TEXT IN BLUE IS FROM CURRENT CITY OF MEMPHIS PANHANDLING ORDINANCE; TEXT IN BLACK IS WHAT HAS BEEN ADDED

DRAFT

Sec. 20-28. Panhandling

PURPOSE.

The purpose of this section and legislation is to regulate and punish violations of the act of panhandling, rather than the status of the person and is not intended to restrict the exercise of protected free speech.

Exclusion. The activities of panhandling do not include a person who passively stands or sits with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

Nothing in this section shall abrogate, or abridge provisions of City Code, Chapter 30, "Solicitation of Public Funds", or the laws of state and federal government, or those laws regulating non-profit, religious, educational, civic or benevolent organizations.

It is the intent of the City Council in enacting this ordinance to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against abusive conduct of persons engaged in solicitation, by imposing reasonable manner and place restrictions on solicitation while respecting the constitutional rights of free speech for all citizens.

An increase in aggressive and abusive solicitation throughout Memphis, and in particular the Central Business Improvement District (CBID), has become extremely disturbing and disruptive to residents, visitors and businesses. Furthermore, aggressive and abusive solicitation has contributed not only to the loss of access and freedom to enjoy public spaces, but also to an enhanced sense of fear, intimidation and disorder and has created an economic hardship on businesses.

The City Council also finds as abusive the solicitation of people in places where they are a "captive audience" in which it is impossible or difficult for them to exercise their own right to decline to listen to or to avoid solicitation from others. Additionally, the City Council also finds that the presence of individuals who solicit money from persons at or near banks, automated teller machines, parking lots and garages, pay telephones, outdoor dining areas, school buildings, health care institutions and health services and public transportation facilities is especially troublesome because of the enhanced fear of crime in those confined environments. Such places include but are not limited to trolley stops, hotels, indoor and outdoor dining areas and financial institutions. Restricting solicitation in such places will provide a balance between the rights of solicitors and the rights of persons who wish to decline or avoid such solicitations, and will help avoid or diminish the threat of violence in such unavoidable confrontations.

Furthermore, people entering public buildings are frequently confronted with persons blocking the entrance in order to solicit funds, which not only can be a hindrance and distraction, but creates a bottleneck in an area where it is essential that there be a free flow of pedestrian traffic.

The City Council finds that aggressive solicitation for money in public and private places threatens residents' and visitors' safety, privacy and quality of life. Memphians seek policies that preserve citizens' rights to enjoy public spaces free from fear and harassment while protecting the free speech rights of individuals and groups, permitting appropriate and safe commercial activities of street artisans, performers and merchants.

It is not the purpose of this Ordinance to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Rather, its goal is to protect citizens from the fear and intimidation accompanying certain kinds of solicitations that have become an unwelcome and overwhelming presence in Memphis.

In promulgating this Chapter, the City Council seeks to impose regulations that are narrowly tailored to serve the aforementioned significant government interests.

(b) **Definitions**. [For the purposes of this section, certain terms shall have the meanings ascribed to them in this paragraph, unless the context clearly indicates otherwise:]

"***Assault***" means assaultive offenses as set out in Tennessee Code Annotated sections 39-13-101, 39-13-102 and 39-13-103, and classed as criminal offenses.

For purposes of this City Code section 20-28, "assault" does not apply to "manner of panhandling" as set out in paragraph (f) hereunder and classified as a misdemeanor.

"***Abusive Solicitation***" means to do one or more of the following while engaging in solicitation or immediately thereafter:

1. Coming closer than three (3) feet to the person solicited unless and until the person solicited indicates that he or she wishes to make a donation;
2. Blocking or impeding the passage of the person solicited;
3. Following the person solicited by proceeding behind, ahead or alongside of him or her so as to continue soliciting after the person solicited declines to make a donation;
4. Threatening the person or accompanying person solicited with physical harm by word or gesture and the person would regard the threat as offensive or provocative;
5. Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction;
6. Touching the solicited person without the solicited person's consent and a reasonable person would regard the contact as offensive or provocative ;
7. Engaging in solicitation activity in any of the prohibited places specified in Restricted Geographical Areas.

