

ORDINANCE NO. 23-05-04

**AN ORDINANCE AMENDING TITLE 9, PUBLIC PEACE, MORALS AND WELFARE,
OF THE CITY CODE OF ORDINANCE; PROHIBITING PANHANDLING;
PRESERVING THE HEALTH AND WELFARE OF THE CITY AND FOR OTHER
LAWFUL PURPOSES**

WHEREAS, the City of McDonough (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City are the Mayor and Council (“City Council”) thereof;

WHEREAS, the City is authorized pursuant to Section 2.17(b) of the City Charter to adopt ordinances resolutions, rules and regulations deemed necessary, expedient, or helpful for the good order, welfare, prosperity and well-being of the City;

WHEREAS, the City desires to prohibit panhandling through this Ordinance; and

WHEREAS, the City Council finds this Ordinance to be in the bests interest of the health, safety and welfare of the City.

THE COUNCIL OF THE CITY OF MCDONOUGH HEREBY ORDAINS as follows:

Section 1. Title 9, Public Peace, Morals and Welfare, of the City Code of Ordinances is hereby amended by creating a new Section 9.08.140, Panhandling, which shall read as follows:

TITLE 9 - PUBLIC PEACE, MORALS AND WELFARE

CHAPTER 9.08 - MISCELLANEOUS OFFENSES

...

SEC. 9-08.140 – Panhandling.

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

“*Accosting*” means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his person, or upon the property in his immediate possession.

“*Aggressively panhandle*” means and includes:

1. Intentionally or recklessly making any nonconsensual physical contact with another person and/or such person's vehicle in the course of soliciting;
2. Following the person being solicited, if that conduct 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 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 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 reasonably 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. Acts legally authorized as an exercise of one's constitutional right to picket or legally protest shall not constitute obstruction of pedestrian or vehicular traffic;
5. Intentionally or recklessly using obscene or abusive language or gestures 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 words intended to, or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
6. Approaching the person being solicited 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 reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

"Ask," "beg" or "solicit" means and includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms.

"Forcing oneself upon the company of another" means continuing to request, beg or solicit alms from a person after that person has made a negative response, blocking the passage or the individual addressed or otherwise engaging in conduct which could reasonably be construed as intended to compel or force a person to accede demands.

"Public area" means an area to which the public or a substantial group of persons has access including, but not limited to, alleys, bridges, buildings, driveways, parking lots, parks, play grounds, plazas, sidewalks, and streets that are open to the general public

"Solicit", "solicitation" and/or "soliciting" means to request from another person an immediate donation of: 1) money or 2) other thing of value, regardless of the solicitor's purpose or intended use of the money or thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

B. Prohibitions. It shall be unlawful for any person, firm, organization, or corporation to aggressively panhandle within any public area in the city. It shall additionally be unlawful for any person, firm, organization, or corporation to solicit funds and/or things of value for the benefit of the solicitor:

1. In any public transportation vehicle, or bus or subway station or stop;
2. Within 15 feet of any entrance or exit of any bank or check cashing business or within 15 feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
3. On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;
4. From any operator of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle;
5. Within 15 feet of the entrance to or exit from any public toilet facility;
6. Within 15 feet of any bus stop;
7. From any person who is waiting in line for entry to any building, public or private including, but not limited to, any residence, business or athletic facility;
8. Within 15 feet of the entrance or exit from a building, public or private including, but not limited to, any residence, business, or athletic facility; and
9. Within any public right-of-way in the city.

C. Violations. Violation of this chapter shall subject the offender to arrest, citations, community service and/or fines within law enforcement's, and the court's, lawful discretion. Each act of aggressive panhandling and/or solicitation committed by an offender against different persons and/or within five minutes apart shall constitute separate offenses. Nothing within this chapter shall prohibit law enforcement, courts and/or prosecuting officials from issuing a warning and/or dismissal in lieu of a fine, where the circumstances so warrant.

D. Applicability. This chapter regulates the time, place and manner of solicitations and shall not apply to any persons exercising their clearly established constitutional right to picket, protest or engage in other constitutionally protected activity. Additionally, this chapter shall not prohibit any conduct expressly permitted under chapter 5.36 of the City code,

nor shall this chapter apply to: 1) solicitations made on public and/or private property with the property owner and/or City's consent, or 2) communications between persons related by blood and/or marriage.

Section 2. INSTRUCTIONS TO CITY CLERK, POLICE CHIEF AND COMMUNITY DEVELOPMENT DIRECTOR. The City Clerk is hereby directed to forward a fully executed copy of this Ordinance to the Police Chief and Community Development Director. The Police Chief and Community Development Director shall thereafter cause for a copy of this Ordinance to be emailed to all code and law enforcement officers within their respective departments.

Section 3. It is hereby declared to be the intention of the City Council that:

- (a) All sections, paragraphs, sentences, and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.
- (b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
- (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance.

Section 4. The City Attorney and City Clerk are authorized to make non-substantive editing and renumbering revisions to this Ordinance for proofing and renumbering purposes.

Section 5. The effective date of this Ordinance shall be the date of adoption, unless provided otherwise by the City Charter, state and/or federal law.

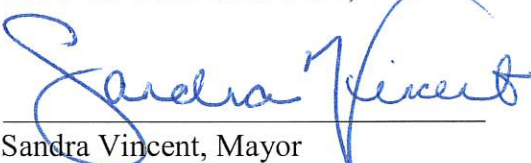
BE IT SO ORDAINED, this 4th day of May, 2023.

ATTEST:




Christy L. Taylor, City Clerk

CITY OF MCDONOUGH, GEORGIA:



Sandra Vincent, Mayor

APPROVED AS TO FORM:



Emilia C. Walker, City Attorney

