

A RESOLUTION OF THE COMMISSIONER OF BARTOW COUNTY, GEORGIA FOR THE PURPOSE OF ADOPTING AN ORDINANCE TO REGULATE INTERFERENCE WITH PARKED VEHICLES, PROVIDING FOR JURISDICTION AND ENFORCEMENT OF SAME, AND OTHER MATTERS, ADOPTED AT THE REGULAR MEETING OF THE COUNTY COMMISSIONER OF BARTOW COUNTY ON NOVEMBER 1, 2023.

WHEREAS, the Bartow County Sole Commissioner has received numerous complaints from employees of Bartow County of persons interfering with the employees' private vehicles parked in the County parking lots; and

WHEREAS, the Commissioner directed his staff and legal counsel to investigate the issue and the legality of regulations to address the situation; and

WHEREAS, on November 1, 2023, the Commissioner conducted a Public Hearing regarding this issue and heard testimony from multiple employees, and the Commissioner makes the following findings of fact resulting from such hearing as a basis for adopting this ordinance:

1. On multiple occasions, going back to at least April of 2022, individuals have placed handbills on vehicles in the county courthouse parking lot.
2. On multiple occasions over the last 18 months, various county employees have confronted different individuals and asked them not to touch their private vehicles nor to put material on their vehicles. However, the practice has continued.
3. On multiple occasions over the last 18 months, the Facilities Department of the County has had to clean up leaflets that blow loose across the grounds of the courthouse complex, having not been adequately secured to the vehicles in the parking lot.
4. Multiple employees have gotten into heated disputes with the individuals who continue to place handbills, threatening a breach of the peace.
5. Multiple employees have requested the Commissioner do something to prevent random persons from touching their vehicles while parked at work.
6. Multiple employees have felt harassed and intimidated when persons placing handbills have aggressively argued with them about their "right" to touch their private vehicles.

WHEREAS, such testimony is recorded in the minutes and audio recording of the County Commissioner's meeting, kept by the County Clerk, and also on video recording kept by the Community Development Department; and

WHEREAS, the Commissioner finds that handbills on vehicles are aesthetic blight, similar to handbills on telephone poles, especially when they are blown free of the windshield and end up in the lawn and grounds of the courthouse; and

WHEREAS, the Commissioner finds that employees' vehicles are private property (and very expensive possessions) and that efforts to verbally request that handbillers stop touching those vehicles are not successful and have led to heated confrontations, threatening to lead to a breach of the peace; and

WHEREAS, the Commissioner recognizes that having the ability to stand on the sidewalk and offer leaflets to passers-by, as well as direct distribution to mailboxes and doorknobs, are time-honored free speech right going back to the founding of this Country, which have been upheld by the U.S. Supreme Court, and finds that this ordinance does nothing to interfere with those rights, leaving ample alternative channels of communication; and in addition, any vehicle owner who wishes to receive communications affixed to their vehicle is permitted in the ordinance to give written permission or to put a sign on their vehicle, which is a much more reasonable burden than requiring those who do not wish to receive communications to have to put a “no handbilling” or “no solicitation” sign on their vehicles, because per the evidence presented, no one is interested in receiving the proffered communications; and

WHEREAS, the Commissioner also recognizes that automobiles did not exist in 1776 or 1789 and that putting leaflets is not a method of communication the Founding Fathers envisioned when drafting the First Amendment; and that windshields are not a public forum; and

WHEREAS, the Commissioner finds that the ordinance adopted today is content-neutral, narrowly tailored to promote significant government interests in limiting aesthetic blight, litter, and preventing the breach of the peace as well as protecting private property from being touched or interfered with; and

WHEREAS, the County’s attorneys have advised the Commissioner of the legal analysis and reasoning in Jobe v. City of Catlettsburg, 409 F3d 261 (6th Cir. 2005) and City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984), and finds those legal precedents persuasive, and concludes that the ordinance adopted today is not unconstitutional; and

WHEREAS, the Commissioner concludes that the County’s attorneys have considered the analysis and suggestions set forth in the University of Cincinnati Law Review article by Tony Bickel (*WINDSHIELD LEAFLETING ORDINANCES: A PERMISSIBLE USE OF LOCAL GOVERNMENT AUTHORITY?*, 79 U. Cin. L. Rev. 749 (2011)), and finds the analysis and conclusion of that article – that ordinances such as what the County adopts today are constitutional – to be persuasive, especially when based on actual evidence of real harms, as is the case here; and

WHEREAS, the Constitution of Georgia of 1983, Article IX, Section II, Paragraph I, entitled Home Rule for Counties, states that the governing authority of each county, which in the case of Bartow County is the Sole Commissioner (as created by Ga.L. 1924, p. 276), “shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property...”; and

WHEREAS, under the law of the State of Georgia, “A county may enact regulations to protect the health, safety, and general welfare of the public under its police powers.” Bd. of Comm’rs of Atkinson County v. Guthrie, 273 Ga. 1, 3, 537 S.E.2d 329, 331–32 (2000); and “General law gives counties the police power necessary to protect the public health, safety, and general welfare.” Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 20, 608 S.E.2d 639, 641 (2005); and

WHEREAS, the Commissioner finds, based on the evidence presented and the legal analysis discussed above, this Ordinance to be clearly reasonable, to be constitutional, and to be a proper exercise of the County's police powers, both in the unincorporated areas and on the property it owns, such as the courthouse complex which is located within the City of Cartersville;

NOW THEREFORE BE IT ORDAINED AND RESOLVED, AND IT HEREBY IS ORDAINED AND RESOLVED, by virtue of the authority vested in the Bartow County Sole Commissioner by law, that the Bartow County Code of Ordinances is amended to adopt new section 50-4 located in Article 1 of Chapter 50, as follows:

Sec. 50-4 Interference with Parked Vehicles

- (a) It shall be unlawful for any person to place or deposit or in any manner to affix or cause to be placed or deposited or affixed to any motor vehicle (as defined in OCGA Sec. 40-1-1), any handbill, sign, poster, bumper sticker, advertisement or notice of any kind whatsoever, unless they be the owner thereof, unless they have secured written permission from the motor vehicle's owner, or unless the owner of the vehicle has placed a sign in the windshield stating "Handbills Accepted" or a similar message inviting communication be placed on their motor vehicle.
- (b) It shall be noted that this provision does not prohibit persons from handing out leaflets and handbills on any sidewalks or public places, or offering them to passing motorists, as long as the flow of traffic is not impeded, and other applicable regulations for soliciting are followed.
- (c) This ordinance shall apply to all parking areas on all real property owned by Bartow County, whether within an incorporated area or not.
- (d) Pursuant to OCGA Sec. 15-10-2(a)(4), this ordinance shall be enforced by citation to the Bartow County Magistrate Court, under the same provisions set forth in Article III of Chapter 50 for disorderly conduct.

SUCH ORDINANCE to be spread upon the minutes of the County and set forth in the published Bartow County Code of Ordinances.

SO ADOPTED this 1st day of November, 2023, to be effective immediately, the public health, safety, and welfare demanding.

ATTEST:

BARTOW COUNTY, GEORGIA

Kathy Gill, Certified County Clerk
(SEAL)

by: Steve Taylor, Sole Commissioner