

ORDINANCE NO. 19-27

AN ORDINANCE OF THE CITY OF DAYTONA BEACH, FLORIDA, REPEALING ARTICLE I, ARTICLE III, ARTICLE IV AND ARTICLE VI OF CHAPTER 66, PEDDLERS, SOLICITORS, CANVASSERS, AND ITINERANT VENDORS, CITY CODE; REPLACING ARTICLE I OF CHAPTER 66, CITY CODE; PROVIDING FOR FINDINGS AND INTENT; PROVIDING FOR PROHIBITED CONDUCT, AND PROXIMITY AND LOCATION RESTRICTIONS FOR SOLICITATION, PANHANDLING OR BEGGING; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, § 166.041, Florida Statutes, provides for procedures for the adoption of ordinances and resolutions by municipalities; and

WHEREAS, the City of Daytona Beach recognizes that panhandling, including but not limited to solicitation and begging are activities that are protected by the First Amendment to the United States Constitution; and

WHEREAS, the City Commission finds that panhandlers and beggars sometimes use profane language when requesting money from people; that panhandlers and beggars sometimes physically touch or threaten to touch the people they solicit for money; and that panhandlers and beggars sometimes block the path of people they solicit for money, or follow the people they solicit for money in an apparent effort to intimidate people into making a donation or as retribution for refusing to make a donation; and

WHEREAS, the City Commission finds that the foregoing activities constitute "aggressive panhandling or begging," and that the increase in aggressive panhandling or begging throughout the City of Daytona Beach has become extremely disturbing and disruptive to residents, visitors, and businesses, and has contributed to an enhanced sense of

fear, intimidation, and disorder resulting in the loss of access to and enjoyment of public places throughout the City; and

WHEREAS, the City of Daytona Beach has experienced a significant number of complaints made to the Daytona Beach Police Department regarding panhandling and problematic panhandling behaviors; and

WHEREAS, the City of Daytona Beach has a compelling governmental interest in preserving and protecting the lives of its citizens which can be imperiled by congregation of panhandlers which results in, inter alia, traffic and pedestrian congestion which among other things can delay deployment of life saving fire and police vehicles and personnel and otherwise endanger the lives of drivers of automobiles and other pedestrians; and

WHEREAS, the City of Daytona Beach has a compelling governmental interest in protecting the health, safety and welfare of its citizens and visitors from health hazards spread by habits of panhandlers including but not limited to open urination and open defecation; and

WHEREAS, the City of Daytona Beach can adopt regulations of speech which satisfy strict scrutiny if the regulation employs the least restrictive means of advancing such government interest. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2000); and

WHEREAS, in the alternative, the City of Daytona Beach can adopt and enforce regulations of behavior that implicate First Amendment activity when the regulations affect the time, place, and manner of expression, are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample

alternative channels of communication; and

WHEREAS, the City Commission finds that in the alternative, regulation of panhandling and begging, based on the time, place, or manner of the solicitation including but not limited to panhandling or begging, arguably is a content neutral and narrowly tailored way to promote public safety, and protect residents and visitors in areas where they may be or reasonably perceive themselves to be vulnerable and/or unable to leave; and

WHEREAS, the City Commission finds that regulation of panhandling and begging in public places where people feel particularly vulnerable and/or unable to leave provides ample alternative avenues of communication and is narrowly drawn to address the City's substantial interests; and

WHEREAS, the City of Daytona Beach has a significant interest in providing a safe and pleasant environment and in eliminating nuisance activity, *Smith v. City of Fort Lauderdale, Florida*, 177 F.3d 954, 956 (11th Cir. 1999); and

WHEREAS, the City of Daytona Beach has a significant interest in preserving the safety of traffic flow and preventing traffic congestion wherever possible in the City of Daytona Beach, *Ayres v. City of Chicago*, 125 F.3d 1010 (7th Cir. 1997); and

