

ORDINANCE 2022-18 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, REPEALING SECTIONS 15-90 "DEFINITIONS," 15-91 "PROHIBITED ACTS REGARDING PANHANDLING," AND 19-14 "RIGHT-OF-WAY SOLICITORS AND CANVASSERS" OF THE CITY CODE OF ORDINANCES WHICH MAKE CERTAIN INSTANCES OF PANHANDLING OR SOLICITING IN PUBLIC AREAS UNLAWFUL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AN EFFECTIVE DATE, AND FOR OTHER PURPOSES

WHEREAS, the City of Lake Worth Beach, Florida (the "City") is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, section 15-91 of the City's Code of Ordinances (the "Code") makes it unlawful to solicit money or other things of value in certain public areas, including bus stops, public transportation facilities, public transportation vehicles, areas within fifteen (15) feet of a sidewalk café, automatic teller machine, and the entrance or exit of a commercial or governmental building, parking lots, parking garages and parking pay stations owned or operated by the City and private property, unless the person panhandling has permission from the owner of such property; and

WHEREAS, section 19-14 of the Code makes it unlawful for any person to canvass or solicit in the right-of-way at certain designated intersections within the City; and

WHEREAS, the City's law enforcement agency, the Palm Beach County Sheriff's Office (PBSO), ceased enforcing sections 15-91 and 19-14 on January 14, 2022; and

WHEREAS, given the prior decision to cease enforcement of these ordinances, the City Commission believes it is prudent to repeal section 15-91 (and associated section 15-90 "Definitions") and section 19-14 of the Code; and

WHEREAS, the City Commission finds and declares that the repeal of these ordinances is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1: The foregoing "WHEREAS" clauses are incorporated into this Ordinance as true and correct findings of the City Commission.

Section 2: Chapter 15 "Offenses – Miscellaneous," Article VI "Panhandling" is hereby repealed in full as follows:

ARTICLE VI. – RESERVEDPANHANDLING

~~Sec. 15-90. - Definitions.~~

~~Definitions as used in this article:~~

~~(a) Aggressive panhandling or solicitation means:~~

~~(1) Approaching or speaking to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with either imminent bodily injury or the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;~~

~~(2) Continuing to request money or something else of value after the person solicited has given a negative response to the initial request;~~

~~(3) Blocking, either individually or as part of a group of persons, the passage of a solicited person;~~

~~(4) Touching a solicited person without explicit permission; or~~

~~(5) Engaging in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.~~

~~(b) Panhandling means:~~

~~(1) Any solicitation made in person requesting an immediate donation of money or other thing of value for oneself or another person; or~~

~~(2) Any solicitation which seeks a donation where the person solicited receives an item of little or no monetary value in exchange and where a reasonable person would understand that the transaction is in substance a donation.~~

~~Panhandling does not mean the act of passively standing or sitting, performing music, or singing with a sign or other indication that a donation is being sought, but without any vocal request other than a response to an inquiry by another person.~~

~~Sec. 15-91. - Prohibited acts regarding panhandling.~~

~~(a) It shall be unlawful to engage in the act of panhandling when either the solicitation occurs or the person being solicited is located in, on, or at any of the following locations:~~

~~(1) Bus stop or any public transportation facility;~~

~~(2) Public transportation vehicle;~~

~~(3) Area within fifteen (15) feet, in any direction, of a sidewalk café, as defined in the Code;~~

~~(4) Parking lot, parking garage, or parking pay station owned or operated by the city;~~

~~(5) Area within fifteen (15) feet, in any direction, of an automatic teller machine;~~

~~(6) Area within fifteen (15') feet, in any direction, of the entrance or exit of a commercial or governmental building;~~

~~(7) Private property, unless the person panhandling has permission from the owner of such property.~~

~~(b) It shall be unlawful to engage in the act of aggressive panhandling in any location in the city.~~

Section 3: Chapter 19 "Streets and Sidewalks," Article I "In General," Section 19-14 "Right-of-way solicitors and canvassers" is hereby repealed in full as follows:

Sec. 19-14. – Reserved.Right-of-way solicitors and canvassers.

