

ORDINANCE NO. 07-21

AN ORDINANCE OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 118, "SOLICITORS AND PEDDLERS AND DISTRIBUTION OF HANDBILLS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY REPEALING CHAPTER 118, "SOLICITORS AND PEDDLERS AND DISTRIBUTION OF HANDBILLS", IN ITS ENTIRETY AND ENACTING A NEW CHAPTER 118, "MISCELLANEOUS PROVISIONS AND OFFENSES"; PROVIDING FOR FINDINGS AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED CONDUCT, PROXIMITY AND LOCATION RESTRICTIONS FOR SOLICITATION, PANHANDLING OR BEGGING; PROVIDING FOR PENALTIES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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

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

WHEREAS, the City of Delray Beach has a compelling governmental interest in preserving and protecting the lives of its citizens which can be imperiled by numerous 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 Delray 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 Delray Beach has a compelling governmental interest in protecting the health, safety, and welfare of its citizens and visitors from the contracting and spread of COVID-19 and any other pandemic which is spread through unhealthy hygienic habits attributed by testimony to panhandlers including but not limited to open urination and open defecation; and

WHEREAS, the City of Delray Beach has a compelling governmental interest in protecting the health, safety, and welfare of its citizens and visitors from contracting and spread of COVID-19 and any other pandemic which is spread by unhealthy hygienic habits such as open urination, open defecation, lack of social distancing, and touching the people solicited for money when handed it; and

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

WHEREAS, the City of Delray Beach has a significant interest in the safety of pedestrians and individuals

traveling in vehicles throughout the City of Delray 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 Delray Beach has a significant interest in promoting tourism, and aesthetics of downtown Delray 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 Delray 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 Delray 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 Delray 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 Delray 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 Delray 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 Delray 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. 2440, 49 L.Ed.2d 310 (1976); and

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

WHEREAS, after application of the distance parameters set forth in this Ordinance regarding the time, place, and manner of panhandlers' ability to panhandle within the city limits of Delray Beach, an overwhelming and much more than ample alternative avenues of communication exist for panhandlers to panhandle within the city limits of Delray Beach; and

WHEREAS, the City Commission for the City of Delray 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 ORDAINED BY THE CITY COMMISSION FOR THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Title 11, "Business Regulations", Chapter 118, "Solicitors and Peddlers and Distribution of Handbills", of the Code of Ordinances of the City of Delray Beach, Florida, be repealed in its entirety and a new Chapter 118, "Miscellaneous Provisions and Offenses", is hereby enacted to read as follows:

~~CHAPTER 118. -- SOLICITORS AND PEDDLERS AND DISTRIBUTION OF HANDBILLS⁽⁴⁾~~

~~Sec. 118.01. -- DEFINITIONS.~~

~~The following words, terms, and phrases and their derivations, when used in this ordinance, shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning.~~

~~(a) -- Aggressive panhandling or solicitation means any of the following:~~

- ~~(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) -- Requesting 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) ~~Canvasser is a person who attempts to make personal contact with another person without prior specific invitation or appointment from the person, for the primary purpose of (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.~~
- (c) ~~Handbill distribution means the distribution of any commercial or noncommercial written material of any kind, including, but not limited to, a newspaper, papers, sample or device, circular, leaflet, pamphlet, or booklet which may or may not contain commercial or non-commercial advertising or information and which may be sold or delivered without cost to the recipient and not distributed through an authorized news rack or the U.S. Mail.~~
- (d) ~~Panhandling means any of the following:~~
- ~~(1) Any solicitation requesting an immediate donation of money or other thing of value for oneself or another person;~~
 - ~~(2) Seeking donations for oneself where the person solicited receives an item of little or no monetary value in exchange for the donation under circumstances where a reasonable person would understand that the transaction is in substance a donation;~~
 - ~~(3) 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.~~
- (e) ~~Peddler is a person who attempts to make personal contact with another person without prior specific invitation or appointment from the person, for the primary purpose of attempting to sell a good or service. A "peddler" does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the person for purchase at a location away from or at a time different from the time of visit. (Such a person is a "solicitor".)~~
- (f) ~~Person means a natural person or any firm, corporation, association, club, society or other organization.~~
- (g) ~~Private property means any residential, commercial and industrial real property of any kind which is privately owned or occupied.~~
- (h) ~~Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, public beaches, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.~~

