

ORDINANCE NO. 2017-012

AN ORDINANCE OF THE CITY OF OCOEE, FLORIDA, CREATING A NEW ARTICLE IV OF CHAPTER 153 OF THE CITY OF OCOEE CODE OF ORDINANCES RELATING TO PANHANDLING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, as provided in Article VIII of the Constitution of the State of Florida and chapters 163 and 166, Florida Statutes, the City of Ocoee (the "City") enjoys all home rule authority, police power, land development and zoning authority, and governmental and proprietary powers necessary to conduct municipal government and perform municipal functions; and

WHEREAS, the City may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, the City Commission in good faith determines that this Ordinance is in the best interest of the City and its residents and promotes the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF OCOEE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals**. The foregoing recitals are hereby ratified and confirmed as true and correct and incorporated herein by this reference.

Section 2. **Authority**. The City Commission of the City of Ocoee has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 3. **Chapter 153, Article IV - Panhandling**. Article IV of Chapter 153 of the City of Ocoee Code of Ordinances, is hereby created to read as follows:

See **Exhibit "A"** attached hereto and by this reference made a part hereof.

Section 4. **Severability**. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereto.

Section 5. **Codification**. It is the intention of the City Commission of the City that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City; and that sections of this Ordinance may be renumbered or relettered 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 renumbered or relettered and the correction of typographical errors

which do not affect the intent may be authorized by the City Manager, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

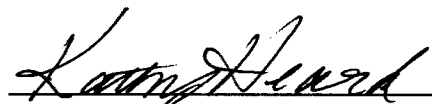
Section 6. **Effective Date.** This Ordinance shall be in force and take effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 21st day of March, 2017.


APPROVED:

ATTEST:

CITY OF OCOEE, FLORIDA



Melanie Sibbitt, City Clerk
Kathy Heard, Deputy



Rusty Johnson, Mayor

(SEAL)

ADVERTISED March 9, 2017
READ FIRST TIME March 7, 2017
READ SECOND TIME AND ADOPTED
March 21, 2017
UNDER AGENDA ITEM NO. 10

**FOR USE AND RELIANCE ONLY BY
THE CITY OF OCOEE, FLORIDA;
APPROVED AS TO FORM AND LEGALITY**
this 21st day of MARCH, 2017

SHUFFIELD, LOWMAN & WILSON, P.A.

By: 

City Attorney

EXHIBIT "A"

A new Article IV is added to Chapter 153 of the City of Ocoee Code of Ordinances, relating to Streets and Sidewalks, to read as follows with underlines showing new language:

ARTICLE IV – Panhandling

Section 153-30. – Purpose, Intent, and Findings.

A. It is the purpose and intent of this article to secure the health, safety, and welfare of all persons using city streets and rights of way, to ensure that the use of city streets and rights of way does not become dangerous, to ensure that the free flow of traffic thereon is not impeded, and to protect those on the city streets and rights of way against abusive behavior by panhandlers, as this term is defined herein. The City Commission further finds that, to protect citizens from the fear and intimidation accompanying certain locations and types of panhandling, and to prohibit aggressive and intimidating panhandling, restrictions on such activity is necessary.

(2) The City Commission finds that significant public health, safety, and welfare concerns and crowd control problems caused by panhandling near city streets and rights of way which are in use by vehicular traffic. The City Commission finds that such concerns and problems arise because panhandling in the City right of way involves the process of a panhandler soliciting the immediate donation of money or other thing of value from an occupant or operator of a vehicle which is in traffic, that vehicle occupant or operator must consider the offer, and, if the vehicle occupant or operator decides to give the donation to the panhandler, that person must reach for a wallet or search for money, all while the panhandler and vehicle are located on a city street or right of way that is in use by vehicular traffic. Based on the foregoing, the City Commission finds that the activity of panhandling from 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, creates a safety hazard, poses a substantial risk to the public, and impedes the free flow of traffic on the city's streets and rights of way. The City Commission further finds that the safety of panhandlers and the occupants of vehicles is at significant risk when panhandlers engage in their activities on or near public streets because City streets and rights of way are meant for the use and control of vehicular traffic and not for panhandling activities.

(3) The City Commission further finds that the presence of persons who panhandle from other persons at or near automated teller machines, the entrance and exits of certain buildings and establishments, at certain facilities and events, or at or around other locations, as described in this article, is especially troublesome because said persons cannot readily escape from the undesired conduct and that such activity often carries with it an implicit threat to both persons and property.

B. It is not the purpose and intent of this article to prohibit panhandling in public areas when such activities will not interfere with vehicular traffic, cause traffic safety and traffic flow concerns, or constitute a threat to the public health, safety, and welfare of the citizenry. Panhandlers may conduct their activities so long as they are in compliance with this Code.

Section 153-31. - Definitions.

"Panhandling" is hereby defined as a solicitation made in person, requesting an immediate donation of money or other thing of value. Purchase of an item of an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in fact a donation, is a donation for the purpose of this article. Except as specifically provided in this article, panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific persons other than in response to an inquiry by that person.