~~(a) Definitions. For the purposes of this section, "right-of-way canvasser or solicitor" shall mean any person who sells or offers for sale any thing or service of any kind, or who seeks any donation of any kind, or who personally hands to or seeks to transmit by hand or receive by hand any thing or service of any kind, whether or not payment in exchange is required or requested, to any person who operates or occupies a motor vehicle of any kind, which vehicle is engaged in travel on or within any portion of any of the streets or roadways in the city, whether or not such vehicle is temporarily stopped in the travel lanes of the road. The term shall not apply to any person who merely holds or displays a sign lawfully permitted to be displayed by a person as long as there is no entry by such person or sign into any portion of the roadway. Further, this term shall not apply to official citations or notices provided pursuant to governmental authority.~~

~~(b) Findings; purpose; intent.~~

~~(1) The city commission of the City of Lake Worth desires to adopt an ordinance restricting right-of-way canvassers and solicitors from certain intersections located in the city because such canvassers and solicitors pose a danger to themselves and the public at large by interfering with the safe movement of normal vehicular traffic; and~~

~~(2) According to a 2017 report by Smart Growth America, a national group that advocates for smart development, since 2009, pedestrians in Florida are more likely to be struck by vehicles than elsewhere in the United States;~~

~~(3) According to the Smart Growth America report, the metropolitan areas from Miami to West Palm Beach are one of the most dangerous metropolitan areas for pedestrians with 1,508 pedestrian fatalities from 2005-2014; and~~

~~(4) According to the Florida Department of Highway Safety and Motor Vehicles 2015 Florida Traffic Crash Statistics Report, six hundred thirty-two (632) pedestrians were killed on Florida roadways in 2015; thirty-five (35) of those pedestrians were killed on roadways in Palm Beach County; and~~

~~(5) As reported in the USDOT National Highway Traffic Safety Administration's June 2008 National Pedestrian Crash Report, the Lake Worth experienced two (2) pedestrian crash deaths in 2006 alone; and~~

~~(6) Based upon statistics collected by the U.S. Department of Transportation, Federal Highway Administration, Florida pedestrian fatalities are on the rise; and~~

~~(7) According to a Palm Beach County Metropolitan Planning Organization's Bicycle and Pedestrian Safety Team commissioned study, Lake Worth Road (from Jog Road east into downtown Lake Worth) is a corridor of concern based on crash data involving pedestrians and bicyclists in Palm Beach County from 2010 to 2014 with central Palm Beach County being the most intense for pedestrian crashes in the past five (5) years; and~~

~~(8) Numerous types of right-of-way canvassers and solicitors may seek to operate within the City of Lake Worth, including, but not limited to, children, adolescents and adults who seek to collect money for school and community activities; vendors who sell flowers, newspapers and other products; and, people who seek donations or distribute written information; and~~

~~(9) Right-of-way canvassers and solicitors approach motorists and passengers in motor vehicles engaged in travel on roads, and are particularly susceptible and vulnerable to serious injury, or death due to the speed and number of motorists who operate vehicles on busy roads within the city; and~~

~~(10) Roadways are primarily designed for vehicular traffic and are not suited to safely accommodate right-of-way canvassers and solicitors; and~~

~~(11) The presence of right-of-way canvassers and solicitors interferes with the safe movement of normal vehicular traffic; and~~

~~(12) The road network in the city is substantially burdened by a high volume of traffic, roadway and adjacent construction and road design which frequently includes vehicle turns and movements that demand a driver's strict attention; and~~

~~(13) It is the intention of the city commission to use the least restrictive means to advance the significant governmental interests of traffic safety and public safety and, consequently, the Palm Beach County Sheriff's Office analyzed each of the major roads within the city and determined that the intersections listed in subsection (c) below present an increased and significant danger for use by distracted drivers, pedestrians and right-of-way canvassers and solicitors and pose the greatest threat to traffic and public safety in reference to activities and use by right-of-way canvassers and solicitors, and therefore the city commission has determined that such activities and use by right-~~