- ~~(i) — Solicitor is a person who attempts to make personal contact with another person without prior specific invitation or appointment from the person, for the primary purpose of attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent educational, civil, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service.~~

~~Sec. 118.02. PROHIBITED ACTS REGARDING HANDBILL DISTRIBUTION.~~

- ~~(a) — It shall be unlawful for any person to place a handbill or to cause a handbill to be placed on:~~
- ~~(1) — Any public area, excluding authorized news racks or in the U.S. Mail, by any means, including but not limited to, tossing the handbill on the lawn, driveway, or walk on the premises, or on the sidewalk, driveway apron, swale area, or street in front of the public area, or by hanging the handbill on any part of a building on the public area or on the mailbox. Nothing in this section shall be deemed to prohibit the hand to hand delivery of a handbill to a person willing to accept it;~~
 - ~~(2) — Any private property by any means, including but not limited to, tossing the handbill on the lawn, driveway, or walk on the private premises, or on the sidewalk, driveway apron, swale area, or street in front of the private premises, or by hanging the handbill on any part of a building on the private premises or on the mailbox, after the owner or occupant of the private premises has requested that the distribution of the handbill stop its delivery:~~
 - ~~(i) — The request not to deliver a handbill must be in writing made either to the individual delivering the handbill or to the publisher of the handbill. A request to the individual delivering the handbill shall be deemed to be given to the publisher of the handbill. The request may be for a specified length of time or may be indefinite. If indefinite, the request shall remaining effect until it is rescinded by the owner or occupant of the private premises;~~
 - ~~(ii) — A sign posted on a private premise visible from an adjoining public right of way with the words "No Solicitation" or words of similar meaning shall be deemed a request not to deliver a handbill;~~
 - ~~(3) — On any vehicle; or~~
 - ~~(4) — Or attached to any sign, utility pole, transit shelter or other structure within the public right of way. The police and code enforcement shall be authorized to remove any handbill or flyer found within the right of way and any individuals or groups found to be responsible for such actions in violation of this section shall be in violation of the City's sign code and the City's ordinance on anti littering laws.~~

~~Sec. 118.03. PROHIBITED ACTS REGARDING SOLICITING, PEDDLING, AND PANHANDLING.~~

- ~~(a) It shall be unlawful for any person to solicit or peddle money or other things of value, or to solicit the sale of goods or services:~~
- ~~(1) Without an occupational license;~~
 - ~~(2) In any public transportation vehicle, or bus or train station or stop;~~
 - ~~(3) 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.~~
 - ~~(4) On a street or right-of-way in such a manner as to obstruct the flow of pedestrian or motor vehicle traffic.~~
- ~~(b) It shall be unlawful for any person to peddle or vend products, including personal property, ice cream, or other food products from motor vehicles in the public streets:~~
- ~~(1) Without an occupational license;~~
 - ~~(2) In any vehicle not designed and constructed specifically for the purpose of vending the product or products to be vended;~~
 - ~~(3) Without a license by the County Health Department or other state or local agency having jurisdiction over the use of such vehicles depending upon the nature of the products sold;~~
 - ~~(4) Without proof of a valid Florida driver's license and vehicle registration;~~
 - ~~(5) Without proof of current insurance issued by an insurance company authorized to do business in the State of Florida. The insurance shall provide coverage for bodily injury, including accidental death, as well as from claims for property damage. An occurrence type policy is preferred. The City shall be named as a certificate holder and as an additional insured on the policy. The policy limits of such insurance shall not be less than three hundred thousand dollars (\$300,000.00) combined single limit for each occurrence for bodily injury and three hundred thousand dollars (\$300,000.00) for property damage;~~
 - ~~(6) In the Central Business District (CBD) of downtown Delray Beach;~~