Section 153-32. - Prohibited activities.

A. It shall be unlawful for any person to panhandle, and no registration issued under this section shall be deemed to allow panhandling, including passively standing or sitting with a sign or other indication that one is seeking donations, when the person solicited is in any of the following places within the city limits:

- (1) Within 100 feet of any bus stop or train stop;
- (2) In any public transportation vehicle or facility, excluding airports;
- (3) In the city right of way or in any vehicle located in or on the city right of way;
- (4) In a public park, fairground, or sporting facility, including entry ways or exits thereto;
- (5) Within 100 feet of any school as this term is defined in Section 1002.01, Florida Statutes, and Section 1003.01, Florida Statutes;
- (6) At the site of any automated teller machine. For the purposes of this subsection, "site of any automated teller machine" includes an area within 100 feet of any automated teller machine;
- (7) On private property, including at any point of sale or commercial retail establishment, unless the panhandler has written permission from the owner or person in possession of the private property or commercial retail establishment;
- (8) In a parking lot or garage owned or operated by the city, including entry ways or exits and pay stations connected therewith; or

(9) Within 100 feet of any liquor store, defined as a store whose predominate business is the sale of alcoholic beverages.

B. It shall be unlawful for any person to panhandle in any of the following manners:

(1) By coming within three (3) feet of the person solicited, unless that person has indicated that he or she does wish to make the donation;

(2) By blocking the path of the person solicited;

(3) By following a person who walks away or otherwise indicates he or she does not wish to make a donation to the panhandler;

(4) By using profane or abusive language, either during the solicitation or following a refusal of a solicitation;

(5) By panhandling in a group of two or more persons unless the group of two or more persons have registered as required in this ordinance and have received written permission from the owner or person in possession of the private property or commercial retail establishment; or

(6) By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

C. It shall be unlawful for any persons to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

(1) Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

(2) Stating that the donation is needed to meet a need which does not exist;

(3) Stating that the solicitor is from out of town and stranded, when such is not true;

(4) Wearing a military uniform or other indication of military service when the solicitor is neither a present nor former member of the service indicated;

(5) Wearing or displaying any indication of physical or mental disability, when the solicitor does not suffer the disability indicated;

(6) The use of makeup, or any other artifice to simulate any deformity or injury; or

(7) Stating that the solicitor is homeless, when in fact he or she is not.

D. It shall be unlawful for any person to solicit and receive a donation by indicating that the funds requested are needed for a specific purpose, and then spend the funds received for a different purpose.

E. It shall be unlawful for any operator or occupant of a vehicle that is in traffic on a city right of way to offer money or some other article of value to a person who is panhandling that results in the actual exchange of money or some other article of value between the person panhandling and the operator or occupant of a vehicle while that vehicle is on the portion of a city right of way currently in use by vehicular traffic.

F. Any violation of this section shall be punishable as set forth in section 1-12 of this Code.

Section 153-33. - Registration requirement.

A. No person shall panhandle without a registration issued by the city police department. A person who has been registered shall keep a copy of the registration on his or her person at all times while panhandling and show it to any police officer upon request. No person whose registration has been revoked shall panhandle for a period of two years following the revocation. A violation of this section shall be punishable as set forth in section 1-12 of this Code.

B. The police department shall issue the registration, without fee, to any eligible person who presents himself or herself at the city police headquarters, states his or her true name, presents a photo identification or signs a declaration under penalty of perjury that he or she has no such identification, and permits himself or herself to be photographed and fingerprinted.

C. A person is ineligible to register and registration will not be granted if, and only if, within the last five (5) years he or she:

(1) Has been convicted whether or not adjudication was withheld of two or more violations of this section;

(2) Has had a registration revoked pursuant to subsections E. or F. below; or

(3) Has been convicted, whether or not adjudication was withheld, of two or more offenses under the law of any jurisdiction which involves aggressive or intimidating behavior while panhandling or false or misleading representations while panhandling.

D. If the police department is unable to determine eligibility within two working days, excluding weekends and holidays, upon receipt of an application for registration to panhandle, the police department shall issue a temporary registration which will be valid for up to 30 days or until such time as the police department determines eligibility for regular registration, whichever comes first. The regular registration shall expire three years from the date of issuance. Along with the registration, the police department shall give the applicant a copy of this article.

E. Any person who makes any false or misleading representations while applying for a registration under this section shall be punished under section 1-12 of this Code. Upon conviction for violation of this section, the city police department shall revoke any registration issued to the convicted person under this section.

F. If a registration is issued to a person under this section and that person is later convicted of a violation of any provision under this section, the police department shall revoke the registration.

G. Upon arrest for any violation of this section the panhandler shall release his or her registration to the arresting officer. A panhandler may apply at the police department for consecutive 30-day temporary registrations pending the outcome of the arrest in a court of law.