

ORDINANCE NO. O-16-05

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA, RELATING TO SOLICITATION, PANHANDLING AND CANVASSING BY REPEALING SECTION 11-4 OF CHAPTER 11 OF THE CITY OF WINTER HAVEN CODE OF ORDINANCES AND ADOPTING NEW PROVISIONS REGARDING SOLICITATION, PANHANDLING AND CANVASSING TO BE CODIFIED IN CHAPTER 15 OF THE CITY OF WINTER HAVEN CODE OF ORDINANCES; AMENDING SECTION 2-63 OF CHAPTER 2 OF THE CITY OF WINTER HAVEN CODE OF ORDINANCES RELATING TO THE JURISDICTION OF THE CODE ENFORCEMENT SPECIAL MASTER; AND DELETING SECTIONS 9-187 (b) AND 9-189 OF THE CITY OF WINTER HAVEN CODE OF ORDINANCES RELATING TO THE REGISTRATION OF SOLICITORS AND CANVASSERS WITH THE CHIEF OF POLICE FOR THE CITY OF WINTER HAVEN, FLORIDA; ESTABLISHING PURPOSE, INTENT, FINDINGS, DEFINITIONS AND REGULATING ACTS OF SOLICITATION, PANHANDLING, AND CANVASSING, AND AGGRESSIVE SOLICITATION, PANHANDLING, AND CANVASSING ON CERTAIN PROPERTY WITHIN THE CITY; AND AUTHORIZING THE CITY'S CODE ENFORCEMENT SPECIAL MASTER TO HEAR FIRST, AND SECOND OFFENSE CASES AND IMPOSE CIVIL FINE(S) FOR SUCH VIOLATION(S); PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR CODIFICATION AND THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech, and a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content;

WHEREAS, the United States Supreme Court has recognized that the First Amendment protects the right of every citizen to "reach the minds of willing listeners" but, in doing so, the Court has also recognized that the First Amendment does not guarantee the right to communicate one's view(s) at all times and places in any manner desired;

WHEREAS, the City of Winter Haven acknowledges that public ways and sidewalks occupy a special position in terms of First Amendment protection(s) because of their role as “traditional public fora” and as sites for discussion and debate which have historically been open to the public for speech activities;

WHEREAS, the City of Winter Haven has determined that limited restrictions on solicitation, panhandling and canvassing, which are content-neutral and narrowly tailored, based on time, place, or manner of the solicitation, panhandling and/or canvassing are necessary to protect and promote the health, safety and general welfare of the citizens, residents and visitors of the City of Winter Haven;

WHEREAS, the City of Winter Haven has determined that limited restrictions on solicitation, panhandling and canvassing which are content-neutral and narrowly tailored, based on time, place, or manner of the solicitation, panhandling, and/or canvassing are necessary to protect and promote the free and unobstructed flow of pedestrian and motor vehicle traffic and serves the City’s significant interests in protecting and promoting the health, safety and general welfare of pedestrians and occupants of motorized vehicles on public streets, sidewalks and roadways located within the City of Winter Haven;

WHEREAS, the City of Winter Haven has determined that limited restrictions on solicitation, panhandling and canvassing which are content-neutral and narrowly tailored, based on time, place, or manner of the solicitation, panhandling and/or canvassing are necessary to promote public safety and protect its citizens, residents and visitors at specifically identified locations or areas where such solicitous encounters may be perceived as threatening and/or intimidating;

WHEREAS, the City of Winter Haven has determined that limited restrictions on solicitation(s), panhandling, and/or canvassing which occur at Automatic Teller Machines (ATM) located within the City of Winter Haven and other limited locations and/or places, where a person may perceive themselves as particularly vulnerable and unable to leave and/or escape the solicitous event are narrowly drawn to address the City’s significant interests in protecting and promoting the safety of its citizens, residents and visitors;

WHEREAS, the City of Winter Haven has determined that limited restrictions on solicitation(s), panhandling, and /or canvassing at ATMs and in other limited locations and/or places where a person may perceive themselves as particularly vulnerable and unable to leave and/or escape the solicitous event still provide numerous alternative public fora for solicitation and communication;

WHEREAS, the City has received increasing complaints regarding solicitation, panhandling and canvassing about the disruptive effects of aggressive solicitation panhandling and canvassing activities within the public places of the City of Winter Haven; and

WHEREAS, the City Commission has determined that, while ensuring alternative measures for communication(s) and burdening speech no more than necessary to advance its interests, the amendments established in this Ordinance and the limited restrictions prescribed herein are content-neutral, narrowly tailored, and necessary to protect and promote the health, safety and general welfare of the citizens, residents and visitors of the City of Winter Haven, Florida.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are hereby ratified and incorporated herein as forming the purpose and legislative intent for the adoption of this Ordinance.

