

Draft 11-15-2013

ORDINANCE NUMBER _____

An ordinance of the Missoula City Council amending Missoula Municipal Code Title 9, entitled "Public Peace, Morals and Welfare," Chapter 9.34 entitled "Pedestrian Interference" and Chapter 9.36 entitled "Solicitation and Aggressive Solicitation as Acts of Disorderly Conduct" by amending Sections 9.34.020, 9.34.030, 9.34.040, and 9.36.050 by making all distances a uniform 20 feet, prohibiting sitting, sleeping or lying on a sidewalk in the Downtown Business Improvement District between 6 am and 11 pm, prohibiting sitting, sleeping, lying, on or within 20 feet of the entrance/exit of a pedestrian footbridge or pedestrian tunnel, and prohibiting soliciting within 20 feet of the entrance/exit to any pedestrian footbridge or pedestrian tunnel.

Be it ordained by the Missoula City Council that Title 9, Chapter 9.34, Sections 9.34.020, 9.34.030 and 9.34.040 and Chapter 9.36, Section 9.36.050 be amended as follows:

**Title 9
Public Peace, Morals and Welfare**

Section 1.

9.34.020 Purposes. The purpose of this chapter is to protect the health, safety and welfare of the citizens of and visitors to the city by prohibiting acts of aggression or interference towards pedestrians. This includes prohibiting actions that intentionally obstruct pedestrian passage on public bridges, streets, sidewalks, parks and other publicly held or owned lands. The city council declares that such prohibitions are necessary and desirable for the following reasons:

A. The city deems it necessary to find solutions to make it easier for the city's diverse residents and visitors to share public areas.

B. The city deems it necessary to find solutions to encourage courteous behavior of people in order to promote greater tolerance and civility towards each other while narrowly defining unacceptable behaviors.

C. Records kept by the Downtown Business Improvement District of Missoula (BID) show there has been an increase in the number of persons interfering with, obstructing, harassing, threatening and intimidating other pedestrians on city streets in recent years, many of whom are wearing or carrying weapons or who are more aggressive or intimidating in their conduct. This conduct has been either related to obstruction of pedestrian passage or soliciting of pedestrians;

D. The police department and other city offices have received complaints from citizens complaining that they are afraid to walk, or as business people, are afraid to allow their customers to walk on downtown city streets and riverfront walkways as a result of the aggressive, intimidating conduct of persons soliciting and/or conduct of persons harassing, intimidating, interfering with, obstructing or accosting pedestrians or people in public places;

E. The city deems it necessary to protect the rights of its citizens and visitors to move openly and freely on the city streets, sidewalks, walkways, parks and other public places without fear of being harassed, interfered with, obstructed, accosted, intimidated, injured or robbed by aggressive individuals interfering with their passage; and

F. The city deems it necessary to protect pedestrians, in public places on public property from obstruction, interference, intimidation, harassment, damage or injury caused or partially attributable to being accosted, harassed, interfered with or obstructed by any person, especially someone with a weapon.

Section 2.

9.34.030 Definitions. The following definitions shall apply to the provisions of this chapter.

A. "Accost" means physically approaching or, when in close proximity to an individual, speaking to that individual in such a manner as would cause a reasonable person to fear imminent bodily harm or fear endangerment that the commission of a criminal act upon his or her person, or upon property in his or her immediate possession, may be about to be committed by the accoster. "Accost" does not include passive, nonobstructive speech or conduct while standing or sitting along the side of a sidewalk or walkway if it does not physically obstruct pedestrians.

B. "Harass" means words, conduct, or actions directed toward another which would reasonably be expected to annoy, alarm, or cause emotional distress. Repeated or persistent harassment of individuals in a similar circumstance infers intent to harass the individual subjected to the behavior described.

C. "Intimidate" means to engage in conduct which would make a reasonable person fearful of imminent harm to his person or property or feel threatened.

D. "Knowingly" means a person acts knowingly with respect to conduct or to a circumstance described by an ordinance defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by an ordinance defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

E. "Obstruct" means to walk, stand, sit, lie or place an object in such a manner as to impair, hinder or block passage by another person or to require another person to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest shall not constitute obstruction of or interference with pedestrian traffic.

F. "Public Place" means a place to which the public or a substantial group of people has access.

G. "Purposely" means a person acts purposely with respect to a result or to conduct described by an ordinance defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

H. "Sit" means to be in a position in which your bottom is resting on a chair, the ground, etc. with your back upright.

I. "Weapon" means any firearm, knife, sword, club or any other object used as a weapon by the offender when violating the provisions of this chapter.

