

MR/EBD/tlc 7-10-06
Requested by the Mayor

9
RECEIVED
CLERK OF COUNCIL
CITY OF AKRON

Public Safety

2006 JUL 10 PM 10:12
SUBSTITUTE OFFERED
AS AN AMENDMENT

Offered by SHEALEY

ORDINANCE NO. 356 - 2006 amending and/or supplementing Title 13, Chapter 135, Section 135.10 of the Code of Ordinances by adding locations where panhandling is prohibited and requiring registration of panhandlers; and declaring an emergency.

WHEREAS, the City of Akron has an important, substantial and significant governmental interest in protecting public safety and welfare and protecting the public from fraud, intimidation, crime and undue annoyance on public streets and sidewalks and in their homes; and

WHEREAS, persons should be able to move freely upon the streets and sidewalks of the city without undue interference from or intimidation or harassment by panhandlers; and

WHEREAS, excessive and aggressive panhandling has become a concern to business and restaurant owners and their patrons; and

WHEREAS, additional panhandling regulation is necessary to ensure protection of pedestrian traffic and free access and enjoyment of public places, particularly in the downtown area; and

WHEREAS, soliciting financial support is subject to reasonable regulation; and

WHEREAS, the City of Akron has an important, substantial and significant interest in regulating panhandling as necessary to serve these interests; and

WHEREAS, it is in the public interest to regulate the time, place and manner of panhandling in order to promote public safety and order and to make public areas safe and inviting for residents and visitors; and

WHEREAS, Council has reviewed studies and reports and considered testimony as to the effects of panhandling on businesses and individuals; and

WHEREAS, based upon its review of the studies, and testimony and its own familiarity with and knowledge of the harmful effects in the City of Akron, Council determines that regulation of panhandling is necessary; and

WHEREAS, Council intends that this ordinance address the inherently disruptive and frequently intimidating nature of panhandling; and

WHEREAS, Council recognizes that there remain numerous places and means to solicit a monetary donation consistent with the provisions of this ordinance.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That Title 13 "General Offenses", Chapter 135 "Offenses Against Persons," Section 135.10 "Unlawful Panhandling and Fraudulent Solicitation" of the Code of Ordinances of the City of Akron, be and is hereby amended and/or supplemented to read as follows:

135.10 Unlawful panhandling and fraudulent solicitation.

A. **DEFINITIONS.** For purposes of this section, "panhandling" means any solicitation made in person requesting an immediate donation of money. The 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 shall be considered a donation. "Panhandling" does not include passively standing or sitting with a sign or other non-verbal indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

B. **TIME OF PANHANDLING.** No person shall panhandle after sunset or before sunrise on any street, sidewalk, public right-of-way, or other public property.

C. **PLACE OF PANHANDLING.** No person shall panhandle any person(s) **WHEN THE PERSON PANHANDLING OR THE PERSON BEING PANHANDLED IS IN ANY OF THE FOLLOWING PLACES:**

1. At a bus stop or train stop;
2. In a public transportation vehicle or facility;
3. In a vehicle ~~on the street~~; **WITHIN THE PUBLIC RIGHT-OF-WAY;**
4. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT OF ANY BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR CHECK CASHING BUSINESS DURING ITS BUSINESS HOURS OR WITHIN TWENTY FEET OF ANY AUTOMATED TELLER MACHINE;**
5. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO CANAL PARK STADIUM;**
6. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO AKRON CIVIC THEATRE;**
7. **IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO LOCK 3 PARK;**
8. **IN OR AT ANY SIDEWALK CAFÉ FOR WHICH A PERMIT HAS BEEN ISSUED IN ACCORDANCE WITH SECTION 98.05;**
9. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO THE AKRON ART MUSEUM;**
10. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO ANY SCHOOL OR CHURCH;**
4. 11 On private property, ~~unless the panhandler has written permission from the owner or occupant of the 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.**

D. **MANNER OF PANHANDLING.** No person shall panhandle on any street, sidewalk, public right-of-way, or public property by:

1. Blocking the path of the person being asked for a donation;
2. Following **AND CONTINUING TO SOLICIT** a person who walks away from the panhandler; or
3. Making any statement, gesture, or other communication by which the panhandler knowingly causes another to believe that the panhandler will cause physical harm to the person or property of the other person.

