

ORDINANCE NO.2022-12

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, CREATING CHAPTER _____ OF THE CITY’S CODE OF ORDINANCES ENTITLED “PEDESTRIAN SAFETY AND PUBLIC LODGING” BY SPECIFICALLY CREATING SECTIONS ____ THROUGH ____ DESIGNED TO PROTECT PEDESTRIANS, PANHANDLERS, SOLICITERS, AND BEGGARS IN PUBLIC STREETS AND RIGHTS OF WAY AND PROHIBITING CERTAIN PUBLIC LODGING SUBJECT TO OUTREACH EFFORTS; PROVIDING FOR CODIFICATION, PROVIDING FOR A CONFLICTS CLAUSE, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, based upon statistics collected by “Pedestrian Traffic Fatalities by State” 2020 Preliminary Data by the Governors Highway Safety Association approximately 332 pedestrians were killed between January and June in 2020 in the State of Florida.

WHEREAS, in addition to pedestrians, numerous types of right-of-way vendors and solicitors currently operate or may seek to operate within the City of Westlake, often with multiple groups soliciting within one intersection at the same time, collecting donations for various causes along with people seeking to distribute information and/or obtain donations; and

WHEREAS, the metro area of Fort Lauderdale-West Palm Beach-Miami ranked 13th among the nation’s most dangerous metropolitan areas for pedestrians over the last decade, according to the report entitled “Dangerous by Design 2021” by Smart Growth America, a pedestrian safety organization; and

WHEREAS, South Florida had 1,675 pedestrian deaths between 2010 and 2019, the last period for which data is available. That is 2.8 deaths per 100,000 residents, annually; and

WHEREAS, the roads, streets and boulevards located in the City of Westlake are primarily designed for vehicular traffic and are not suited to safely accommodate right-of-way vendors or solicitors whose presence interferes with the safe movement of normal vehicular traffic; and

WHEREAS, vendors or solicitors in the City utilize the streets, roads and boulevards or right-of-ways located in the City to store items for sale or distribution, and other objects utilized to assist or support their solicitation, creating a hazard to vehicular traffic and causing litter and debris to be dispersed throughout the area; and

WHEREAS, it is the intention of the City Council to utilize means which are narrowly tailored to advance the significant government interests of traffic safety and public peace and safety, and by analysis of the major roadways within the City, including accident data and reports, the City Council has determined that hazards posed to traffic and public safety with regard to activities in and use of city streets, roads and boulevards by right-of-way vendors and solicitors will be lessened by the enactment of the regulations contained herein; and

WHEREAS, the City Council has reviewed the regulations proposed in this ordinance and finds that such regulations accomplish the purpose intended while utilizing the least restrictive means possible; and

WHEREAS, the City Council desires to preserve and protect the personal safety and quality of life of its residents and of those who use the streets, roads and boulevards, located in the City both pedestrian and motorist alike as well as vendors and solicitors; and

WHEREAS, the City Council finds that it is in the best interests of the residents of the City to adopt this ordinance to protect and provide for the safety of pedestrians and any other individuals when using the streets, roads, avenues, and boulevards, in the City of Westlake; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF WESTLAKE, FLORIDA, as follows:

SECTION 1. Recitals. The foregoing recitals are confirmed, adopted and incorporated herein and made a part hereof by this reference.

SECTION 2. The City Council hereby creates Chapter ____ entitled "Pedestrian Safety and Public Lodging" as follows:

Chapter _____, Pedestrian Safety and Public Lodging.

Sec _____

(a) The City Council recognizes a constitutional right to beg, panhandle, solicit or offer for sale items in a peaceful and non-threatening manner. However, the City Council further finds that the activity of begging, panhandling, soliciting, or selling items adversely impacts the public health, welfare, safety, and crowd control when such activities are conducted on or near public streets which are in use by vehicular traffic because these activities involve the process of a person requesting something from an occupant or operator of a vehicle which is in traffic, that vehicle occupant or operator must consider the request or solicitation, and, if the vehicle occupant or operator decides to fulfill the request, that person must perform some act while that person and vehicle are located on a public street in use by vehicular traffic. Based on the foregoing, the City Council finds that the activity of begging, panhandling, soliciting or selling from or to occupants or operators of vehicles located on streets in use by vehicular traffic distracts drivers from their primary duty to watch traffic and potential hazards in the road, observe all traffic signals or warnings and move through the city's streets and intersections in a lawful and safe manner and creates a potential safety hazard and poses a substantial risk to the public, particularly pedestrians, and impedes the free flow of traffic on the streets within the city resulting in the delay and obstruction of the public's free flow of travel on the city's streets. The City Council further finds that the safety of beggars, panhandlers, solicitors, individuals selling items, pedestrians and operators and occupants of vehicles is at significant risk when such activities occur because the nature of these activities often entails beggars, panhandlers, solicitors, or individuals selling items by standing on traffic medians, bicycle paths and public streets and right of way in use by vehicular traffic, property only meant for the use and control of vehicular traffic and not begging, panhandling, soliciting or the sale of items.

(b) It is not the purpose and intent of this article to prohibit begging, panhandling, soliciting or selling items in public areas when such activities will not interfere with vehicular traffic and cause traffic safety and traffic flow concerns or when such activities will not otherwise cause any public health, welfare and safety concerns.

(c) The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to serve a substantial governmental interest. Moreover, this article only restricts begging, panhandling, soliciting and the sale of items in certain public places while preserving ample alternative areas for the valid exercise of First Amendment constitutional rights. Furthermore, in enacting this ordinance, the City Council recognizes the availability of community service and other alternatives, which may be appropriate remedies for violations of this article.