"***Accost***" means to approach and speak in a challenging and aggressive manner.

"***Aggressively beg***" means to beg with the intent to intimidate another person into giving money or goods with actual or implied threats, or menacing actions.

"***ATM*** or ***Automated Teller Machine***" shall mean a device, linked to a financial institution's account records, which is able to carry out cash transactions.

"***Bank***" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

"***Beg***" means to ask for money or goods as a charity, whether by words, bodily gesture, signs, or other means.

"***Check Cashing Business***" shall mean any person duly licensed to engage in the business of cashing checks, drafts or money orders for consideration.

"***Coerce***" means:

1) To approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:
   a) Imminent bodily injury; or
   b) The commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;
2) To persist in a solicitation after the person solicited has given a negative response;
3) To block, either individually or as part of a group of persons, the passage of a solicited person;
4) To engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

"***Credit Union***" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

"Donation" means nay item of value, monetary or otherwise, accepted by a panhandler and shall also include 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 gift.

"Exempt organizations" shall mean any non-profit, religious, civic or benevolent organization described in Section 501© of the Internal Revenue Code of 1986.

"Exempt Zones" means those portions of public property within, or on the boundary of, the Downtown Panhandling Prohibited Zone specifically excluded by the Exempt Zone Committee from the prohibitions of Section 20-28. Solicitation and off-premises canvassing, as defined above, and otherwise meeting the requirements of the City Code, may take place in exempt zones. The size, number and location of exempt zones shall be determined by the Exempt Zone Committee. Maps showing the location of the CBID Panhandling Exclusion Zone and Exempt Zones shall be made available at the Center City Commission and the Memphis Police Department South Main Precinct. Exempt Zones that are part of public property leased, permitted or otherwise contracted to third parties by the Center City Commission shall lose their exempt status during the term of the contract.

"Exempt Zone Committee" means a committee comprised of 1) the President of the Center City Commission and/or his designee(s) and 2) the ranking Memphis Police Department commander and/or his/her designee(s) of the South Main Precinct. Said committee shall determine the number and location of appropriate locations for Exempt Zones and shall meet on a semi-annual basis to perform a review of existing Exempt Zones.

"***Financial Institution***" shall mean any banking corporation, credit union, or foreign exchange office.

"***Health care institution***" shall mean any agency, institution, facility or place, whether publicly or privately owned or operated, that provides health services and that is one (1) of the following: nursing home; recuperation center; hospital; ambulatory surgical treatment center; birthing center; mental health hospital; mental retardation institutional habilitation facility; home care organization or any category of service provided by a home care organization for which authorization is required under part 2 of this chapter; outpatient diagnostic center; rehabilitation facility; residential hospice; or non-residential methadone treatment facility as defined in the Tennessee Code.

"***Health service***" means clinically related services such as diagnostic, treatment or rehabilitative services.

"***Intimidate***" means to engage intentionally in conduct which would make a reasonable person fearful or feel compelled.

Also, for purposes of this section 20-28, a person commits the offense of intimidating others from exercising civil rights who:

1. Injures or threatens to injure or coerces another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the State of Tennessee; or
2. Injures or threatens to injure or coerces another person with the intent to unlawfully intimidate another because that other exercised any right or privilege secured by the Constitution or laws of the United States or the Constitution or laws of the State of Tennessee.

"***Panhandler***" is any person, other than an exempt organization, acting on his/her own behalf or on behalf of another, requesting an immediate donation of money or exchange of any services; or any person, acting on his/her own behalf, attempting to sell an item for an amount far exceeding its value, or where said item is already offered free-of-charge to the general public, and a reasonable person would understand that the purchase is in substance a donation.