~~F. 4. No person shall panhandle~~ Stating that the donation is needed for a specific purpose and then spending the donation received for a different purpose.

E. **FALSE OR MISLEADING SOLICITATION.** No person shall knowingly make any false or misleading representation in the course of panhandling. False or misleading representations include, but are not limited to, the following:

1. Stating that the donation is needed to meet a specified need, when the panhandler 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 panhandler is from out of town and stranded, when that is not true;
4. Wearing a military uniform or other indication of military service, when the panhandler is neither a present nor former member of the service indicated;
5. Wearing or displaying an indication of physical disability, when the panhandler does not suffer the disability indicated;
6. Use of any makeup or device to simulate any deformity; or
7. Stating that the panhandler is homeless, when the panhandler is not.

F. **REGISTRATION REQUIRED.** **NO PERSON SHALL PANHANDLE WITHOUT A REGISTRATION ISSUED BY THE CHIEF OF POLICE EXCEPT AS PROVIDED IN SUBSECTION (6). THE REGISTRATION SHALL INCLUDE THE NAME AND PHOTOGRAPH OF THE PERSON TO WHOM IT IS ISSUED. ANY PERSON WHO HAS BEEN REGISTERED SHALL DISPLAY THE REGISTRATION IN PLAIN VIEW ON THE FRONT OF THAT PERSON AT ALL TIMES WHILE PANHANDLING.**

1. **THE CHIEF OF POLICE SHALL ISSUE THE REGISTRATION, WITHOUT FEE, TO ANY ELIGIBLE PERSON WHO PRESENTS HIMSELF OR HERSELF AT THE H.K. STUBBS JUSTICE CENTER, 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.**

2. **A PERSON IS INELIGIBLE TO REGISTER AND/OR MAY HAVE HIS OR HER REGISTRATION REVOKED IF, AND ONLY IF, WITHIN THE PAST TWO YEARS, HE OR SHE:**

A. **HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SECTION 135.10(B), (C), OR (F);**

B. **HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SECTION 135.10(D) OR (E) OR TWO OR MORE OFFENSES UNDER THE LAWS OF ANY JURISDICTION WHICH INVOLVE AGGRESSIVE OR INTIMIDATING BEHAVIOR WHILE PANHANDLING OR FALSE OR MISLEADING REPRESENTATIONS WHILE PANHANDLING.**

C. **HAS HAD HIS/HER REGISTRATION REVOKED BY THE CHIEF OF POLICE PURSUANT TO SECTION 135.10(F)(5).**

D. IS DETERMINED BY THE CHIEF OF POLICE TO HAVE VIOLATED THE PROVISIONS OF SECTION (F)(4).

E. ANY REVOCATION UNDER THIS SECTION SHALL REMAIN IN EFFECT UNTIL THE PERSON WHOSE REGISTRATION IS REVOKED IS ELIGIBLE TO REGISTER.

3. UPON RECEIPT OF AN APPLICATION FOR REGISTRATION IN ACCORDANCE WITH THIS SUBSECTION, THE CHIEF OF POLICE SHALL ISSUE A TEMPORARY REGISTRATION VALID FOR TEN DAYS AND SHALL DETERMINE ELIGIBILITY FOR A REGULAR REGISTRATION BEFORE THE TEMPORARY REGISTRATION EXPIRES. AN ELIGIBLE APPLICANT SHALL RECEIVE A REGULAR REGISTRATION UPON DETERMINATION OF THE APPLICANT'S ELIGIBILITY. THE REGULAR REGISTRATION SHALL EXPIRE ONE YEAR FROM THE DATE OF ISSUANCE. ALONG WITH THE REGISTRATION, THE CHIEF OF POLICE SHALL GIVE THE APPLICANT A COPY OF THIS SECTION.