Section 2. Section 11-4 of Chapter 11, of the Code of Ordinances of the City of Winter Haven, Florida, relating to Solicitations of contributions from occupants of vehicles on public streets and roadways is hereby deleted in its entirety and Chapter 15 Sections 15-370 through 15-384 relating to solicitation, panhandling and canvassing and aggressive solicitation, panhandling and canvassing are hereby adopted in full as set forth in Exhibit "A" attached hereto and incorporated by reference.

Section 3. Section 2-63 of Chapter 2, of the Code of Ordinances of the City of Winter Haven, Florida, relating to Jurisdiction of the code enforcement special master is hereby amended to provide as follows: (New text is shown by underline and deleted text is shown in ~~strike through~~ format).

Sec. 2-63. – Jurisdiction.

(a) The code enforcement special master shall have the jurisdiction and authority to hear and decide alleged violations of the codes and ordinances of the city including, but not limited to, the following which is not intended to be an exhaustive list:

Chapter/Section	Code Title/Description
Chapter 3	Alcoholic beverages
Chapter 4	Animal regulations
Chapter 5	Buildings and building regulations
Chapter 6	Fire prevention and protection
Chapter 9	Licenses and business regulations
Chapter 10	Marine activities, structures and waterways
Chapter 11/Section 4	Solicitation of contributions from occupants of vehicles on public streets and roadways
Chapter 12	Nuisances
Chapter 14	Solid Waste
Chapter 15	Streets, sidewalks and other public places <u>and Public Solicitation</u>
Chapter 21	Unified land development code

Ordinance 10-15	Minimum property maintenance standards
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(b) The special master shall have the jurisdiction and authority to hear and decide any other code enforcement matters the city commission shall determine is appropriate.

(c) The special master shall have the jurisdiction and authority to affirm or modify penalties imposed by the code enforcement board whose jurisdiction was repealed effective May 24, 2004, by Ordinance No. O-04-13.

(d) The special master shall have the jurisdiction and authority to determine the amount of reasonable expenses incurred by the city as a result of orders issued pursuant to the authority granted herein.

(e) The jurisdiction of the code enforcement special master shall not be exclusive. Any alleged violation of any code and ordinance may be pursued by appropriate remedy in court at the option of the administrative official whose responsibility it is to enforce that respective code or ordinance and nothing shall prevent the city from taking such other lawful action, including, but not limited to, resorting to equitable action, as is necessary to enforce the provisions of respective city codes or ordinances.

Section 4. Sections 9-187(b) and 9-189 of Chapter 9 of the Code of Ordinances of the City of Winter Haven, Florida are hereby deleted in their entirety.

Section 5. Severability.

If any portion of this ordinance is declared invalid or unenforceable, then to the extent it is possible to do so without destroying the overall intent and effect of this ordinance, the portion deemed invalid or unenforceable shall be severed here from and the remainder of this ordinance shall continue in full force and effect as if it were enacted without including the portion found to be invalid or unenforceable.

Section 6. Repeal of Conflicting Ordinances.

All ordinances and/or resolutions or parts of ordinances and/or resolutions which are in conflict with this ordinance are hereby repealed, to the extent necessary to alleviate the conflict, but shall continue in effect insofar as they are not in conflict herewith, unless repeal of the conflicting portion destroys the overall intent and effect of any of the conflicting ordinances and/or resolutions, in which case those ordinances and/or resolutions so affected shall be hereby repealed in their entirety.

Section 7. Codification and Administrative Correction of Scrivener's Errors.