~~of-way canvassers and solicitors shall be prohibited at the intersections listed in subsection (c); and~~

~~(14) It is the finding of the city commission that many other alternative channels of communication (other than right-of-way canvassing and solicitation at the prohibited intersections) exist for persons who seek to exercise their First Amendment freedoms, such as, but by no means limited to, solicitation of funds or distribution of literature through the mail or at alternate locations (such as houses of worship, shopping areas and special events); the sale and/or distribution of newspapers through home or office delivery, vending machines and retail stores; other authorized and permitted business, charitable and other activities under the city's Code; and the sale of goods and services at retail stores, through the internet and from vending machines; and~~

~~(15) The city commission desires to preserve and protect the personal safety and quality of life of its residents and of those who use streets within the city, both pedestrians and motorists alike; and~~

~~(16) The city commission has reviewed the proposed regulations provided by this section and finds that such regulations accomplish the purposes intended while utilizing the least restrictive means; and~~

~~(17) The city commission finds that it is in the best interests of the residents of the city to adopt this section.~~

~~(c) *Prohibited intersections.* It shall be unlawful for any person to act as a right-of-way canvasser or solicitor at the intersections of:~~

~~(1) Interstate 95 (I-95) northbound and southbound on and off ramps at Sixth Avenue South;~~

~~(2) Interstate 95 (I-95) northbound and southbound on and off ramps at 10th Avenue North;~~

~~(3) Lake Worth Road and the CSX railway (located west of the Interstate 95 (I-95) overpass at Lake Worth Road);~~

~~(4) Intersection of 10th Avenue North and North Dixie Highway; and,~~

~~(5) Intersection of 6th Avenue South and South Dixie Highway.~~

~~For purposes of enforcement, the above identified intersections shall include any area within one hundred (100) feet from the lateral curb or boundary line of the intersection; and, shall also include the entire length of the Interstate 95 (I-95) on and off ramps at 6th Avenue South and 10th Avenue North.~~

~~(d) *Chapter 316, Florida Statutes.* The enforcement of this section shall not, in any way, preclude the enforcement of F.S. § 316.130(5), as applicable.~~

~~(e) *Precedence*. It is the intent of this section that the prohibition herein for persons acting as right-of-way canvassers or solicitors at the identified intersections takes precedence over and prohibits any authorized or permitted activity under chapter 19, article VI, of this Code, regarding the authorized and permitted use of pedestrian and vehicular rights-of-way and other public property.~~

~~(f) *Enforcement and penalties*.~~

~~(1) It shall be the duty of any law enforcement officer authorized to enforce the laws of the state to enforce the provisions of this section against any person found in violation.~~

~~(2) Any violation of any of the provisions of this section shall be prosecuted as a misdemeanor of the second degree and punished by a fine of not more than five hundred dollars (\$500.00) and/or imprisonment in an authorized facility for not more than sixty (60) days.~~

~~(3) Notwithstanding the foregoing, the enforcement provisions and penalty provisions provided for in this section are not exclusive. The city may pursue any other legal or equitable remedies available under law for the enforcement of this section and related penalties, including without limitation, code enforcement.~~

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 portions thereof.

Section 5: Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6: Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 7: Effective Date. This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by _____, seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

231
232 The Mayor thereupon declared this ordinance duly passed on first reading on the
233 _____ day of _____, 2022.
234

235
236 The passage of this ordinance on second reading was moved by
237 _____, seconded by _____, and upon being put to a vote,
238 the vote was as follows:
239

240 Mayor Betty Resch
241 Vice Mayor Christopher McVoy
242 Commissioner Sarah Malega
243 Commissioner Kimberly Stokes
244 Commissioner Reinaldo Diaz
245

246 The Mayor thereupon declared this ordinance duly passed on the _____ day of
247 _____, 2022.
248

249 LAKE WORTH BEACH CITY COMMISSION
250

251
252 By: _____
253 Betty Resch, Mayor

254 ATTEST:
255
256

257 _____
258 Melissa Ann Coyne, City Clerk