

***RELATIVE TO ADDING CHAPTER 746 OF THE CODIFIED ORDINANCES
ENTITLED “AGGRESSIVE PANHANDLING”***

BY:

Council Chairman Andrew Touma
Council Member William Kennedy
Council Member Ezra P. Scott, Jr.
Council Member Kenny Tompkins
Council Member Christopher Voccio

BE IT RESOLVED, by the City Council of the City of Niagara Falls, New York that Chapter 746 of the Codified Ordinances entitled “Aggressive Panhandling” is hereby added to read as follows:

746.00 **LEGISLATIVE FINDINGS AND DECLARATION.**

This legislation is adopted in order to protect persons from threatening, intimidating or harassing behavior, to keep public places safe and attractive for use by all members of the community and to maintain and preserve public places where all of the community can interact in a peaceful manner. This legislation is also intended to provide for the free flow of pedestrian and vehicular traffic on streets and sidewalks in the City of Niagara Falls, to promote tourism and business and preserve the quality of urban life. The City Council finds that aggressive acts associated with solicitation tend to interfere with the free flow of pedestrian and vehicular traffic and intimidate persons in public places, and can lead to disruption and disorder in public places. Aggressive acts can also cause persons to avoid public places and lead to declining patronage of commercial establishments and tourism. The City Council further finds that solicitation in certain public places is inconsistent with the use of those places, is inherently intimidating, targets persons who are captive audiences or constitutes an invasion of privacy as persons are not able to simply move on if they do not wish to speak to the person soliciting. Solicitation in proximity to bank entrances or check-cashing businesses or automated teller machines is inherently intimidating and should be restricted. By this legislation, the City Council intends to promote the health, safety and welfare of the citizens and visitors to the City.

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746.01 **DEFINITIONS**

Whenever the following words and phrases are used in this section, they shall have the following meanings:

(a) “Aggressive Manner” - Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation, or approaching within an arm’s length of the person, except with the person’s consent;

Following the person being solicited, if that conduct is:

(1) 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

(2) Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(3) Continuing to solicit within five feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:

i. 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 likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(4) 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;

(5) Intentionally or recklessly using words:

- 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 or likely to intimidate the person into responding affirmatively to the solicitation; or

(6) Approaching the person being solicited in a manner that is:

- i. 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. Intended to or is likely to intimidate the person being solicited into responding affirmatively to the solicitation.

(b) "Automated Teller Machine" - A device, linked to a financial institution's account records, which is able to carry out transactions, including but not limited to account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(c) "Automated Teller Machine Facility" - The area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

(d) "Banking Organization" - All banks, trust companies, private bankers, savings banks, industrial banks, safe deposit companies, savings and loan associations, credit unions and investment companies as defined in § 2 of the New York State Banking Law.

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- (e) “Licensed Casher Of Checks” - Any individual, partnership, unincorporated association or corporation duly licensed by the New York State Superintendent of Banks to engage in business pursuant to the provisions of Article IX-A of the New York State Banking Law.
- (f) “Parking Ramp” - The parking ramp owned by the City of Niagara Falls located on Rainbow Boulevard or any other parking ramp facility.
- (g) “Parking Station” - The municipal parking lots owned by the City of Niagara Falls.
- (h) “Public Place” - Any area or building owned, leased, operated or controlled by or on behalf of any government, municipality, public authority or public corporation in the City of Niagara Falls which is generally accessible by the public, including but not limited to any street, including the sidewalk portion thereof, skyway, bridge, tunnel, park, playground, recreation area, cemetery, school or school grounds, building, facility, driveway, parking lot or parking ramp, and the doorways and entrances to buildings and dwellings.
- (i) “Solicit” - Shall include, without limitation, the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or any other thing of value.

746.02 No person shall solicit in an aggressive manner in a public place.

746.03 No person shall solicit within 20 feet of an automated teller machine or an entrance or exit of an automated teller machine facility during the time the automated teller machine is available for customers’ use; or within 20 feet of an entrance or exit to a banking organization or a licensed cashier of checks during its business hours.

746.04 No person shall solicit when either the person soliciting or the person being solicited is in a bus shelter or at a bus stop.

746.05 No person shall solicit in a parking ramp or parking station.

746.06 No person shall solicit in any portion of a public skyway or tunnel.

746.07 No person on a sidewalk or alongside a roadway shall solicit from any occupant of a motor vehicle that is on a street or other public place.

746.08 **PENALTIES.**

A violation of this Chapter shall be a “violation” as that term is defined in the Penal Law. A person convicted of violating this section shall be fined not less than \$25 nor more than \$250, and, in addition, for a second conviction within 12 months of a preceding conviction, may be imprisoned for a term not longer than 15 days. In lieu of a fine, the court may impose an appropriate alternative sentence; provided, however, that an alternative sentence shall not be an unconditional discharge.

746.09 **SEVERABILITY.**

If any provision of this section is declared invalid or unconstitutional for any reason, the remaining provisions shall be severable and shall continue in full force and effect.