

ORDINANCE NO. 5111-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING CHAPTER 54 (OFFENSES), TO REPEAL ARTICLE IV (OFFENSES AGAINST PUBLIC PEACE), DIVISION 2 (AGGRESSIVE SOLICITATION); AND TO AMEND DIVISION 3 (PROHIBITED CONDUCT), SECTIONS 54-146-54-147 OF THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA; PROVIDING A CODIFICATION CLAUSE; PROVIDING A CONFLICTS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of West Palm Beach (the "City") as set forth in Article VIII, Section 2, of the Constitution of the State of Florida; Chapter 166, Florida Statutes; and other applicable controlling law; and

WHEREAS, the United States Supreme Court found that any law that limits speech based on its communicative content is subject to strict scrutiny in *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) and since 2015 numerous courts have found panhandling ordinances content based and therefor presumptively unconstitutional and unlikely to survive strict scrutiny; and

WHEREAS, on December 28, 2020, the City Commission adopted Ordinance No. 4919-20 amending Chapter 54, Article IV to prohibit public indecency, urinating and defecating in public places and to prohibit panhandling and soliciting in the downtown and Northwood; and

WHEREAS, on May 3, 2021, the City Commission adopted Ordinance No. 4934-21, amending Chapter 54, Article IV to prohibit sleeping, camping and lodging in public places when there is no housing/shelter available and establishing mandatory outreach efforts in the event that a Court were to find that sleeping in public is involuntary conduct protected by the Eighth Amendment; and

WHEREAS, on June 28, 2024, the United States Supreme Court rendered a decision in *City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 2202 (2024) finding that the Eighth Amendment does not prohibit enforcement of public-camping laws even in the absence of sufficient shelter; and

WHEREAS, in the *Grants Pass* case, the Court noted the difficulty one would have in ascertaining whether the shelter was either suitable or available; and

WHEREAS, during the 2024 legislative session, the legislature amended section 125.0231, defining public camping or sleeping and providing that a county or municipality may not authorize or otherwise allow any person to regularly engage in public camping or sleeping on any public property, including but not limited to, any public building or its grounds and any public right-of-way under the jurisdiction of the county or municipality, as applicable; and

All text which is added is underlined and all text which is ~~stricken~~ is deleted.

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WHEREAS, the City Commission finds that it is in the best public interest amend its ordinance to be consistent with the holding of the united states supreme court and with the legislative amendment to Chapter 125, Florida Statutes; and

WHEREAS, this Ordinance is necessary for the preservation and improvement of the public health, safety, and welfare of the City's residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission of the City of West Palm Beach, Florida hereby repeals Chapter 54 (Offenses), Article IV (Offenses Against Public Peace), Division 2 (Aggressive Solicitation) of the Code of Ordinances of the City of West Palm Beach, Florida, in its entirety.

SECTION 2: The City Commission of the City of West Palm Beach, Florida hereby amends the Code of Ordinances of the City of West Palm Beach, Florida, at Chapter 54, (Offenses), Article IV (Offenses Against Public Peace), Division 3, (Prohibited Conduct), Section 54-146, and this Section shall now read as follows:

DIVISION 2. - PROHIBITED CONDUCT

Sec. 54-146. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Public camping or sleeping* means either sleeping or otherwise being in a temporary shelter out of doors, sleeping out of doors or cooking over an open flame out of doors,~~

a. Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings; or

b. Lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

The term does not include:

a. Lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.

b. Camping for recreational purposes on property designated for such purposes.

c. Camping or sleeping in an area within the City designated by Palm Beach County as an area to be used for the purposes of public camping or sleeping pursuant to s.125.0231(3), Florida Statutes.

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d. except that "camp" or "camping" does not include in their meaning only so-called "tailgating," picnicking or other similar temporary celebratory activity conducted in good faith in connection with the occurrence of a legitimate sporting event, concert, theatrical event or similar activity conducted by a school, college, professional sports association, orchestra, governmental agency, religious or civic organization or Section 501(c)(3) organization.

Defecate or *defecation* means to excrete waste from the body from a person's bowels.

~~*Downtown area* means that area of the city defined by the following boundaries: the eastern right-of-way line of North Flagler Drive from Fourth Street to Fern Street; the northern boundary shall be the northern right-of-way line of Fourth Street from the east side of North Flagler Drive to the western right-of-way line of Quadrille Boulevard and the northern right-of-way line of Third Street from Quadrille Boulevard to Rosemary Avenue; the western boundary shall be the western right-of-way line of Quadrille Boulevard from Fourth Street to Third Street and the western right-of-way line of Rosemary Avenue from Third Street to Evernia Street and the western right-of-way line of Narcissus Avenue from Evernia Street to Fern Street; the southern boundary shall be the southern right-of-way line of Evernia Street from Rosemary Avenue to Narcissus Avenue and the southern right-of-way line of Fern Street from Narcissus Avenue to North Flagler Drive, all as shown on Exhibit "A" attached to Ordinance No. 3322-00.~~

~~*Northwood area* means that area of the city defined by the following boundaries: the southern boundary shall be the northern right-of-way line of Twenty Third Street; the western boundary shall be the eastern right-of-way line of Pinewood Avenue; the eastern boundary shall be the western right-of-way line of Poinsettia Avenue and North Dixie Highway; and the northern boundary shall be the northern line of that certain alley lying north of and parallel to Twenty Fifth Street, said northern line described as: Beginning at the intersection of the northern line of said alley with the East right-of-way line of Pinewood Ave; thence easterly along said northern line and its easterly extension to the intersection with the East line of a North-South alley lying just West of Poinsettia Ave; thence North along said East line to the South right-of-way line of 26th Street; thence easterly along said South line to the West right-of-way line of Poinsettia Ave, all as shown on Exhibit "A" attached to Ordinance No. 4919-20.~~

