

Ordinance No. 2024-__

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ENACTING TOWN CODE SECTION 10-01-170 “PROHIBITED SOLICITATION” IN ARTICLE 10-01 “OFFENSES” OF CHAPTER 10 “OFFENSES”; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES, AND SECTIONS OF THE TOWN CODE, NOT HEREIN AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, in 2013, the US District Court (Arizona) found Arizona’s longstanding anti-begging provision (ARS §13-2905(a)(3)) unconstitutional as violating free speech rights under the US and Arizona constitutions; and

WHEREAS, in response the Arizona Legislature adopted SB1094 (2015 Ariz. Legis. Serv. Ch. 146) removing the provision and replacing it with an “aggressive solicitation” prohibition in ARS §13-2914 that applied to a broad range of public areas, including “alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open to the general public, and the doorways and entrances to buildings and dwellings and the grounds enclosing them”; and

WHEREAS, in 2015, the US Supreme Court issued its decision in *Reed v. Town of Gilbert*, said decision becoming the “new standard for content-neutrality determinations”, including in panhandling jurisprudence. [Anthony D. Lauriello, *Panhandling Regulation After Reed v. Town of Gilbert*, 116 Colum. L. Rev. 4 (2016)]; and

WHEREAS, Arizona municipalities (including the neighboring City of Prescott), in response to increased solicitations of occupants of operating motor vehicles in their streets, added prohibitions against such activity if the solicitation interfered with or impeded the flow of traffic; and

WHEREAS, as the popularity of solicitation of occupants of operating vehicles in streets has appeared to be unabated, in October 2022 the City of Glendale adopted an ordinance prohibiting all solicitation of occupants of operating motor vehicles in streets, whether such vehicles are moving or stopped. The City of Prescott is among other Arizona municipalities that have followed the Glendale example and adopted similar prohibitions; and

WHEREAS, as Prescott Valley has grown in population and seen increased motor vehicle traffic in its commercial areas, it has also seen a noticeable increase in solicitation of occupants of operating motor vehicles in the streets (whether the vehicles are moving or stopped), raising concerns for the safety of both those soliciting and vehicle occupants due to proximity to operational vehicles that are moving (or may move at any moment), and the potential for impeding flow of traffic due to unexpected stops for reasons other than traffic control devices; and

WHEREAS, general law towns like Prescott Valley are specifically authorized “to prohibit and punish any...practice tending to...obstruct persons passing upon the streets or sidewalks...and to restrain and punish the...crying of goods or other...performances and practices tending to cause the collection of persons upon the streets or sidewalks and the obstruction thereof.” [ARS §9-240(B)(15)]; and

WHEREAS, this specific authority necessarily includes implied authority to address the issue of solicitation of occupants of operating motor vehicles in the streets, whether moving or temporarily stopped due to traffic control devices; and

WHEREAS, the Town Council does not intend to limit any person from exercising the constitutional right to solicit funds, picket, protest, or engage in other constitutional activity, but only to impose specific time, place, and manner restrictions on solicitation and associated conduct under circumstances deemed particularly threatening or dangerous; and

WHEREAS, the Council desires now to adopt in its Town Code the same prohibitions found in ARS §13-2914 but add thereto the same prohibition as has been adopted by other municipalities related to solicitation of occupants of operating motor vehicles on the public streets;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That that certain document entitled “Prohibition of Certain Solicitation of Occupants of Operating Motor Vehicles”, attached hereto as Exhibit “A”¹, be hereby declared to be a public record, and adopted as if fully set forth herein in accordance with ARS §9-802.

SECTION TWO. That all other Chapters, Articles, and Sections of the Town Code not herein amended, shall remain in full force and effect.

SECTION THREE. That, if any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION FOUR. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this ____ day of _____, 2024.

Kell Palguta, Mayor

ATTEST:

Fatima Fernandez, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

¹ Exhibits on file in the office of the Town Clerk for public review.

EXHIBIT "A"

Prohibition of Certain Solicitation of Occupants of Operating Motor Vehicles

SECTION ONE. That Section 10-01-170 "Prohibited Solicitation" in Article 10-01 "OFFENSES" in Chapter 10 "OFFENSES" of the Town Code of the Town of Prescott Valley, Arizona, be hereby enacted to read as follows:

10-01-170 Prohibited Solicitation.

- A. It shall be unlawful for any person to solicit money or other items of value, or to solicit the sale of goods or services:
1. Within fifteen feet of any bank entrance or exit or any automated teller machine if the person does not have permission to be there from the bank or the owner of the property on which the automated teller machine is located.
 2. In a public area by:
 - a. Intentionally, knowingly or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent.
 - b. Approaching or following the person being solicited in a manner that is intended or is likely to cause a reasonable person to fear imminent bodily harm to oneself or another or damage to or loss of property or that is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
 - c. Continuing to solicit the person after the person being solicited has clearly communicated a request that the solicitation stop.
 - d. Intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation. This subdivision does not apply to acts that are authorized as an exercise of one's constitutional right to picket or protest.
 - e. Intentionally, knowingly or recklessly using obscene or abusive language or gestures that are intended or likely to cause a reasonable person to fear imminent bodily harm or that are reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
 - f. From any operator of a motor vehicle that is in traffic on a public street or stopped for a traffic control device or stop sign on a public street, regardless of whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space, or directing the occupant to a public parking space or even if no services are received in exchange for responding to the solicitation; 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.

- B. Any violation of this section is a civil violation for a first offense and a Class 1 misdemeanor for any subsequent offense(s) in a twelve (12) month period.
- C. For the purposes of this section:
 - 1. “Automated teller machine” has the same meaning prescribed in § 6-101.
 - 2. “Bank” means a bank, credit union or other similar financial institution.
 - 3. “Public area” means an area that the public or a substantial group of persons has access to and includes alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open to the general public, and the doorways and entrances to buildings and dwellings and the grounds enclosing them.
 - 4. “Solicit” means using any means of communication, including by spoken, written or printed word, to request an immediate donation or exchange of money or other thing of value from another person regardless of the solicitor’s purpose or intended use of the money or other thing of value.