It is the intention of the City Commission of the City of Winter Haven, Florida, that the provisions of this ordinance shall become and be made part of the Code of Ordinances of the City of Winter Haven, Florida; and that sections of this ordinance may be re-numbered or re-lettered and the word "ordinance" may be changed to "chapter,"

"section," "article," or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the Code is accomplished, sections of this ordinance may be re-numbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

Section 8. Effective Date.

This ordinance shall become effective immediately upon its passage and adoption after public hearing/second reading, according to law.

INTRODUCED on first reading this 13th day of September, 2016.

PASSED on second reading this 26th day of September, 2016.



ATTEST:

Vanessa Castillo

CITY CLERK

CITY OF WINTER HAVEN, FLORIDA

[Signature]

MAYOR-COMMISSIONER

APPROVED AS TO FORM:

[Signature]

CITY ATTORNEY

Chapter 15 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE XI. - PUBLIC SOLICITATION

DIVISION 1. - GENERALLY

Sec. 15-370. - Short title.

This article shall be known and cited as the Public Solicitation Ordinance.

Sec. 15-371. - Purpose, intent and findings.

(a) It is the purpose and intent of this article to promote the health, safety and general welfare of the citizens, residents and visitors of the city; to assure the free, orderly, undisrupted movement of persons and motor vehicles within the city; to protect pedestrians and occupants of motorized vehicles against physical and personal injury on public streets, roads and sidewalks within the city; and to maintain the charm and aesthetics of the city's neighborhoods, commercial areas and public places as a safe and peaceful place to live and do business.

(b) The city recognizes that solicitation, panhandling and canvassing are recognized forms of speech entitled to protection under the First Amendment to the United States Constitution. Further, the city recognizes that public streets, sidewalks and parks are traditional public forums that historically have served as places for free public assembly, the communication of thoughts and the exercise of First Amendment freedoms by citizens, residents and visitors. Even so, the city may lawfully regulate the time, place and manner of engaging in solicitation, panhandling and canvassing within traditional public forums such as public streets, sidewalks and parks. Further, the city may lawfully prohibit solicitation, panhandling and canvassing in public spaces that are not created or intended for First Amendment activity. Such public spaces, public facilities and public properties are built for specific purposes and functions unrelated to the exercise of First Amendment speech rights. Accordingly, the designation of such properties to be nonpublic forums, where solicitation, panhandling and canvassing activity may and should be prohibited, is a reasonable set of restrictions that facilitates the proper intended use of the properties.

(c) The regulations in this article are intended and specifically found by the city to be narrowly-tailored to serve the city's substantial government interests in the free, orderly and undisrupted movement of citizens, in public safety, and in public aesthetics. Additionally, the regulations in this article are intended and specifically found by the city to allow citizens, residents and visitors to engage in solicitation, panhandling

and canvassing in alternative ways using accessible and convenient alternative channels without violating the proscriptions herein. For example, this article does not prohibit a person from standing on a sidewalk to distribute or sell products or materials to a pedestrian, or the operator or occupant of a legally parked motor vehicle under such circumstances that do not divert an operator's attention from safe operation, and does not prohibit a person from standing on a sidewalk with a sign soliciting business at another location. Such activities are not prohibited because they do not result in, and are not intended to result in, a transaction with the operator or an occupant of a motor vehicle on the traveled portion of a public street. Further, this article does not prohibit a person from passively standing or sitting, performing music, or singing with a sign or other indication that a donation is being sought or that canvassing is being conducted on those portions of public property other than the proscribed areas herein and in such a way so as not to prevent the free and regular passage of pedestrians or the free ingress and egress to and from buildings and other private property.

(d) It is the intent of the city that the regulations in this article shall apply evenhandedly to all persons engaging in the activities prescribed herein, regardless of the message, type or viewpoint of the person's speech.

(e) With respect to the regulations in this article preventing solicitation, panhandling and canvassing of others within the traveled portions of the city's streets, roads and highways, the city hereby finds and determines that soliciting, panhandling or canvassing a motor vehicle occupant is a dangerous activity that subjects the solicitor, panhandler, canvasser and occupant to serious risk of personal injury. Such activity requires action by those who would respond, which can only be safely achieved by stopping and legally parking a motor vehicle for the period of time necessary to effectuate the speaker's intended exchange and, with respect to operators of motor vehicles, while such operators are not engaged in actual driving activity. In consideration of the high volume of motor vehicles traveling on the streets, roads and highways within the city, the city finds that solicitation, panhandling and canvassing activity which is directed toward an occupant of a motor vehicle is an unsafe distraction to the occupant, is an obstruction of the travel space and view of the occupant and other motorists, is a disruption and displacement of the flow of vehicular traffic and pedestrian traffic at intersections, and is inherently dangerous to the speaker, the occupant, area pedestrians and other motorists.