(d) The law is not intended to limit any persons from exercising their constitutional right to beg, panhandle or solicit funds, picket, protest or engage in other constitutionally protected activity or any lawful activity permitted pursuant to the Florida Statutes. Its goal is instead to provide for pedestrian safety and protect citizens from the fear and intimidation accompanying certain kinds of begging, panhandling or solicitation and to prohibit aggressive begging, panhandling and solicitation in certain public places based upon significant governmental interests.

Sec _____

(a) Purpose. The City Council also finds that any person who intentionally blocks the passage of another person or a vehicle, which requires another person to take evasive action to avoid physical contact, constitutes a threat to the public health, welfare and safety of the citizenry. The City Council further finds that any person who begs, panhandles or solicits under circumstances where the person being solicited cannot readily escape from the undesired conduct constitutes a threat to the public health, welfare and safety of the citizenry. The City Council also finds that any person begging, panhandling or soliciting from occupants or operators of vehicles while such vehicles are on the portion of a public street currently in use by vehicular traffic and any person begging, panhandling or soliciting on traffic medians, bicycle paths or public streets when such property is in use by vehicular traffic poses a threat to public safety and prevents the free flow of traffic on public streets.

(b) Definitions. Except where the content otherwise requires, as used in this chapter:

(1) Aggressively beg, panhandle or solicit means any request made in person from another person by an unwanted touching, detaining, impeding or intimidation.

(2) Beg, panhandle or solicit means any request made in person, either by words, bodily gestures, signs or other means, from another person or to another person.

(3) Beg, panhandle, solicit or offer to sale to or from any operator or occupant of a vehicle that is in traffic on a public street or to make an offer to sale any item or provide a service of any nature to any operator or occupant of a vehicle that is in traffic on a public street means any request made in person or provide a service for value, either by words, bodily gestures, signs or other means, from any operator or occupant of a vehicle, between the person begging, panhandling or soliciting and any operator or occupant of a vehicle while that vehicle is on the portion of a public street currently in use by vehicular traffic.

(4) Obstruct pedestrian or vehicular traffic means to walk, stand, sit, lie or place an object in such a manner as to block passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's

constitutional right to picket or to legally protest outside of the portion of the public street or right of way not currently in use by vehicular traffic, are not included within the definition of this term.

(5) Beggar, panhandlers or solicitor means any person traveling either by foot, vehicle or other conveyance, from place to place, requesting in person anything, either by words, bodily gestures, signs or any other means, from another person.

(c) Restrictions and requirements.

(1) Beggars, panhandlers or solicitors are prohibited from obstructing pedestrian or vehicular traffic and aggressively begging, panhandling, soliciting or offering to sell any items on any County road located in the City of Westlake and any road in Westlake that joins a County road.

(2) Beggars, panhandlers or solicitors are prohibited from begging, panhandling or soliciting from any operator or occupant of a vehicle that is in traffic on a public street.

(3) No person shall stand on a traffic median, bicycle path, public street, or right of way to beg, panhandle, solicit or sell items when in use by vehicular traffic.

Sec. _____

Any person convicted of violating any of the provisions of Sections _____ and _____ shall be punished as provided in _____ of this Code which provides, *inter alia*, that the county court may either impose a fine, a sentence of imprisonment for a term not to exceed ninety (90) days, or both.

Sec. _____ . Public Lodging.

(a) 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:

(1) Camp or camping 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, 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 (1) 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, Section 501(c)(3) organization, or (2) an organization with a validly issued special event permit contemplating such activities; or (3) a site that has been approved for or is customarily associated with events, subject to all requirements the [Special Events Chapter] imposes on such event venues for events.

(2) Outreach team member shall mean any group of social service providers, homeless outreach workers, mental health or drug and alcohol workers that may be authorized and designated by the City to work with County officials.

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 law enforcement 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 the following conduct:

(1) Sleep, camp, lodge or lie with the intent to sleep, camp, or lodge:

a. On any right-of-way, sidewalk, street, 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 that are intended to be used for housing accommodations, lodging, sleeping or camping:

a. On any right-of-way, sidewalk, street, 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; or

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 (b) 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 law enforcement 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 (b) of this section after notice of a violation has been provided, the person may be cited with a violation of subsection (b) of this section.

(3) Law enforcement officers shall take all necessary and appropriate steps to insure that those officers who are likely to come into contact with persons in violation of subsection (b) 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.

Sec. _____, Enforcement.

A violation of this division shall be subject to the penalties provisions of Section _____ of this Code. In addition to any other penalty provided in this section, a person violating this article may be subject to the penalties and procedures set forth in F. S. §§ 162.22 and 162.23.

SECTION 3. Codification. It is the intention of the City Council of the City of Westlake that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Westlake, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

SECTION 4. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions which are in conflict herewith, are hereby repealed to the extent of such conflict.

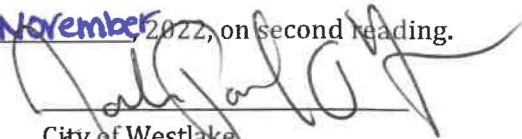
SECTION 5. Severability. Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

SECTION 6. Effective Date. This ordinance shall be effective upon adoption on second reading.


PASSED this 4 day of October, 2022, on first reading.

PUBLISHED on this 19 day of October, 2022 in the Palm Beach Post.

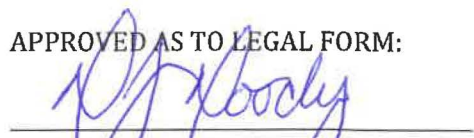
PASSED AND ADOPTED this 1 day of November, 2022, on second reading.



City of Westlake
John Paul O'Connor, Mayor

ATTEST:


Zole Burgess, City Clerk

APPROVED AS TO LEGAL FORM:


OFFICE OF THE CITY ATTORNEY