

ORDINANCE 2020-31

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE LAKE WALES CODE OF ORDINANCES, CHAPTER 15, MISCELLANEOUS OFFENSES, SECTION 15-14, PANHANDLING, BY ENACTING SECTION 15-14 OF THE LAKE WALES CODE OF ORDINANCES TO INCLUDE THE PROVISIONS SET FORTH HEREIN; PROVIDING FOR SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the previous provisions of Section 15-14 concerning solicitation, aggressive solicitation, and panhandling were repealed by Ordinance 2019-02 due to numerous court rulings which found Ordinances of the type previously enacted by the City and other governmental entities to be unconstitutional; and

WHEREAS, complaints have recently been received by the City concerning actions which could be characterized as panhandling; and

WHEREAS, the City Commission deems it advisable to again provide the means to attempt to control activities of this sort.

NOW THEREFORE BE IT ENACTED by the City Commission of the City of Lake Wales, Polk County, Florida.

Section 1 - The following provisions are hereby added to Chapter 15 of the Lake Wales Code of Ordinances:

SECTION 15-14(1). Legislative findings/intent.

(a)The City Commission hereby finds that any person who panhandles or otherwise demands money, gifts or donations under circumstances that warrant a reasonable concern for the safety of persons or property in the vicinity by utilizing or employing tactics including, but not limited to, non-consensual touching, detaining, impeding or intimidation which causes fear or apprehension in another person constitutes a threat to the public health, welfare and safety of the citizenry. The City Commission further finds that any person who intentionally blocks the passage of another person or a vehicle which requires another person to take evasive action to avoid physical contact constitutes a threat to the public health, welfare and safety of the citizenry.

(b)The City Commission finds that any person who panhandles under circumstances that warrant a reasonable concern for the safety of persons or property in public rooms or private buildings and on private developed properties by utilizing or employing tactics including, but not limited to, non-consensual touching, detaining, impeding or intimidation, which causes fear or apprehension in another person, engages in acts which constitute a threat to the public health, welfare and safety of the citizenry.

(c)The City Commission finds that panhandling or demanding money, gifts or donations may interfere with the safe ingress and egress of human and vehicular traffic into public buildings, public areas and public transportation areas thereby constituting a threat to the public health, welfare and safety of the citizenry.

(d) Aggressive panhandling is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder.

(e) The presence of individuals who solicit money from persons in places that are confined, difficult to avoid, or where a person might find it necessary to wait, is especially hazardous because of the enhanced fear of crime.

(f) This Chapter is intended to protect all persons from the hazards, disruption, fear, and intimidation that accompany certain kinds of solicitation, and not to limit constitutionally protected activity.

SECTION 15-14(2). - Definitions.

Except where the content otherwise specifically requires, as used in this Chapter, the following definitions apply:

Aggressive means and includes, but is not limited to, approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, the intentional blocking of pedestrian and vehicular traffic, the touching or causing physical contact with a solicited person without that person's consent or threatening to make such contact, the intentional blocking of the entrance to any building or vehicle, the following behind, ahead or alongside a person who walks away from a solicitor after being solicited with the intent to intimidate or continue solicitation, the approaching of a solicited person in a manner that is 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 is intended to or is likely to intimidate a reasonable person into responding affirmatively to the solicitation, or the soliciting of a person while the solicitor is under the influence of alcohol or drugs in a manner which disrupts the peace. Aggressive includes, but is not limited to, by acting in a manner committing an assault, by committing a battery, or in a manner which violates the provisions of this Section.

Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie, or place an object in such a manner as to block passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a lawfully issued permit pursuant to this Code are not included within this definition.

Panhandle means to ask for, demand or solicit money, gifts or donations, either by words, bodily gestures, signs or other means. The terms panhandle, solicit and beg are synonymous in meaning. Panhandling is any solicitation made in person, requesting an immediate donation of money or other thing of value.

Purchase of an item for an amount far exceeding its normal market value, under circumstances where a reasonable person would understand that the purchase is, in substance, a donation, is a donation for the purpose of this Section. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations at a location not prohibited by this Section and not in a manner prohibited by this Section.

Private building includes, but is not limited to, retail or service establishments, such as restaurants, convenience food stores, laundromats, service stations, hotels, offices and similar establishments open to the public. This term does not include any building owned, leased or operated by the federal or state government, or their political subdivisions, municipalities, special districts, any public administration board or authority of the state.

Private developed property includes, but is not limited to, a parking lot, driveway, walkway and landscaped areas.

Public building means any building or facility owned, leased or operated by or on behalf of the federal or state government or any of their political subdivisions, any municipality, or special district or any public administrative board or authority of the federal or state government.