Section 3.

9.34.040 Prohibited conduct. The following conduct or action is prohibited pursuant to the city of Missoula "Pedestrian Interference Act" and is considered to be a violation of this chapter.

A. It is unlawful for any person to sit, lie or sleep on a sidewalk within twenty (20) ~~twelve (12)~~ feet of an entrance to a building, or to sit, lie or sleep upon any street or alley, within the city limits.

B. It is unlawful for any person to sit, lie or sleep on a public sidewalk, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk during the hours between 6:00 am and 11:00 pm in the Downtown Business Improvement District of Missoula;

A- C. It is unlawful for any person to sit, lie, or sleep on, or within twenty (20) feet of any entrance/exit to, any pedestrian footbridge or pedestrian tunnel, including but not limited to the Van Buren Street,

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Madison Street, California Street and North-Side pedestrian foot bridges and the Orange Street and Reserve Street pedestrian tunnels.

~~B. D.~~ It is unlawful for any person to walk, stand, sit or place an object in such a manner which obstructs or hinders passage of pedestrians on any street crosswalk, sidewalk or other public right-of-way by leaving less than six contiguous feet (6') of clear right-of-way for pedestrian passage for sidewalks that are twelve feet or wider in width, and no less than fifty percent (50%) of the sidewalk width for clear right-of-way for pedestrian passage on sidewalks within the city limits

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~~C. E.~~ It is unlawful for any person on a public bridge, sidewalk, walkway, park or any other publicly held or owned land to purposely or knowingly harass or intimidate another person as defined herein.

~~D. F.~~ Exceptions. The prohibition in Section 9.34.040(B) shall not apply to any person:

1. Sitting or lying down on a public sidewalk due to a medical emergency;
2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk;
3. Operating or patronizing a business which has permission to occupy the sidewalk; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to special event or other permit;
4. Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
5. Sitting on a public sidewalk within a bus stop zoned while waiting for public or private transportation.
6. Engaging in constitutionally protected expressive activities which would otherwise be unreasonably restricted by the limitations in Subsections A, B and C of this section.

Section 4.

9.36.050 Soliciting in Certain Places. It shall be unlawful for any person to solicit in the following places:

A. Banks and ATM's. No person shall solicit within twenty (20) feet of any entrance or exit of any check cashing business or bank, or within twenty feet of any automated teller machine. Provided, however, that when an automated teller machine is located within a building or facility, such distance shall be measured from the entrance or exit of the facility;

B. Motor Vehicles and Parking Lots.

1. No persons shall solicit from any operator or occupant of a motor vehicle while such vehicle is located on any street or highway 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.

2. No person shall solicit in any public transportation vehicle, within 20 feet of any bus or bus station or stop, in any public or private parking lot or structure, or within twenty (20) feet of any parking lot pay box.

C. No person shall solicit within ~~six (6)~~twenty (20) feet of an entrance to a building;

D. No person shall solicit within twenty (20) feet of any outdoor patio or sidewalk café where food or drink is served.

E. No person shall solicit after dark, which shall mean one-half hour after sunset until one-half hour before sunrise;

F. No person shall solicit within twenty (20) feet of any vendor's location when the vendor has a valid permit.

G. No person shall solicit within twenty (20) feet of any pay telephone.

H. No person shall solicit within twenty (20) feet of the entrance to or exit from any public toilet facility, which includes any temporary use site (port-a-toilet).

I. No person shall solicit on, or within twenty (20) feet of any entrance/exit to, any pedestrian foot bridge or pedestrian tunnel, including but not limited to the Van Buren Street, Madison Street, California Street and North-Side pedestrian foot bridges and the Orange Street and Reserve Street pedestrian tunnels.

J. No person shall solicit on private or residential property after having been asked to leave or asked to refrain from soliciting by the owner or other person lawfully in possession of such property.

K. Exemption. A validly obtained Special Events Permit may provide an exemption to the provisions of this section. A Special Events permit may be obtained pursuant to Title 12, Chapter 58 of the Missoula Municipal Code.

Section 5.

Enforcement. During the first ninety (90) days after adoption of this ordinance, city law enforcement shall only issue warnings for a violation of Subsection 9.34.040(B). All other violations shall be enforced upon adoption of this Ordinance.

Section 6.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and final adoption on the _____ day of _____, 2013, by a vote of _____

Second reading and adoption on the _____ day of _____, 2013, by a vote of _____.

PASSED by a vote Ayes, Nay 0 Abstentions and Absent; and

APPROVED on this ____th day of November, 2013 as shown above.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

(SEAL)