4. NO PERSON SHALL MAKE A FALSE OR MISLEADING REPRESENTATION WHILE APPLYING FOR REGISTRATION UNDER THIS SECTION.

5. UPON ARREST FOR ANY VIOLATION OF SECTION 135.10, A PANHANDLER SHALL RELEASE TO THE ARRESTING OFFICER ANY REGISTRATION ISSUED TO THE ARRESTEE. THE ARRESTEE MAY APPLY TO THE CHIEF OF POLICE FOR CONSECUTIVE 30-DAY TEMPORARY REGISTRATIONS PENDING ADJUDICATION OF THE ARREST CASE, WHICH SHALL BE ISSUED PROMPTLY. THE CHIEF OF POLICE SHALL REVOKE ANY REGISTRATION ISSUED UNDER THIS SECTION TO ANY PERSON WHO IS INELIGIBLE TO REGISTER OR SUBJECT TO REVOCATION OF REGISTRATION UNDER SECTION (F)(2).

6. A PERSON SHALL BE EXEMPT FROM THE REGISTRATION REQUIREMENTS IN SUBSECTION (F) IF THE PERSON IS ELIGIBLE TO REGISTER AND ENGAGES IN PANHANDLING EXCLUSIVELY ON PRIVATE PROPERTY WHERE NOT PROHIBITED BY SUBSECTION (C)(11).

G. APPEALS. ANY APPLICANT SHALL HAVE THE RIGHT TO APPEAL THE DENIAL OR REVOCATION OF REGISTRATION BY REQUESTING A REVIEW. THE APPEAL SHALL BE TAKEN BY THE APPLICANT OR REGISTRATION HOLDER WITHIN TEN DAYS AFTER ISSUANCE OF THE NOTICE OF DENIAL OR REVOCATION BY FILING WRITTEN NOTICE OF APPEAL WITH THE POLICE CHIEF AT 217 SOUTH HIGH STREET, AKRON, OHIO 44308. A HEARING OFFICER APPOINTED BY THE MAYOR OF THE CITY OF AKRON SHALL CONSIDER THE APPEAL WITHIN A REASONABLE TIME PERIOD NOT TO EXCEED THIRTY DAYS. THE HEARING OFFICER SHALL DIRECT THAT THE DENIAL OR REVOCATION BE RESCINDED IF THE APPLICANT HAS MET ALL OF THE QUALIFYING CRITERIA SET FORTH IN THIS SECTION. THE APPLICANT OR REGISTRATION HOLDER MAY APPEAL THE DECISION OF THE HEARING OFFICER TO THE COURT OF COMMON PLEAS OF SUMMIT COUNTY PURSUANT TO CHAPTER 2506 OF THE OHIO REVISED CODE.

G. H. PENALTY. Whoever violates any provision of this section is guilty of a misdemeanor of the fourth degree.

Section 2. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that further panhandling regulation is necessary to immediately enable persons to move

freely upon the streets and sidewalks of the city without undue interference or exposure to intimidation or harassment from panhandlers, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed July 10, 2006

Cheryl C. Prange
Clerk of Council

Mario S. Lomuscio
President of Council

Approved July 12, 2006

Adm

[Signature]
MAYOR

File

Fin.

muni ct

1) Clerk of Councils

2) Library

Pres. office

Attn: Law Library

Attn: " "

Lexis Nexis

Police Chief

Ken Kuckuck - muni ct

2006 JUN 12 PM 1:08

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WHEREAS, aggressive panhandling of persons in the downtown area has become a concern to downtown business and restaurant owners and their patrons; and

WHEREAS, additional panhandling regulation is necessary to ensure protection of pedestrian traffic and free access and enjoyment of public places, particularly in the downtown area.