- ~~(7) Within one thousand (1,000) feet of any public or private school between the hours of 7:00 a.m. and 5:00 p.m.;~~
- ~~(8) From any vehicle that plays amplified music or other sounds in violation of the City's noise ordinance.~~
- ~~(c) It shall be unlawful to engage in an act or acts of panhandling when either the person soliciting 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 or outdoor dining area;~~
 - ~~(4) Parking lot, parking garage, or parking pay station owned or operated by the city;~~
 - ~~(5) Park owned or operated by the city;~~
 - ~~(6) Area within fifteen (15) feet, in any direction, of an automatic teller machine (ATM);~~
 - ~~(7) Area within fifteen (15) feet, in any direction, of the entrance or exit of a commercial or governmental building; or~~
 - ~~(8) Private property, unless the person panhandling has permission from the owner of such property.~~
- ~~(d) It shall be unlawful to engage in the act of aggressive panhandling in any location in the City.~~

~~Sec. 118.04. EXEMPTIONS FROM OBTAINING AN OCCUPATIONAL LICENSE.~~

~~It shall be unlawful for any person eighteen (18) years of age or older to engage in peddling or solicitation activities within the City of Delray Beach without first obtaining an Occupational License issued by the Chief Building Official or his/her designee; provided, however, that the following are exempted from the provisions of this Section:~~

- ~~(a) The following are exemptions from prohibited acts under [Section 118.03](#):~~
 - ~~(1) Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made;~~
 - ~~(2) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation;~~

- ~~(3) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person; or~~
- ~~(4) Any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected shall be turned over to the named beneficiary; or~~
- ~~(5) Authorized solicitors and peddlers that are participating in City-sponsored or co-sponsored special events and parades; or~~
- ~~(6) Any solicitation on private commercial property for charitable purposes so long as the private commercial property owner has given prior consent to the use of his/her property for purposes of soliciting patrons thereof.~~
- ~~(7) Authorized news racks and U.S. Mail.~~

~~Sec. 118.05. PERMIT FOR SPONSORING JUVENILE PEDDLERS.~~

- ~~(a) No person under the age of eighteen (18) shall be permitted to engage in soliciting or peddling except as provided in this Section.~~
- ~~(b) An Occupational License shall be obtained by a sponsoring person, company or organization for the conduct of any peddling or solicitation activities involving, in whole or in part, a sales force of one or more persons under eighteen (18) years of age.~~
- ~~(c) The sponsor shall be responsible for supervising and controlling the conduct of all persons, including juveniles, peddling under the sponsor's license.~~
- ~~(d) The sponsor shall provide to each individual in its sales force a badge or other easily readable form of identification which identifies the names of the sponsor and the name of the individual. The sponsor shall require all individuals in its sales force to wear such identification so that it is clearly visible at all times when the individuals are peddling or soliciting.~~
- ~~(e) The sponsor shall comply with the requirements of State of Florida Youth Employment Act, Chapter 450.~~

~~Sec. 118.06. PERMIT APPLICATION.~~

~~Every person subject to the provisions of this ordinance shall file with the Chief Building Official or his/her designee an application for Occupational License in writing on a form to be furnished by the Building Department except for handbill distributors and/or canvassers who are exempted from this Section.~~

~~Sec. 118.07. -- FEES.~~

~~At the time the application for Occupational License is filed with the Chief Building Official or his/her designee, the applicant shall pay a fee to cover the cost to the City of processing the application and investigating the facts stated therein. The occupational license fee is set forth in [Section 110.15](#) of this Code and shall be paid in addition to the background check fee as required by the Florida Department of Law Enforcement (FDLE).~~

