



# Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: September 13, 2004

FROM: CITY ATTORNEY

SUBJECT: AMENDMENT OF VEHICLE SOLICITATION ORDINANCE TO PROHIBIT SOLICITATION IN UNAUTHORIZED LOCATIONS WITHIN COMMERCIAL PARKING AREAS

**TITLE OF PROPOSED ORDINANCE:**

AN ORDINANCE OF THE CITY OF PASADENA AMENDING VARIOUS SECTIONS IN CHAPTER 10.39 OF THE PASADENA MUNICIPAL CODE AND ADDING A NEW SECTION 10.39.031 PROHIBITING VEHICLE SOLICITATION IN UNAUTHORIZED LOCATIONS WITHIN COMMERCIAL PARKING AREAS

**PURPOSE OF THE ORDINANCE:**

The purpose of this ordinance is to add “commercial parking areas” to the locations covered by the City’s Vehicle Solicitation Ordinance.

**REASON WHY THIS LEGISLATION IS NEEDED:**

On April 26, 2004, the City Council directed the City Attorney to prepare an ordinance amending the municipal code to prohibit vehicle solicitation in unauthorized locations within commercial parking areas. An ordinance is necessary to amend the Vehicle Solicitation Ordinance pursuant to Section 505 of the City Charter.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

This ordinance shall impact business owners with commercial parking areas in posted "No Vehicle Solicitation Zones," and staff in the Police Department and Northwest Programs.

FISCAL IMPLICATIONS:

This amendment is an additional effort to eliminate hazardous traffic conditions created by drivers transacting temporary employment relationships in commercial parking areas.

POLICY CHANGE:

This amendment does not represent a policy change.

Respectfully submitted,

*Carolyn Y. Williams*  
for Michele Beal Bagneris  
City Attorney

Concurrence:

*Cynthia J. Kurtz*  
Cynthia J. Kurtz  
City Manager

Prepared by:

*Carolyn Y. Williams*  
Carolyn Y. Williams  
Asst. City Attorney

**CITY OF PASADENA**

**MEMORANDUM**

**TO:** City Council through the Economic Development & Technology Committee  
**FROM:** Michele Beal Bagneris, City Attorney (CMB)  
**DATE:** September 13, 2004  
**RE:** No Vehicle Solicitation Ordinance Questions

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This memorandum responds to various questions which we understand the Committee raised regarding the No Vehicle Solicitation Ordinance ("the Ordinance"). We will bring the proposed ordinance regarding prohibitions in commercial parking lots to the City Council at its meeting of September 13, 2004.

**Question 1.** May the City include language in city contracts which provides for termination of the contract when municipal laws are violated, including violation of the Ordinance?

**Response 1.** Yes, the City may include language in city contracts which provides that violation of local laws may constitute grounds for termination of the contract. Following are two standard terms in most city contracts:

**COMPLIANCE WITH LAWS:** Contractor shall comply with all Federal, State, County and City laws, ordinances, rules and regulations, which are, as amended from time to time, incorporated herein and applicable to the performance hereof, including, but without limitation, the Pasadena Living Wage Ordinance.

**DEFAULT:** In the event either party materially defaults in its obligations hereunder, the other party may declare a default and terminate this contract by written notice to the defaulting party. The notice shall specify the basis for the default. The contract shall terminate unless such default is cured before the effective date of termination stated in such notice, which date shall be no sooner than ten (10) days after the date of the notice.

To follow-up on a subsequent and related question from the Ed Tech Committee, the City could send notices to existing contractors reminding them of these two contractual provisions, and stating that violation of the No Vehicle Solicitation Ordinance could provide grounds for termination of their contracts with the City.

**Question 2:** May the City revoke someone's business license because that person violated the Ordinance?

**Response 2:** The City's business license code provides that Chapters 5.04 through 5.16 (covering fees for miscellaneous businesses) "are *enacted solely to raise revenue* for municipal purposes and are *not intended for regulation.*" Business licenses for contractors and related activity are not regulatory licenses under the City's municipal code. Consequently, an entity's business license could not be revoked based on a violation of the of the No Vehicle Solicitation Ordinance.

**Question 3.** Does the City have a stronger basis to regulate solicitations for business within residentially zoned areas than in commercial areas?

**Response 3.** Case authority suggests that regulation of commercial activity in residential neighborhoods provides a basis for the City exercising greater controls and imposing greater regulations and restrictions when such activity is conducted in residential areas, when compared to commercial areas. This conclusion is supported by the court's decision in *City of Glendale v. George*, 256 Cal. Rptr. 742 (1989), with regard to protection of First Amendment activity in residential neighborhoods:

"And where the First Amendment activity impinges upon the peaceful enjoyment by others of their homes in a residential neighborhood, the state may impose reasonable time, place and manner restrictions to advance *the compelling interest of preserving the integrity of such a neighborhood.*" *Id.* at p. 746.

**Question 4.** May the City require organizations that distribute disposable paper goods to the public to inscribe their logos on the paper goods to enable greater enforcement of litter laws.

**Response 4.** It is not clear whether the City may require organizations (including non-profit, First Amendment protected organizations) to inscribe their logos on materials handed out free of charge in public areas. Case authority suggests that reasonable regulations may be imposed on those distributing materials in public. However, there is no authority on point which addresses the ability of the City to impose such a requirement. It is possible that such a requirement may survive a legal challenge if the requirement is narrowly tailored, and the least restrictive means of addressing and preventing an identified littering problem. However, the City should attempt other means of addressing and preventing a littering problem identified in particular areas before imposing such a requirement which arguably has First Amendment implications.