Public entertainment venue means a place that is open to the public (whether or not upon payment of a fee for admission and whether or not the management reserves the right to exclude individual members of the public) for entertainment. The term includes, but is not limited to, cinemas, parks, theaters, concert halls, electronic games centers, indoor sports centers, art galleries, museums, and premises upon which any display or exhibition promoted as such is conducted.

Public place means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including, but not limited to, public entertainment venues, those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

Public room includes a basement, building entrance or doorway, lobby, hallway, stairway, mezzanine, elevator, foyer, public restroom or sitting room or any other place used in common by the public, tenants, occupants or guests situated in any private building.

Public transportation area means a building, facility or area designated for mass transit transportation, such as, but not limited to, bus terminals, bus stops and taxi stands.

Solicit means any plea made in person where:

(a) A person by vocal appeal requests an immediate donation of money or other item from another person; or

(b) A person verbally offers or actively provides an item or service of little or no value to another in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation.

SECTION 15-14(3) - Prohibited and unlawful acts.

(a) It is prohibited and unlawful for a person to interfere with pedestrians or motor vehicles if he or she obstructs pedestrian or vehicular traffic or aggressively panhandles on a right-of-way, road or street as defined in Section 334.03, Florida Statutes (2016), as this statute may be amended from time to time, which terms include, but are not limited to, associated sidewalks and crosswalks.

(b) It is prohibited and unlawful for a person to panhandle in any public room in any private building or on private developed property, without the permission or consent of the building's owner or managing and authorizing agent. For the purpose of enforcement of this Subsection, it is rebuttably presumed that if the owner, lessee, managing agent or other person in charge of a building prominently displays a sign as provided in Section 15-14(4) of this Code, then the activities declared unlawful in this Subsection are deemed to be without the permission or consent of the building's owner, lessee, managing agent or other authorized person.

(c) It is prohibited and unlawful for any person to obstruct, impede or interfere with the movement of pedestrians or vehicles for the purpose of panhandling within a public building, the parcel of land on which a public building is located, or a public transportation area.

(d) It is prohibited and unlawful for any person to panhandle when the person solicited is located on private property, unless the panhandler has permission from the owner or occupant of the private property.

(e) It is prohibited and unlawful for any person to aggressively panhandle in any public place within the City which public places include, by way of example only and not by way of limitation, the following places:

(1) At any bus stop;

(2) In any public transportation vehicle or facility, including, but not limited to, airports, roads, streets and right-of-way;

(3) In any vehicle on a street unless a permit has been issued to do so;

(4) In a public park, fairground, or sporting facility, including, but not limited to, entryways or exits thereto;

(5) Within a circumference of 25 feet of the site of any automated teller machine (ATM), a vending machine or any other machine dispensing cash or within a painted "privacy zone" painted on the ground around an ATM, whichever distance is less, all of which are subject to the permitting requirements of the City if such painted zone encompasses area within a road or right-of-way;

(6) Within 1,000 feet of a school bus stop when children are present.

(f) It is prohibited and unlawful for any person to panhandle in any of the following manners each of which will rebuttably be deemed to be aggressive:

(1) By blocking the path of the person solicited;

(2) By using obscene, profane or abusive language, either during the solicitation or following a refusal;

(3) By panhandling in a group of two or more persons which would encircle the person being solicited and deter their free movement; or

(4) By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

SECTION 15-14(4) - Conspicuous notice.

Each owner, lessee, managing agent or person in charge of the operation of a private building or private developed area may prominently display a sign on the premises, such as the lobby or entrance of the private building or private developed property, where it may be read by any person going in or out of the building or private developed property stating generally: "NO PANHANDLING OF ANY TYPE PERMITTED - SUCH CONDUCT IS PROHIBITED BY LAKE WALES CITY CODE". The display of such signage constitutes conclusive proof that the person in charge has not granted permission to panhandle on the posted property.

SECTION 15-14(5) - Areas of enforcement.

The City Commission is acting under this Section as the governing body for the City of Lake Wales, Florida, and this Section will be effective within the corporate boundaries of the said City.

SECTION 15-14(6) - Penalties and remedies.

(a) Pursuant to Section 1-15, General penalty; continuing violations., of the Lake Wale Code of Ordinances, any person violating the provisions of this Section may be punished either by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a term not to exceed sixty (60) days, or by both.

(b) In addition to the penalties provided by Subsection (a) of this Section, any violation of this Section is subject to appropriate civil action in a court of appropriate jurisdiction.

Section 2. Effective Date. This ordinance shall become effective immediately upon its passage by the City Commission.

CERTIFIED AS TO PASSAGE this _____ day of _____ 2020.

Eugene Fultz, Mayor
City of Lake Wales

ATTEST:

Jennifer Nanek, CMC, City Clerk