~~Sec. 118.08. -- APPLICATION REVIEW AND PERMIT ISSUANCE.~~

- ~~(a) Upon receipt of an application for Occupational License, the Chief Building Official or his/her designee, or authorized representative, shall review the application as deemed necessary to ensure the protection of the public health, safety and general welfare.~~
- ~~(b) If the Chief Building Official or his designee finds the application to be satisfactory, he/she shall endorse his/her approval on the application and shall, upon payment of the prescribed fee, deliver the required license to the applicant.~~
- ~~(c) The Occupational License shall show the name and address of the licensee, the class of license issued, the kind of goods or services to be sold or delivered, the date of issuance, and the length of time that the license shall be in effect. The license shall also show the license number and identifying description of any vehicle to be used in carrying on the business for which the license is issued.~~
- ~~(d) A record of all licenses issued shall be maintained by the Building Department for a period of two (2) years.~~

~~Sec. 118.09. -- DENIAL OF PERMIT.~~

- ~~(a) Upon the Chief Building Official or his/her designee's review of the application for Occupational License, he/she may refuse to issue a license to the applicant under this ordinance for any of the following reasons:~~
 - ~~(1) The location and time of solicitation or peddling would endanger the safety and welfare of the solicitors, peddlers or their customers;~~
 - ~~(2) An investigation reveals that the applicant falsified information on the application;~~
 - ~~(3) The applicant has been convicted of a felony, misdemeanor or ordinance violation involving a sex offense, trafficking in controlled substances, or any violent acts against persons or property, such conviction being entered within the five (5) years preceding the date of application;~~

- ~~(4) — The applicant is a person against whom a judgment based upon, or conviction for fraud, deceit, misrepresentation, theft, or crimes involving dishonesty has been entered within the five (5) years immediately preceding the date of application;~~
 - ~~(5) — There is no proof as to the authority of the applicant to serve as an agent to the principal; or~~
 - ~~(6) — The applicant has been denied a license under this ordinance within the immediate past year, unless the applicant can and does show to the satisfaction of the Building Official that the reasons for such earlier denial no longer exist.~~
- ~~(b) — The Building Official's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his application is disapproved and that no Occupational License will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last known address.~~

~~Sec. 118.10. — PERMIT EXPIRATION.~~

~~All Occupational Licenses issued under the provisions of this ordinance shall expire one year from the date of issuance, unless an earlier expiration date is noted on the license.~~

~~Sec. 118.11. — PERMIT EXHIBITION.~~

~~Every person required to obtain an Occupational License permit under the provisions of this ordinance shall exhibit the license when requested to do so by any prospective customer, Code Enforcement Officer or Police Department employee.~~

~~Sec. 118.12. — TRANSFER PROHIBITED.~~

~~It shall be unlawful for any person other than the licensee to use or wear any license or badge issued under the provisions of this ordinance, except that Juvenile Peddlers may use the Occupational License of a sponsoring person in accordance with [Section 118.04](#) of this Code.~~

~~Sec. 118.13. — HOURS OF SOLICITATION.~~

~~No person, while conducting the activities of a peddler or solicitor, whether licensed or unlicensed, shall enter upon any private property, knock on doors, vend products from motor vehicles or otherwise disturb the citizens of the City of Delray Beach before 9:00 a.m. and no later than the earlier of thirty (30) minutes after sunset or 9:00 p.m.~~

~~Sec. 118.14. — PERMIT REVOCATION.~~

~~Any Occupational License issued under this ordinance may be revoked or suspended by the Chief Building Official or his/her designee, after notice and hearing, for any of the following reasons:~~

- ~~(a) Fraud, misrepresentation or false statement contained in the application for Occupational License;~~
- ~~(b) Fraud, misrepresentation or false statement made by the licensee in the course of conducting solicitation or peddling activities;~~
- ~~(c) Conducting peddling or solicitation activities contrary to the provisions contained in the application for Occupational License;~~
- ~~(d) Conviction for any crime involving dishonesty or moral turpitude; or~~
- ~~(e) Conducting peddling or solicitation activities in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.~~

