicit in the following places:

1. In a bus.⁴
2. At a bus station.
3. At a bus stop.
4. At a facility operated by a transportation authority for passengers.⁵
5. Within 25 feet of an ATM or group of ATMs or any adjacent space made available to banking customers.⁶
6. Within 25 feet of the entrance or exit of a bank.
7. Within 25 feet of the entrance or exit of a check cashing business.⁷
8. At a marked crosswalk.
9. On either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit.⁸

Keep in mind that for these nine locations, ALL solicitation is prohibited whether it is done aggressively, cavalierly, nonchalantly, passively, weakly, ineffectively, or quietly. The Salvation Army cannot set up their bell and kettle at a bus stop or within 25 feet of an ATM, for example.

Now that we know what it means to “solicit” and the locations where we can’t solicit at all, under any circumstances, let’s get to the aggressive solicitation part. The new ordinance bans soliciting “in an aggressive manner in a public area.” Apparently

³ He shouts to you as you walk by trying to persuade you to try his game of chance. "C'mon, win the lady a prize! Just 50 cents to play! Everyone's a winner!" So you lay down your quarters and throw the softball at the cement laden milk bottles that a bowling ball couldn't knock over, and sheepishly collect your little plastic bear as your consolation prize. It was the lure of the giant stuffed bear that you could have won for a mere 50 cents that got you to challenge the odds. Instead, your girlfriend leaves you like the loser you are. But I'm not bitter.

⁴ Bus means a vehicle operated by a transit authority for public transportation. This would not include a school bus. Ditto for bus station and bus stop.

⁵ This would include airports, bus depots, train stations, and of course, the High Point subway system (coming soon!)

⁶ This is called an automated teller facility by the ordinance, but that’s what it means.

⁷ This is defined in the ordinance as “a person in the business of cashing checks, drafts, or money orders for consideration.” It is not clear how broad this will be interpreted, but I think the best way of reading it is to include any business who will allow you to present a check, draft, or money order and give you cash for it regardless if you have purchased something from the business. If you have to purchase something and then write a check for more than the actual purchase to get money back, I don’t think it qualifies. The courts may have a different view on this, but that’s my legal opinion.

⁸ Of these nine locations, the ordinance states that this one is the only one requiring a culpable mental state. Again, it is unclear, but I think this means that you would have to prove the offender knew that there was a school or child-care facility in that block. As you can imagine, this particular item is going to cover a pretty big piece of territory.

there is no prohibition on soliciting your wife in the privacy of your home, or even someone else's home, or someone else's wife.⁹ A public area is defined in the ordinance as "an outdoor area to which the public has access." Since it has to be an outdoor area, aggressive solicitation inside the mall, for instance, is not a violation of this statute, although it may be a violation of mall rules, leading them to ban them from the mall and subjecting them to trespass prosecution. The ordinance specifically mentions sidewalks, streets, highways, parks, parking lots, alleyways, pedestrian ways, or the common area of a school, hospital, apartment house, office building, transport facility, or shop as examples of public areas.

Solicitation is still permissible in public areas so long as it is not done "aggressively." What makes solicitation aggressive? I'm glad you asked. Aggressive solicitation features one or more of the following:

1. Intentional or reckless touching of another person without consent.¹⁰
2. Continuing to solicit a person within five feet of the solicitee¹¹ after the solicitee has declined to contribute. "No" means "no."
3. Blocking the safe or free passage of the solicitee or requiring the person (or driver, if in a car) to take evasive action to avoid physical contact.
4. Using obscene or abusive language or gestures toward the solicitee.
5. Following or approaching the solicitee in a manner that is intended or reasonably likely to either cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the solicitee's possession or to intimidate the solicitee into responding affirmatively to the solicitation. In other words, being aggressive.

To sum up, solicitation is prohibited only if it meets one of the above requirements for aggressiveness or if it is done in a location that is prohibited by the ordinance. Violation of the aggressive solicitation ordinance is a Class 3 Misdemeanor punishable by a fine of up to \$500.00.

Two final notes before I wrap this up. First, the ordinance specifically states that it is not intended to prohibit a demand for payment for services rendered or goods delivered. Chasing a shoplifter down the street and telling him to pay up is not aggressive solicitation. Demanding someone pay for the hot dog you just sold them off of your hot dog stand is not aggressive solicitation. Standing over someone and threatening them with harm unless they give you a dollar is aggressive solicitation.¹²

⁹ I'm talking about asking for money here. What were you thinking?

¹⁰ One of the best lines I heard at the City Council meeting when this ordinance was passed came from a concerned citizen who asked, "What is reckless touching, anyway?" I don't have a good answer for that. Legally, I think any unwanted touching, whether intentional or unintentional, would trigger this ordinance.

¹¹ Solicitee = person being solicited

¹² It would also be Common Law Robbery. Don't forget to charge this when appropriate. I think I would rather prosecute a Class G felony than a City Ordinance violation and it might mean a little more to the offender.

Second, remember that this is a misdemeanor and you cannot arrest someone for committing a misdemeanor that occurred outside your presence unless an exception to this rule applies. Therefore, if you are called to the scene and actually observe the aggressive solicitation taking place, you have the option to arrest as you deem proper. If you don't observe it, you may advise the complainant to go swear out a warrant or you may write a citation for the violation if you have probable cause. I would imagine that if you take your time, you will have an opportunity to see the crime taking place. You may also tell the suspect to leave and evaluate him or her for a trespass charge if they fail to do so.

As always, feel free to call or email me with questions. Hopefully this ordinance will be a useful tool to help people feel safer in High Point. Now pass the turkey and mashed potatoes. Please.

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APPENDIX A

Sec. 12-1-13. Aggressive Solicitation Prohibited.

(A) The council finds that:

- (1) Aggressive solicitation is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder.
- (2) Aggressive solicitation includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic.
- (3) The presence of individuals who solicit money from persons at or near banks, automated teller machines, public transportation facilities, and crosswalks is especially troublesome because of the enhanced fear of crime in a place that is confined, difficult to avoid, or where a person might find it necessary to wait.
- (4) This section is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation, and not to limit a constitutionally protected activity.

(B) In this section:

- (1) **AGGRESSIVE MANNER** means:
 - (a) intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
 - (b) following the person being solicited, if that conduct is:
 - (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - (ii) intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (c) continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
 - (d) intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
 - (e) using obscene or abusive language or gestures toward the person being solicited;
 - (f) approaching the person being solicited in a manner that:
 - (i) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (2) **AUTOMATED TELLER MACHINE** means a device, linked to a bank's account records, which is able to carry out banking transactions.
- (3) **AUTOMATED TELLER FACILITY** means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.
- (4) **BANK** includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.
- (5) **BUS** means a vehicle operated by a transit authority for public transportation.
- (6) **CHECK CASHING BUSINESS** means a person in the business of cashing checks, drafts, or money orders for consideration.
- (7) **PUBLIC AREA** means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.
- (8) **SOLICIT** means to request, by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value

from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

- (C) A person commits an offense if the person solicits:
 - (1) in an aggressive manner in a public area;
 - (2) in a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;
 - (3) within 25 feet of
 - (a) an automated teller facility;
 - (b) the entrance or exit of a bank; or
 - (c) the entrance or exit of a check cashing business; or
 - (4) at a marked crosswalk.
 - (5) on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
- (D) A culpable mental state is not required, and need not be proved, for an offense under Subsection (C)(2), (3), or (4).
- (E) This section is not intended to proscribe a demand for payment for services rendered or goods delivered.
- (F) Violation of this section is a misdemeanor, punishable by a fine of up to five hundred dollars (\$500.00)