"***Panhandling***" is the solicitation of any item of value, monetary or otherwise, made by a person, other than an exempt organization, acting on his/her own behalf, requesting an immediate donation of money or exchange of series; or any person, acting on his/her own behalf, attempting to sell an item for an amount far exceeding its value, or an item which is already offered free-of-charge to the general public, and under circumstances a reasonable person would understand that the purchase is in substance a donation.

"***Pedestrian interference***" means the obstruction of pedestrian or vehicular traffic by aggressively begging which impedes the passageway or a pedestrian or vehicular traffic.

THE "DOWNTOWN PANHANDLING PROHIBITED ZONE" is defined by the boundaries of the following named streets, including both sides of each named street and each corner of intersecting named streets: Mill Avenue from the Mississippi River on the west to North Third Street on the east; North Third Street southbound from Mill Avenue to Exchange Avenue; Exchange Avenue eastbound to North Fourth Street; North Fourth Street south to Poplar Avenue; Poplar Avenue eastbound to North Lauderdale Street; North Lauderdale Street southbound to Washington Avenue; Washington Avenue westbound to North Fourth Street; North Fourth Street southbound to Union Avenue; Union Avenue westbound to South Fourth Street; South Fourth Street southbound to Vance Avenue; Vance Avenue westbound to Wagner Street; Wagner Street northbound to Beale Street; Beale Street westbound to Riverside Drive; Riverside Drive northbound to Interstate 40; Interstate 40 westbound to the Mississippi River; the Mississippi River northbound to Mill Avenue.

Graphic insert:

"***Public place***" means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

"Public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used or maintained for carrying 10 or more persons, including the driver; or a passenger vehicle designed for carrying fewer than 10 persons, including the driver, and used to carry passengers for hire.

Restricted geographical areas. ~~P~~persons shall be restricted from panhandling in the following geographical area:

1) Downtown Panhandling Prohibited Zone

"***Savings and Loan Association***" includes a building and loan association, a federal or state savings and loan association, a federal savings bank, and any other financial institution, the accounts of which are insured by the federal savings and loan insurance corporation (FSLIC) or any successor of such corporation. (TN Code 1-3-105)

"***Self-service car wash***" means a structure:

1. At which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine; and
2. That is accessible and available for use by members of the general public.

"***Self-service fuel pump***" means a fuel pump:

1. From which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, without the aid of an employee or attendant of the premises at which the fuel pump is located; and
2. That is accessible and available for use by members of the general public.

"***Sidewalk***" means all portions of any public street where the same has no curb line and as to any public street having a curb line includes all portions situated between each curb line and the nearest property line regardless of whether the sidewalk is improved or unimproved.

"***Solicit***" and "***Solicitation***" mean to make any request in person while in a public place, for an immediate grant of money, goods or any other form of gratuity from another person(s) when the person making the request is not known to the person(s) who are the subject of the request, or to engage in such activity on private property.

However, the terms "solicit" and "solicitation" shall not mean the act of passively standing or sitting with a sign or other indicator that a donation of money, goods, or any other form of gratuity is being sought without any vocal request other than a response to an inquiry by another person.

(d) **Time of panhandling**. It is unlawful for any person to solicit under the following conditions: Between the hours of 7pm and 8am.

(e) **Place of panhandling**. Outside the boundaries of the Panhandling Prohibited Zone, any person who panhandles when the person solicited is in any of the following places is guilty of a misdemeanor:

1. Within 50 feet of:
    a. any entranceway into or exit from any health care institution or health facility;
    b. any entranceway into or exit from any bank, savings and loan association, credit union, check cashing business or other financial institution buildings;

c. an automatic teller machine (ATM), provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

