



City of San Leandro

Meeting Date: September 16, 2019

Staff Report

File Number: 19-490 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.K.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Liz Warmerdam
Assistant City Manager

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a City of San Leandro City Council Ordinance Repealing San Leandro Municipal Code Title 4, Chapter 4-1, Article 9 Pertaining to Intimidating Solicitation

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council introduce an Ordinance repealing Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code Pertaining to Intimidating Solicitation.

BACKGROUND

In 2004, the City Council adopted an ordinance pertaining to intimidating solicitation, codified as Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code ("Intimidating Solicitation Ordinance"). The ordinance makes it unlawful for any person to engage in intimidating solicitation behavior in any public place and unlawful to solicit, ask or beg in certain public places. In 2018, the City Council provided direction to staff and the City Attorney's Office to review the City's Intimidating Solicitation Ordinance.

Analysis

Consistent with the City Council's direction, staff and the City Attorney's Office reviewed the City's Intimidating Solicitation Ordinance, which included an analysis of the legal landscape regarding intimidating solicitation regulations. Under United States Supreme Court precedent, solicitation (including panhandling) is protected by the First Amendment. Since the City's Intimidating Solicitation Ordinance was adopted in 2004, First Amendment case law has evolved. Under current jurisprudence, any law or regulation affecting intimidating solicitation must be viewed under a strict scrutiny analysis. Strict scrutiny is the highest standard of review a court will use to evaluate the constitutionality of government regulations; it is a very difficult standard to meet.

Due to these changes in First Amendment protections, many cities are facing legal challenges

over their intimidating solicitation ordinances. For example, the City of Sacramento's aggressive solicitation ordinance was recently challenged by the ACLU. The United States District Court preliminarily ruled that Sacramento's ordinance violated the First Amendment and Sacramento repealed its entire ordinance.

On July 11, 2019, the City Council Rules Committee reviewed the City's Intimidating Solicitation Ordinance. Due to the changing legal landscape regarding intimidating solicitation regulations, the Rules Committee unanimously recommended the City Council repeal the Intimidating Solicitation Ordinance.

If the Intimidating Solicitation Ordinance is repealed, the City will still have tools to prevent aggressive solicitation behavior, including laws regarding disorderly conduct, battery, trespassing, loitering, and obstructing sidewalks. In addition, the City Attorney's Office is working with staff to prepare a new ordinance, consistent with Federal and State laws that would prohibit individuals from standing on certain street medians, where such behavior raises traffic or safety issues.

Current Agency Policies

Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code ("Intimidating Solicitation Ordinance")

Previous Actions

In 2004, the City Council adopted Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code - "Intimidating Solicitation Ordinance."

Committee Review and Actions

On July 11, 2019, the City Council Rules Committee reviewed the City's Intimidating Solicitation Ordinance. The Rules Committee unanimously recommended the City Council repeal the Intimidating Solicitation Ordinance and return to the Rules Committee with a new ordinance that is legally compliant.

PREPARED BY: Richard D. Pio Roda, City Attorney
Elizabeth D. Warmerdam, Assistant City Manager



City of San Leandro

Meeting Date: September 16, 2019

Ordinance

File Number: 19-491 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Liz Warmerdam
Assistant City Manager and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: A City of San Leandro City Council ORDINANCE Repealing Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code Pertaining to Intimidating Solicitation

WHEREAS, in 2004, the San Leandro City Council adopted an ordinance pertaining to intimidating solicitation, codified as Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code (“Intimidating Solicitation Ordinance”); and

WHEREAS, in 2018, the City Council provided direction to staff and the City Attorney’s Office to review the City’s Intimidating Solicitation Ordinance; and

WHEREAS, the City Council recognizes that the legal landscape regarding solicitation regulations has evolved since the City’s Intimidating Solicitation Ordinance was adopted in 2004; and

WHEREAS, the City Council desires to repeal the Intimidating Solicitation Ordinance in its entirety.

NOW THEREFORE, the City Council for the City of San Leandro does ORDAIN as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and made a part of this ordinance.

SECTION 2. AMENDMENT OF CODE. San Leandro Municipal Code Title 4, Chapter 4-1, Article 9, “Intimidating Solicitation”, is hereby repealed in its entirety.

SECTION 3. CEQA. Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof,

irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 5. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.