

ORDINANCE NO. 04-2021

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, AMENDING CHAPTER 45, "PANHANDLING," OF THE DELTONA CODE OF ORDINANCES, MAKING FINDINGS, PROVIDING DEFINITIONS, PROHIBITING CERTAIN ACTS, AND PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission recognizes an individual's first amendment right of free speech and that some kinds of panhandling have been determined to be protected speech; and

WHEREAS, the City Commission finds that an increase in aggressive panhandling, begging and solicitation in the City has become extremely disturbing and disruptive to residents and businesses and has contributed to the loss of access to and enjoyment of public places and also loss of customers for businesses in the City; and

WHEREAS, the City Commission finds that aggressive panhandling, begging and solicitation usually includes approaching or following pedestrians, repetitive requests for money, use of abusive or profane language, unwanted physical contact and intentional blocking of pedestrian or vehicular travel; and

WHEREAS, the City Commission finds that the presence of individuals who solicit money from other individuals at or near entrances/exits to and from buildings and parking areas is especially troublesome because these solicited individuals cannot readily escape from unwanted solicitation; and

WHEREAS, the City Commission finds that panhandling or solicitation on rights of way poses a danger to the person who is panhandling, as well as to the motoring public, and can cause serious traffic congestion that is detrimental to the public health, safety and general welfare;

WHEREAS, the City Commission finds that the current City Ordinances are inadequate in protecting the health, safety and general welfare of the residents of and visitors to the City in preventing the fear and intimidation that accompanies certain types of begging, panhandling and solicitation in certain locations within the City; and

WHEREAS, the City Commission finds that any individual who begs, panhandles or solicits under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity by unwanted touching, detaining, impeding or intimidation which causes fear or apprehension in another individual constitutes a threat to the public health, safety and general welfare of the citizens of and visitors to the City; and

WHEREAS, the City Commission finds that panhandling during hours other than in full daylight can be particularly threatening to solicited individuals, causing reasonable alarm and immediate concern for the safety of those solicited individuals; and

WHEREAS, the City Commission finds establishing an ordinance to address and prevent such begging, panhandling and soliciting will serve to protect the public health, safety and general welfare of the citizens of and visitors to the City and serves a valid public purpose; and

WHEREAS, the regulations of this ordinance constitute the minimum regulations necessary relating to the time, place and manner of panhandling that is necessary to protect the public health, safety and general welfare of the citizens of and visitors to the City of Deltona.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA:

SECTION 1. The foregoing “Whereas” clauses are true and correct and are hereby ratified and confirmed by the City Commission.

SECTION 2. Chapter 45, “*Panhandling*” of the Code of Ordinances of the City of Deltona is hereby AMENDED to read as follows:

Sec. 45-1. Intent

Intent. The purpose and intent of this article is to recognize the constitutional right of persons to panhandle, including but not limited to solicit and beg, in a peaceful and non-threatening manner; however, an increase in aggressive panhandling and begging throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places but also to an enhanced sense of fear, intimidation, and disorder as well as actual danger to the health, safety and welfare of citizens and visitors alike. Aggressive panhandling and begging usually includes approaching or following pedestrians and persons in vehicles, repetitive requests for donations of money despite refusals, the use of abusive or profane language, unwanted physical contact, and the intentional, or as incident to the aggressive panhandling and begging, blocking of pedestrian and vehicular traffic. Additionally, the presence of panhandlers and beggars, who request money from persons in specific public areas such as outdoor cafes, automated teller machines, entrances and exits from buildings, and while standing in line to enter an event or a building, is especially troublesome because persons cannot readily escape from the undesired conduct, which often carries with it an implicit threat to both persons and property as well as incidental to

the panhandling and begging activities the imperiling of the health, safety and welfare of the citizens of and visitors to the City of Deltona by, among other things, blockage of ingress and egress from and into commercial businesses adjacent to public rights-of-way. Also, unless helped by regulation, some of the habits attributable to panhandlers, including but not limited to open urination and open defecation, pose a threat to the health, safety and welfare of citizens and others who visit the City of Deltona.

This article is not intended to limit any persons from exercising their constitutional right to panhandle, including but not limited to beg, or solicit funds, or engage in any other constitutionally protected activity, when conducted in a legal manner. The goal of this article is instead to ensure the foregoing constitutional rights while through regulation acting to protect citizens from the fear and intimidation accompanying certain kinds of panhandling and begging that have become an unwelcome and overwhelming presence in the City by prohibiting aggressive panhandling and begging throughout the City and by regulating through time, place, and manner ordinance provisions regulating panhandling and begging in certain public places, based upon the foregoing significant, important and substantial governmental interests set forth in the predicate clauses and an overriding compelling governmental interest to protect the health, safety and welfare of the citizens of the City of Deltona and visitors from the adverse secondary effects of solicitation, including panhandling and begging, in public areas. The restrictions contained in this article are neither overbroad nor vague and are narrowly tailored to serve a compelling and substantial governmental interest, and preserve ample alternative areas for the valid exercise of constitutional rights of solicitation which they do as set forth more particularly herein.

If such regulations were to be deemed to trigger strict scrutiny, certain behaviors attributed to panhandlers including but not limited to open urination and open defecation and the blockage of ingress and egress into and from commercial businesses and other public areas as well as the impedance of pedestrian walkways and other public rights-of-way implicates the compelling governmental interest of the City of Deltona in protecting the health, safety and welfare of its citizenry and visitors in preserving police and fire department access to such rights-of-way in order to save lives.