2. Within 25 feet of:
   a. the entrance to a religious assembly;
   b. any parking lot pay box;
   c. any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;
   d. any bus stop, trolley stop or taxi stand
   e. any entranceway into or exit from any building open to the public. Where any such entranceway or exit is recessed from the public sidewalk, the 25 feet shall be measured from the point at which the building abuts the sidewalk;
   f. any marked crosswalk;
   g. any outdoor dining area or outdoor merchandise area, if such areas are in active use at the time;
   h. a self-service fuel pump
   i. a self-service car wash
   j. a line of people waiting to gain admission to a place or vehicle or waiting to purchase an item or admission ticket;
3. At or within 20 feet of any vendor location;
4. While seated on or leaning against any public bench, planter, monument or other public property;
5. While seated on or leaning against any privately owned property without the property owner's or tenant's permission;
6. While conducting a solicitation to any person placing or preparing to place money in a parking meter;
7. In any vehicle on the street;
8. In any public transportation vehicle;
9. On private property, unless the panhandler has permission from the owner or occupant

(f) **Manner of panhandling**. Any person who in a public place panhandles in any of the following ways or manner is guilty of a misdemeanor:

1. By coming within 3 (three) feet of the person solicited, unless that person has indicated that he/she does wish to make a donation;
2. By touching the person being solicited without that person's consent;
3. By using profane or abusive language, either during the solicitation or following a refusal;
4. By following or walking alongside a person who walks away from the panhandler and a reasonable person would regard this as offensive or provocative;
5. By blocking the path of a person who attempts to walk or drive away from the panhandler;
6. By panhandling in a group of two or more persons;
7. By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat;
8. By intimidating, obstructing pedestrian or vehicular traffic;

9. By assaulting or aggressively begging;
10. While under the influence of alcohol, illegal narcotic or a controlled substance.

(g) **False or misleading solicitation.**

1. Any person who knowingly makes any false, misuse, or misleading representation in the course of soliciting a donation is guilty of a misdemeanor. False or misleading representations include, but are not limited to, the following:
    a. Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet the need and does not disclose that fact.
    b. Stating that the donation is needed to meet a need which does not exist.
    c. Stating that the solicitor is from out of town and stranded, when that is not true.
    d. Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated.
    e. Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated.
    f. Use of any makeup or device to simulate any deformity; or
    g. Stating that the solicitor is homeless, when he is not.
    h. Stating the donation is for food but in reality is used for "sidewalk" drugs, or illegal contraband.
    i. Using and exposing minors/children and animals to hazardous conditions i.e., cold, heat, animals, weather and/or strangers, to solicit funds.
    j. To offer to sell newspapers, magazines, periodicals, pamphlets for a price, which are offered free-of-charge to the general public.
2. Any person who solicits a donation stating that the funds are needed for a specific purpose and then spends the funds received for a different purpose is guilty of a misdemeanor.
3. This section and subsection establishes a single offense. Evidence which establishes beyond a reasonable doubt that the defendant violated the section or subsection is sufficient for conviction and need not establish which subdivision was violated.

(h) **Accosting persons or obstructing traffic**. Every person who commits any of the following acts is guilty of a misdemeanor:

1. Who assaults, aggressively begs, intimidates, or accosts other persons in any public place or in any place open to the public, for the purpose of panhandling or soliciting a donation for immediate payment as defined in paragraph (b) above.
2. Obstructs pedestrian or vehicular traffic, or interferes at a time when a person, or the vehicle, is not in a position to walk or drive away.
3. Who accosts other persons in any public place, or in any place open to the public, for donations if it is a general and known fact to all reasonable people that appropriate institutions, organizations, or charity groups exist who make available the same daily necessities and needs at no cost.

Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the

application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

(i) **Penalities for violation**. Any person found violating of any one or all of the above subsections of section 20-28 is deemed guilty of a misdemeanor and upon conviction thereof subject to penalties as set under City Code section 1-8.

(Ord. No. 4211, 1, 12-14-93; Ord. No. 4352, 4, 8-15-95)

Note—It should be noted that Ord. No. 4282, adopted September 27, 1994, repealed and deleted the termination date of September 30, 1994 for section 20-28. Said ordinance is not set out herein, but is on file and available for inspection in the offices of the city.