The Environmental Health Division of the City's Public Health Department has stated that the Health Code regulates the activity of an entity engaged in the retail sale of food items, but not one merely distributing coffee and doughnuts gratis. However, if someone became ill from an item distributed in a free food program, the Division would initiate an enforcement action based on its duty to protect the public health.

Please do not hesitate to contact the City Attorney's Office if you have further questions.

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Introduced by \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PASADENA AMENDING  
VARIOUS SECTIONS OF CHAPTER 10.39 OF THE PASADENA MUNICIPAL  
CODE AND ADDING A NEW SECTION 10.39.031 PROHIBITING VEHICLE  
SOLICITATION IN UNAUTHORIZED LOCATIONS WITHIN COMMERCIAL  
PARKING AREAS**

The People of the City of Pasadena ordain as follows:

**SECTION 1.** Based on staff's receipt of community complaints regarding unsafe conditions created by employment solicitation activities in various streets of the City; staff meetings with impacted residents and business owners; staff meetings with representatives of the Pasadena Community Job Center; and information gathered at public meetings before the Economic Development and Technology Committee on April 21, 2004, and the Pasadena City Council on April 26, 2004, the City Council finds and declares:

1. Commercial parking areas within the City are for the purpose of parking, placing or stationing a vehicle for the benefit of the public, clients, customers, members and occupants of the adjoining commercial premises.
2. Groups of men daily congregate near the driveway or in the parking areas of some commercial establishments to await drivers soliciting temporary workers.
3. The use of commercial parking areas for the solicitation of workers in unauthorized locations results in interference with the intended use of the parking area because of the vehicle congestion in such area caused by vehicles whose occupants bargain and temporarily stop to negotiate with potential workers.

4. Commercial parking areas have limited accessibility to inbound and outbound traffic through their driveways. The commercial activity occurring between vehicle occupant and worker limits such driveway access because of the blockage and congestion of such driveways by vehicles whose occupants stop to bargain or negotiate with persons seeking employment.

5. The public has a substantial interest in promoting the public safety of persons using commercial parking areas by prohibiting drivers of vehicles from soliciting workers within such parking areas when appropriately posted by the property owners.

6. Motorists who stop in restricted commercial parking areas obstruct the free flow of vehicular traffic.

7. Prohibiting activities which occur in the path of cars, trucks, and buses further public safety, constituting a reasonable place restriction.

**SECTION 2.** Section 10.39.020 is amended to add a new subsection G to read as follows:

“G. ‘Commercial parking area’ shall mean privately owned property which is designed or used primarily for the parking of vehicles and which adjoins one or more commercial establishments.”

**SECTION 3.** Chapter 10.39 of the Pasadena Municipal Code is amended to add a new Section 10.39.031 to read as follows:

**Section 10.39.031** Prohibition of vehicle solicitation in unauthorized locations of commercial parking areas.

A. It shall be unlawful for any driver or occupant of a vehicle located on

private property, including a private driveway, private parking facility or private entrance way, to solicit or attempt to solicit any person in such a manner as to disrupt the flow of vehicular traffic on a public right-of-way located within a no vehicle solicitation zone.

B. It shall be unlawful for any motorist to solicit or attempt to solicit any other person within a commercial parking area other than an area within or served by such parking area which is authorized by the property owner or the property owner's representative for such solicitation. This section shall not apply to solicitation to perform employment or business for the owner or lawful tenants of the subject premises.

C. The owner or person in lawful possession of the commercial parking area shall cause a notice to be posted in a conspicuous place at each entrance to such commercial parking area not less than 18' x 24' in size, with lettering not less than one inch in height and not to exceed in total area six (6) square feet. The notice shall be in substantially the following form:

IT IS UNLAWFUL AND AN INFRACTION UNDER THE  
MUNICIPAL CODE TO ENGAGE IN THE SOLICITATION  
OF EMPLOYMENT IN AREAS OF THIS COMMERCIAL  
PARKING LOT WHICH **ARE NOT** APPROVED FOR SUCH  
ACTIVITY BY THE PROPERTY OWNER, OTHER THAN  
TO PERFORM EMPLOYMENT OR BUSINESS FOR THE  
OWNER OR LAWFUL TENANTS OF THE PREMISES.”

**SECTION 4.** Section 10.39.050 is hereby amended to read:



**"10.39.050 Fines and penalty - Infraction.**

Violation of Section 10.39.030 or Section 10.39.031 of this chapter is hereby deemed to be an infraction and is punishable by fines and penalties as set forth in California Government Code Section 36900 and California Penal Code Section 1464."

**SECTION 5.** This ordinance shall take effect thirty (30) days after publication.

Signed and approved this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
Bill Bogaard  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting of \_\_\_\_\_, 2004, by the following vote:

AYES:

NOES:

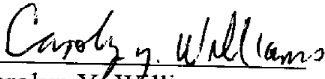
ABSENT:

ABSTAIN:

Published:

\_\_\_\_\_  
Jane Rodriguez  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Carolyn Y. Williams  
Asst. City Attorney