~~*Outreach team member* shall mean a group of social service providers, homeless outreach workers, mental health or drug and alcohol workers authorized and designated by the city's director of the department of housing and community development.~~

~~*Panhandling* and *soliciting* mean to request an immediate or future donation of money or other thing of value from another person, regardless of the panhandler's purpose or intended use of the money or other thing of value. The panhandling or soliciting may be, without limitation, by the spoken, written, or printed word, or by other means of communication.~~

~~*Public place* and *public property* means any City owned or controlled area to which the public or a substantial group of persons has access, and includes, but is not limited to, any public buildings or its grounds, parks, pavilions, playgrounds, and any public right-of-way, including but not limited to, alleys, bridges, public buildings, seawalls, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets which are under the City's jurisdiction open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.~~

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Public indecency means any of the following acts committed in a public place:

- (1) An act of sexual intercourse; or
- (2) A lewd fondling or caress of the body of any person of either sex; or
- (3) Exposure or exhibition of sexual organs; or
- (4) Exposure or exhibition of post-pubescent female breasts; or
- (5) Urination or defecation other than in a toilet or washroom; or
- (6) Throwing, dumping, discarding, placing, depositing, or otherwise disposing of urine or feces, unless such disposal is made into a receptacle that has been specifically provided for that purpose and the receptacle stores or disposes of the wastes in a sanitary manner, and the receptacle is enclosed from the view of the general public.

Urinate or *urination* means to pass or discharge urine excreted by the kidneys from the body.

SECTION 3: The City Commission of the City of West Palm Beach, Florida hereby amends the Code of Ordinances of the City of West Palm Beach, Florida, at Chapter 54, (Offenses), Article IV (Offenses Against Public Peace), Division 3, (Prohibited Conduct), Section 54-147 and this Section shall now read as follows:

Sec. 54-147. - Prohibited conduct.

~~(a) It shall be unlawful for any person to engage in an act of panhandling or soliciting in the following areas:~~

~~(1) On private property in the downtown area and the Northwood area if the owner, tenant, or lawful occupant has asked the person not to panhandle or solicit on the property, or has posted a sign clearly indicating that panhandling or soliciting is not permitted on the property.~~

~~(a)~~ It shall be unlawful for any person:

- (1) To commit public indecency;
- (2) To urinate in any public place that has not been designated for use as a urinal or toilet; or
- (3) To defecate in any public place that has not been designated for use as a toilet.

Exception: This subsection shall not apply to children five years of age or younger.

This article is enforceable by all means provided by law.

~~(b)~~ It shall be unlawful for any person, after having been informed and given notice by a police officer that the following conduct is in violation of a city ordinance, ~~and after the completion of the outreach efforts delineated in subsection (d) of this section,~~ to engage in:

- (1) Public camping or sleeping ~~with the intent to sleep, camp, or lodge on a any public property place~~ including, but not limited to, any public building or its ground and any public right-of-way under the jurisdiction of the City.:

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- ~~a. On any right-of-way, roadway, or parking lot; or~~
- ~~b. In any park or pavilion; or~~
- ~~c. Under any bridge or causeway; or~~
- ~~d. In any building lobby, entranceway, plaza or common area.~~

~~(2) Construct or maintain any building, structure, tent or use any other objects on any public property that are intended to be used for housing accommodations, lodging, or public camping or sleeping:~~

- ~~a. On any right-of-way, roadway, or parking lot; or~~
- ~~b. In any park, or pavilion; or~~
- ~~c. Under any bridge or causeway; or~~
- ~~d. In any building lobby, entranceway, plaza or common area.~~
- ~~e. Upon the grounds of any other person without the permission of such person.~~

~~(d) Outreach efforts. No person shall be cited for a violation of subsection (c) of this section before a reasonable attempt has been made to ascertain whether the person is in need of homeless assistance services and/or housing assistance and that available shelter beds or other suitable emergency housing is available should the person need housing/shelter assistance.~~

~~(1) If it is determined that a person is in need of housing/shelter assistance, the police officer or a city's outreach team member shall evaluate the person's housing needs and take all reasonable steps toward directing the person to the appropriate housing/shelter service provider, including, without limitation, transportation to such provider.~~

~~(2) If a person refuses housing/shelter assistance, or if they have been offered or received housing/shelter assistance within the previous 90 days, and they otherwise fail to comply with subsection (c) of this section after notice of a violation has been provided, the person may be cited with a violation of subsection (c) of this section.~~

~~(3) The city's police department shall take all necessary and appropriate steps to insure that its police officers who are likely to come into contact with persons in violation of subsection (c) of this section shall receive all appropriate training in approaching, investigating, and assisting persons in need of mental health treatment, housing/shelter or other social service assistance~~

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: Should any section or provision of this Ordinance or any portion, paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

SECTION 6: Authority is hereby granted to codify the text amendments set forth in this Ordinance.

SECTION 7: This Ordinance shall take effect on October 1, 2024.

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**FIRST READING THIS 16TH DAY OF SEPTEMBER, 2024.
SECOND READING AND PASSAGE THIS 30TH DAY OF SEPTEMBER, 2024.**



ATTEST:

X *Shaquita Edwards*
CITY CLERK
Signed by: Shaquita Lashae Edwards

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

 Recoverable Signature
X *Keith A. James*
PRESIDING OFFICER
Signed by: Keith A. James

**APPROVED AS TO FORM AND
LEGALITY:**

9/27/2024
X *Kimberly L. Rothenburg*
CITY ATTORNEY
Signed by: Kimberly L Rothenburg