~~Sec. 118.15. - NOTICE AND HEARING.~~

~~Notice of a hearing for revocation of an Occupational License issued under this ordinance shall be provided in writing and shall set forth specifically the grounds for the proposed revocation and the time and place of the hearing. Notice shall be mailed, postage prepaid, to the licensee at the address shown on the license application or at the last known address of the licensee.~~

~~Sec. 118.16. - APPEALS.~~

- ~~(a) Any person aggrieved by the action or decision of the Chief Building Official or his/her designee to deny, suspend or revoke an Occupational License applied for under the provisions of this ordinance shall have the right to appeal such action or decision to the City Manager within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the Occupational License application form, or to his last known address.~~
- ~~(b) An appeal shall be taken by filing with the Building Official/Designee a written statement setting forth the grounds for the appeal.~~
- ~~(c) The Chief Building Official shall transmit the written statement to the City Manager within ten (10) days of its receipt and the City Manager shall set a time and place for a hearing on the appeal.~~
- ~~(d) A hearing shall be set not later than twenty (20) days from the date of receipt of the appellant's written statement.~~

- (e) ~~Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of action or decision.~~
- (f) ~~The decision of the City Manager on the appeal shall be final and binding on all parties concerned.~~

~~Sec. 118.17. - VIOLATIONS AND PENALTY.~~

- (a) ~~Violation of any of the provisions of this ordinance shall be punishable as set forth in [Section 10.99](#) of this Code.~~

CHAPTER 118. - MISCELLANEOUS PROVISIONS AND OFFENSES

Sec. 118.01. - 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 harmful because persons cannot readily escape from the undesired conduct, which often carries with it an implicit threat to both persons and property imperiling the health, safety and welfare of the citizens of and visitors to the City of Delray Beach. Also, unless mitigated 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 Delray Beach as well as the possibility of catching or spreading of COVID-19 or any other pandemic that is spread by unhealthy hygienic habits such as the foregoing.

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 compelling, 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 Delray Beach and visitors from the adverse secondary effects, including but not limited to open urination and open defecation of panhandling which definition includes all solicitation and begging, in public areas. The restrictions contained in this article are neither overbroad nor vague and are narrowly tailored to serve compelling and substantial governmental interests and preserve ample alternative areas for the valid exercise of constitutional rights of panhandling which they do as set forth more particularly herein.

If such regulations were to be deemed to trigger strict scrutiny, regulating certain behaviors attributed to panhandlers including but not limited to open urination and open defecation implicates the compelling governmental interest of Delray Beach in protecting the health, safety, and welfare of its citizenry and visitors, preventing the contracting or spread of COVID-19 or any other pandemic which can be contracted or spread by such unhealthy habits linked by testimony to panhandlers and 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 solicit, 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 or to threaten 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 "beg" 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. Panhandling is considered as having taken place without a word being spoken but with an individual having next to him an open can or container of any sort with any indication on the can or container or by the solicitor that money or some other article of value is being requested. 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 included 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, including restaurant drive-ins;
- 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. Sidewalk approach 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 Pavilion as visibly defined by the Map attached hereto as Exhibit A with a 20-foot buffer surrounding the Pavilion.

(c) Prohibited Conduct, Proximity and Location Restrictions.

(1) It shall be unlawful for any person to engage in Aggressive Panhandling within the city limits of the City of Delray Beach.

- (2) 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 including restaurant drive-ins;
 - 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. Sidewalk approach 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 Pavilion as visibly defined by the Map attached hereto as Exhibit A with a 20-foot buffer surrounding the Pavilion.
- (3) 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 as defined herein;
 - 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 10.99 of this Code.

Section 2. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That specific authority is hereby given to codify this Ordinance.

Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2021.

ATTEST:

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading _____

Second Reading _____

Lynn Gelin, City Attorney