(f) The city additionally finds that certain acts of solicitation, panhandling and canvassing may be confrontational, intimidating, disrupting to free passage, and impeding to the normal flow of pedestrian and motor vehicle traffic, and therefore inherently dangerous for the city's citizens, residents and visitors.

Sec. 15-372. - Definitions.

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

Aggressive manner means to engage in conduct that would reasonably be construed as intended to intimidate, compel, or force any person, whether such person is directly engaged or within a reasonable proximity, to accede to a demand made, including but not limited to touching a person or throwing an object at a person.

Business means any service or activity operated for financial incentive.

Canvassing means person-to-person distribution on public property of written, printed, drawn, or illustrated matter or materials in any format, advertising, or promotional materials, which include, but shall not be limited to, handbills, circulars, dodgers, pamphlets, papers and booklets. For purposes of this article, canvassing does not include the distribution of written, printed, drawn or illustrated matter or materials placed in and obtained from lawfully-placed passive distribution receptacles.

Donation means a grant of money or property, financial assistance, or any other thing of value in response to a solicitation. The purchase of an item for an amount of money which far exceeds the value of such item, under the circumstances where a reasonable person would understand that the purchase is a donation, is in substance a donation.

Panhandling is any solicitation made in person requesting an immediate donation of money or other thing of value.

Person means any individual, regardless of whether said individual is a resident of the city, a vendor, a merchant, an employee or agent of a commercial entity or a business, and includes children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Private property means any real property located in the city which is not public property.

Private street means any street located in the city which is not a public street.

Public street means a publically-owned or -maintained right-of-way primarily used for the travel, ingress and egress of motor vehicles, which shall include, but not be limited to, all pavements, dirt compressions, roadbeds and associated curbs, cutouts, driveways, gutters, medians and shoulders located within the city.

Public property means any street, alley, highway, right-of-way, parking lot, sidewalk, garage, park, building, ground, paved or concrete surface, or other real property owned or controlled by the city, or any portion thereof.

Sidewalk means that portion of public property that is primarily used for the travel, ingress and egress of pedestrians, usually found near, parallel or adjacent to a

public street between the curb-lines or edge of the pavement area and public property boundary lines.

Solicitation means person-to-person communication which, directly or indirectly, seeks a contribution or donation of money or any other item or thing of material or monetary value.

Sec. 15-373. – Application of article in conjunction with other laws.

Nothing contained in this article shall be construed to permit activities that are otherwise prohibited by applicable laws, regulations or ordinances.

Sec. 15-374. - Enforcement.

This article shall be enforced by any law enforcement officer for the City of Winter Haven, Florida ~~the police force of the city~~ and the Sheriff of Polk County, Florida and his or her deputies.

Sec. 15-375. - Penalties.

Any person who violates any provision of this article shall be subject to the following penalties:

(a) **For a first or second offense:** An administrative proceeding before the city's special master and upon conviction, a civil fine not exceeding five hundred dollars (\$500.00) or an appropriate term of community service;

(b) **For a third offense:** A judicial proceeding before the county court in and for Polk County, Florida, and, upon conviction, a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment; and

(c) **For a fourth or subsequent offense:** A judicial proceeding requiring a mandatory appearance before the county court in and for Polk County, Florida, and, upon conviction, a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding twelve (12) months, or by both such fine and imprisonment.

Sec. 15-376. - Authorization to create procedural rules.

The city's special master is authorized to create procedural rules for the administrative prosecution for first and second offenses of this article.

Sec. 15-377. - General severability.

If any section, subsection, sentence, clause, phrase or defined term in this article, or any portion of any section, subsection, sentence, clause, phrase or defined

term in this article, is found for any reason to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, clause, phrase or defined term shall be deemed a separate, distinct, and independent provision of law, and such finding shall not affect the validity of any remaining sections, subsections, clauses, phrases and defined terms herein.