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2. In a public transportation vehicle or facility;
3. In a vehicle ~~on the street~~; **WITHIN THE PUBLIC RIGHT-OF-WAY;**
4. **WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT OF ANY BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR CHECK CASHING BUSINESS DURING ITS BUSINESS HOURS OR WITHIN TWENTY FEET OF ANY AUTOMATED TELLER MACHINE;**
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6. IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO AKRON CIVIC THEATRE;

7. IN OR WITHIN TWENTY FEET OF ANY ENTRANCE OR EXIT TO LOCK 3 PARK;

8. IN OR AT ANY SIDEWALK CAFÉ FOR WHICH A PERMIT HAS BEEN ISSUED IN ACCORDANCE WITH SECTION 98.05 OR IN THE PUBLIC RIGHT-OF-WAY ADJACENT THERETO;

4. 9 On private property, unless the panhandler has written permission from the owner or occupant of the private property.

D. MANNER OF PANHANDLING. No person shall panhandle on any street, sidewalk, public right-of-way, or public property by:

1. Blocking the path of the person being asked for a donation;
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2. A PERSON IS INELIGIBLE TO REGISTER IF, AND ONLY IF, WITHIN THE PAST TWO YEARS HE OR SHE:

A. HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SECTION 135.10(F);

B. HAS PLEADED GUILTY TO OR BEEN CONVICTED OF TWO OR MORE OFFENSES UNDER THE LAWS OF ANY JURISDICTION WHICH INVOLVE AGGRESSIVE OR INTIMIDATING BEHAVIOR WHILE PANHANDLING OR FALSE OR MISLEADING REPRESENTATIONS WHILE PANHANDLING.

C. HAS HAD HIS/HER REGISTRATION REVOKED BY THE CHIEF OF POLICE PURSUANT TO SECTION 135.10(F)(5).

3. UPON RECEIPT OF AN APPLICATION FOR REGISTRATION IN ACCORDANCE WITH THIS SUBSECTION, THE CHIEF OF POLICE SHALL ISSUE A TEMPORARY REGISTRATION VALID FOR TEN DAYS AND SHALL DETERMINE ELIGIBILITY FOR A REGULAR REGISTRATION BEFORE THE TEMPORARY REGISTRATION EXPIRES. AN ELIGIBLE APPLICANT SHALL RECEIVE A REGULAR REGISTRATION UPON DETERMINATION OF THE APPLICANT'S ELIGIBILITY. THE REGULAR REGISTRATION SHALL EXPIRE ONE YEAR FROM THE DATE OF ISSUANCE. ALONG WITH THE REGISTRATION, THE CHIEF OF POLICE SHALL GIVE THE APPLICANT A COPY OF THIS SECTION.

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G. APPEALS. ANY APPLICANT SHALL HAVE THE RIGHT TO APPEAL THE DENIAL OR REVOCATION OF REGISTRATION BY REQUESTING A REVIEW. THE APPEAL SHALL BE TAKEN BY THE APPLICANT OR REGISTRATION HOLDER WITHIN TEN DAYS AFTER ISSUANCE OF THE NOTICE OF DENIAL OR REVOCATION BY FILING WRITTEN NOTICE OF APPEAL WITH THE POLICE CHIEF AT 217 SOUTH HIGH STREET, AKRON, OHIO 44308. A HEARING OFFICER APPOINTED BY THE MAYOR OF THE CITY OF AKRON SHALL CONSIDER THE APPEAL WITHIN A REASONABLE TIME PERIOD NOT TO EXCEED THIRTY DAYS. THE HEARING OFFICER SHALL DIRECT THAT THE DENIAL OR REVOCATION BE RESCINDED IF THE APPLICANT HAS MET ALL OF THE QUALIFYING CRITERIA SET FORTH IN THIS SECTION. THE APPLICANT OR REGISTRATION HOLDER MAY APPEAL THE DECISION OF THE HEARING OFFICER TO THE COURT OF COMMON PLEAS OF SUMMIT COUNTY PURSUANT TO CHAPTER 2506 OF THE OHIO REVISED CODE.

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Passed _____, 2006

Clerk of Council

President of Council

Approved _____, 2006

MAYOR