Sec. 45-2. - Definitions

Definitions. For purposes of this article, the following words and phrases shall have the meanings ascribed to them as follows:

- (a) *After dark* means from one-half hour after sunset until one-half hour before sunrise. The times of sunset and sunrise will be established by the times listed in any local publication of general distribution.
- (b) *Aggressive panhandling* means:
 - (1) To approach or speak to a person and demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within two feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or
 - (2) To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request for money or a donation (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money from that person after that person has refused to donate or give money); or
 - (3) To obstruct, block or impede, either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or
 - (4) To touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent; or
 - (5) To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.
- (c) *Panhandling* means:
 - (1) To beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited to for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word "solicit" and its forms are included in this definition. Panhandling is considered as having

taken place regardless of whether the person making the solicitation received any contribution. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of panhandling. Soliciting is including in this definition of panhandling.

Sec. 45-2. - Prohibited acts regarding panhandling.

- (a) *Prohibited areas for panhandling including but not limited to soliciting and begging* means the following locations throughout the City in which it is unlawful to engage in panhandling, including but not limited to solicitation or begging, when either the panhandler or beggar or the person being panhandled is located in, on or at the following locations:
- (1) Within 20 feet, in any direction, from any entrance or exit of commercially zoned property.
 - (2) Within 20 feet in any direction from any entrance or exit of a public or institutional building.
 - (3) Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility.
 - (4) Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution.
 - (5) Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City.
 - (6) Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency.
 - (7) Within 100 feet, in any direction, of any public or private daycare or school, including pre-kindergarten through grade 12. This includes colleges and trade schools, non-profit or profit.
 - (8) Within 150 feet of any signalized intersection or the length of any signalized intersection turn lane storage or transition area whichever is greater. Distance requirements shall be measured from intersection stop bars.
 - (9) Within 150 feet of any other controlled intersection.
 - (10) Any public park.

(11) Within 150 feet from any other controlled intersection.

Sec. 45-3. - Prohibited conduct, proximity and location restrictions.

- (a) It shall be unlawful for any person to engage in aggressive panhandling on any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Deltona.
- (b) It shall be unlawful for any person to engage in aggressive panhandling 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.
- (c) It shall be unlawful for any person to engage in panhandling when either the person engaged in panhandling or the panhandler or the person being panhandled, is located in, on or at the following locations:
 - (1) Within 20 feet, in any direction, from any entrance or exit of commercially zoned property;
 - (2) Within 20 feet in any direction from any entrance or exit of a public or institutional building.
 - (3) Within 20 feet in any direction from any entrance or exit of a public or institutional building.
 - (4) Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility;
 - (5) Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;
 - (6) Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City;
 - (7) Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency;
 - (8) Within 100 feet, in any direction, of any public or private daycare or school, including pre-kindergarten through grade 12; This includes colleges and trade schools, non-profit or profit.
 - (9) Within 150 feet of any signalized intersection or the length of any signalized intersection turn lane storage or transition area whichever is greater. Distance requirements shall be measured from intersection stop bars.

- (10) Any public park.
 - (11) Within 150 feet from any other controlled intersection.
- (d) It shall be unlawful for any person to engage in the following prohibited conduct:
- (1) Approach an operator or other occupant of a motor vehicle for the purpose of panhandling, soliciting or begging, or offering to perform a service in connection with such vehicle, or otherwise soliciting the sale of goods or services, if such panhandling, soliciting or begging is done in an aggressive manner;
 - (2) Panhandle or solicit or beg at any lawfully permitted outdoor dining area, amphitheater, amphitheater seating area, playground or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time;
 - (3) Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;
 - (4) Panhandle, solicit or beg while the person or persons being solicited is standing in line and/or waiting to be admitted to a commercial establishment;
 - (5) Panhandle, solicit or beg by touching the person or persons being solicited without that person's consent;
 - (6) Panhandle, solicit or beg with the use of profane or abusive language during the solicitation or following an unsuccessful solicitation;
 - (7) Panhandle, solicit or beg by or with the use of any gesture or act intended to cause a reasonable person to be fearful of the solicitor or feel compelled to accede to the solicitation;
 - (8) Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in chapter 893 of the Florida Criminal Statutes; or
 - (9) Panhandle, solicit or beg after dark.

Sec. 45-4. Penalty.

It shall be unlawful for any person to violate or fail to comply with any section of this Code. Where no specific penalty is provided, the violation of any section of this Code shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not

exceeding 60 days or by both such fine and imprisonment. Each day any violation of any section of this Code shall continue shall constitute a separate offense.

SECTION 3. CONFLICTS. All Ordinances or parts of Ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of any conflict.

SECTION 4. CODIFICATION. The provisions of this Ordinance shall be codified as and become and be made a part of the Code of Ordinances of the City of Deltona. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 5. SEVERABILITY. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its final passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2021.

FIRST READING: _____

ADVERTISED: _____

SECOND READING: _____

HEIDI K. HERZBERG, MAYOR

ATTEST:

JOYCE RAFTERY, CITY CLERK

Approved as to form and legality for use
and reliance by the City of Deltona, Florida

MARSHA SEGAL-GEORGE, CITY ATTORNEY