WHEREAS, the City of Daytona Beach has a significant interest in the safety of pedestrians and individuals traveling in vehicles throughout the City of Daytona Beach. *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 650, 101 S. Ct. 2559, 69 L.Ed. 2d 298 (1981); and

WHEREAS, the City of Daytona Beach has a significant interest in promoting tourism, and aesthetics of downtown Daytona Beach, *Young v. American Mini*

Theaters, 427 U.S. 50, 96 S. Ct. 440, 49 L.Ed. 2d 310 (1976); *Smith v. City of Fort Lauderdale, Florida*, 177 F. 3d 954, 956 (11th Cir. 1999); and

WHEREAS, the City of Daytona Beach has a significant interest in promoting the safety and convenience of its citizens on public streets. *Madsen v. Women's Health Center*, 512 U.S. 753, 768, 114 S. Ct. 2516, 129 L.Ed. 2d 593 (1994); and

WHEREAS, the City of Daytona Beach has a significant interest in ensuring the public safety and order and in promoting the free flow of traffic on public streets and sidewalks, *Ayres v. City of Chicago*, 125 F.3d 1010 (7th Cir. 1997); and

WHEREAS, the City of Daytona Beach has a significant interest in the safety and convenience of citizens using public fora such as streets and sidewalks. *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 650, 101 S. Ct. 2559, 69 L.Ed. 2d 298 (1981) *Cox v. New Hampshire*, 312 U.S. 569, 61 S. Ct 762, 85 L.Ed 1049 (1941); and

WHEREAS, the City of Daytona Beach has a significant interest in recognizing the safety and convenience on public roads. *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S. Ct. 762, 85 L.Ed. 1049 (1941); and

WHEREAS, the City of Daytona Beach has a significant interest in controlling traffic and pedestrian congestion. *Ayres v. City of Chicago*, 125 F. 3d 1010, 1015 (7th Cir. 1997); and

WHEREAS, the City of Daytona Beach has a significant interest in preventing crime, protecting the City's retail trade, maintaining property values, and generally protecting and preserving the quality of the City's neighborhoods, commercial districts and the quality of urban life. *Young v. American Mini Theaters*, 427 U.S. 50, 96 S. Ct. 440, 49 L.Ed. 2d 310

(1976); and

WHEREAS, the City of Daytona Beach has a significant interest in appearance of the City and aesthetics. *Metromedia Inc. v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882 (1981); and

WHEREAS, the City of Daytona Beach has a significant interest in maintaining safe ingress and egress into and out of commercial establishments in order to, inter alia, control pedestrian congestion, facilitate pedestrian safety and order, and provide for access for emergency vehicles and personnel both fire and police to promote public health, safety, and welfare; and

WHEREAS, the City Commission of the City of Daytona Beach has determined that the following regulations promote and protect the general health, safety, and welfare of the residents of the City of Daytona Beach; and

WHEREAS, the City Commission for the City of Daytona Beach finds that it is in the best interest of public health, safety, and general welfare that the following amendments be adopted consistent with the requirements of Section 166.021(4), Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH, FLORIDA:

SECTION 1. Article I, Article III, Article IV, and Article VI of Chapter 66, Peddlers, Solicitors, Canvassers, and Itinerant Vendors, of the Code of the City of Daytona Beach are hereby repealed.

SECTION 2. Chapter 66, Article I, of the Code of the City of Daytona

Beach is hereby replaced to read as follows:

Chapter 66 - PEDDLERS, SOLICITORS, CANVASSERS, ITINERANT

VENDORS, ARTICLE I—IN GENERAL

Sec. 66-1 Panhandling, Begging and Solicitation.

(a) 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 tourists alike. Aggressive panhandling and begging usually includes approaching or following pedestrians, 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 Daytona Beach 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 tourists who visit the City of Daytona Beach.

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 Daytona Beach 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 Daytona Beach 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.

(b) Definitions.