Sec. 15-378. – Conflicts with other laws.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the requirements adopted in this article shall apply over any other provisions in conflict therewith.

Secs. 15-378~~379~~—15-380. - Reserved.

DIVISION 2. - REGULATION OF SOLICITATION, PANHANDLING AND CANVASSING IN STREETS, SIDEWALKS AND PUBLIC PLACES

Sec. 15-381. - Solicitation, panhandling and canvassing in public streets prohibited.

Solicitation, panhandling and canvassing within the traveled portions of a public street, or on medians, is prohibited within the city. It shall be unlawful for any person to stand in the traveled portion of a public street, or on medians, and engage in solicitation, panhandling or canvassing. It shall also be unlawful for any person to solicit or attempt to solicit, panhandle or attempt to panhandle, or canvass or attempt to canvass any occupant of any motor vehicle while the motor vehicle is being operated on the traveled portions of any public street in the city.

Sec. 15-382. - Unlawful solicitation or panhandling.

(a) It shall be unlawful for any person to engage in any act of solicitation or panhandling on public property that:

- (1) is done in an aggressive manner;
- (2) exhibits any act, expression or use of language constituting an express or implied threat of injury to any person;
- (3) exhibits any act, expression or use of language constituting an express or implied threat of damage to or loss of any property owned by or in the lawful possession of the person solicited;
- (4) constitutes the commission of a criminal act or a violation of this code upon the person or another person, or upon any property in the person's immediate possession;

(5) knowingly is made through the use of false or misleading representations which include, but shall not be limited to, falsely representing a physical deformity or disability, falsely representing current or former military status, or falsely representing as homeless;

(6) continues to verbally demand, ask or beg for donations or payment after the solicited person has made a negative response to an initial demand or solicitation; or

(7) impedes the passage or free movement of the solicited person regardless if the solicited person is on foot or on a bicycle, in a wheelchair, operating a motor vehicle or attempting to enter or exit a motor vehicle.

(b) It shall be unlawful for any person to engage in any act of solicitation or panhandling on public property when either the solicitor or the person being solicited is located in, on, or at any of the following locations or premises thereof:

(1) at any bus or public transit stop;

(2) an area within fifteen (15) feet in any direction of an Automatic Teller Machine (ATM); and

(3) inside, about or upon private property without permission from the owner or other person lawfully in possession of such property.

Sec. 15-383. - Unlawful canvassing.

(a) It shall be unlawful for any person to engage in any act of canvassing on public property that:

(1) is done in an aggressive manner;

(2) exhibits any act, expression or use of language constituting an express or implied threat of injury to any person;

(3) exhibits any act, expression or use of language constituting an express or implied threat of damage to or loss of any property owned by or in the lawful possession of the person being canvassed;

(4) constitutes the commission of a criminal act or a violation of this code upon the person or another person, or upon any property in the person's immediate possession;

(5) continues after the canvassed person has made a negative response to an initial demand;

(6) impedes the passage or free movement of the canvassed person regardless if the canvassed person is on foot or on a bicycle, in a wheelchair, operating a motor vehicle or attempting to enter or exit a motor vehicle; or

(7) causes any object or material of any kind to enter a public street.

(b) It shall be unlawful for any person to engage in canvassing on public property when the person being canvassed is located in, on, or at any of the following locations or premises thereof:

(1) at any bus or public transit stop;

(2) an area within fifteen (15) feet in any direction of an Automatic Teller Machine (ATM); and

(3) inside, about or upon private property without permission from the owner or other person lawfully in possession of such property.

Sec. 15-384. - Solicitation, panhandling and canvassing prohibited on certain public property.

Solicitation, panhandling and canvassing is prohibited on the following public properties in the city:

(a) *Downtown garage.* The city-owned parking garage located on Avenue A NW, more particularly described as follows:

The West 17 feet of Lot 3, and all of Lots 4, 5, 6, 7, and 8, Block 3, Tier 2, of THE ORIGINAL TOWN OF WINTER HAVEN, according to the map or plat thereof recorded in Deed Book M, Page 160 through 163, inclusive, Public Records of Polk County, Florida.