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

- (1) *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.
- (2) *Aggressive Panhandling* means:

- a. 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 2 feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money);
or
- b. 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
- c. 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
- d. 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
- e. To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

- (3) *Panhandle* means 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 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.
- (4) *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:
- a. Within twenty (20) feet, in any direction, from any entrance or exit of commercially zoned property;
 - b. Within twenty (20) feet, in any direction, of any bus or trolley stop or any public transportation facility;
 - c. Within twenty (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;
 - d. Within twenty (20) feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City;
 - e. Within twenty (20) feet, in any direction, of any public restroom owned and operated by a governmental agency;
 - f. Within one hundred (100) feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;
 - g. Within one hundred and fifty (150) feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads, as such roads are defined by the

Florida Department of Transportation;

- h. Occurring on the Boardwalk as visibly defined by the Map attached hereto as Exhibit A.

(c) Prohibited Conduct, Proximity and Location Restrictions.

- (1) 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 Daytona Beach.
- (2) 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.
- (3) 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:
 - a. Within twenty (20) feet, in any direction, from any entrance or exit of commercially zoned property;
 - b. Within twenty (20) feet, in any direction, of any bus or trolley stop or any public transportation facility;
 - c. Within twenty (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;
 - d. Within twenty (20) feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City;
 - e. Within twenty (20) feet, in any direction, of any public restroom owned and operated by a governmental agency;
 - f. Within one hundred (100) feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;
 - g. Within one hundred and fifty (150) feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3)

arterial and collector roads;

- h. Occurring on the Boardwalk as visibly defined by the Map attached hereto as Exhibit A.

(4) It shall be unlawful for any person to engage in the following Prohibited Conduct:

- a. 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;
- b. 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;
- c. Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;
- d. Panhandle, solicit or beg while the person or persons being solicited is standing in line waiting to be admitted to a commercial establishment;
- e. Panhandle, solicit or beg by touching the person or persons being solicited without that person's consent;
- f. Panhandle, solicit or beg with the use of profane or abusive language during the solicitation or following an unsuccessful solicitation;
- g. 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;
- h. Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in the Chapter 893 of the Florida Criminal Statutes; or
- i. Panhandle, solicit or beg After Dark.

(d) Penalty.

Any person found guilty of violating the provisions of this

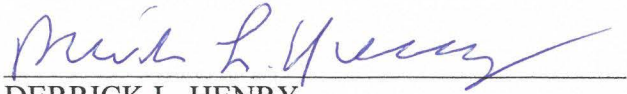
section shall be punished in the manner prescribed in Section 1-14 of this Code.

SECTION 3. Inclusion in Code. The City Commission intends that the provisions of this Ordinance shall become and shall be made part of the Code of the City of Daytona Beach, that the sections of this Ordinance may be re-numbered or re-lettered and that the word ordinance may be changed to section, article or other such appropriate word or phrase in order to accomplish such intentions.

SECTION 4. Severance of Invalid Provisions. In the event that any section, subsection, sentence, clause, phrase, word, term or provision of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly invalid, unconstitutional or unenforceable or invalid for any reason whatsoever, any such invalidity, unconstitutionality, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, unconstitutional, illegal, or unenforceable section, subsection, sentence, clause, phrase, word, term or provision did not exist.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

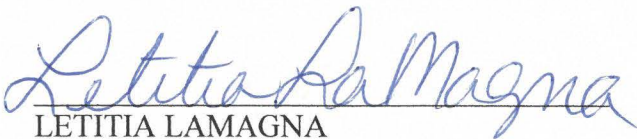
SECTION 6. This Ordinance shall take effect immediately upon its adoption.

A handwritten signature in blue ink, appearing to read "Derrick L. Henry", written over a horizontal line.

DERRICK L. HENRY

Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Letitia LaMagna", written over a horizontal line.

LETITIA LAMAGNA

City Clerk

Passed: January 23, 2019

Adopted: February 6, 2019

EXHIBIT "A"



1 inch = 250 feet