

SUBSTITUTE NO. 1 TO ORDINANCE NO. 19-054

**AN ORDINANCE TO AMEND CHAPTER 36 TO REPEAL BEGGING AND
PANHANDLING PROVISIONS FROM THE WILMINGTON CITY
CODE**

**Rev. 1
#4747**

Sponsor:

**Council
Member
Johnson**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, the Supreme Court of the United States of America has held that begging is protected speech under the First Amendment to the United States Constitution; and

WHEREAS, Council for the City of Wilmington recognizes an individual's right to engage in the lawful act of begging; and

WHEREAS, it is not the City of Wilmington's policy to arrest individuals for, or otherwise prohibit, lawful conduct, but rather to address unlawful conduct, including but not limited to disorderly conduct, assault, menacing, harassment and trespass; and

WHEREAS, said unlawful conduct is specifically prohibited in the Wilmington City Code and Delaware State Code; and

WHEREAS, in light of the foregoing, Council deems it proper to repeal the provisions of the Wilmington City Code relating to begging.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF
WILMINGTON HEREBY ORDAINS:**

SECTION 1. Chapter 36 of the Code is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

Sec. 36-68. - Loitering.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public place means an area generally visible to public view and including streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, while moving or not, within 50 feet of buildings which are single-family or multifamily residences, or which are open to the general public and which serve food or drink for consumption on or off the premises, or which provide entertainment, and the doorway and entrances to such buildings and the grounds enclosing them, or any other area either publicly owned or to which the public has access or any vacant property in either a residential or commercial district as designated by section 48-96 of this Code.

- (b) *Prohibited behavior.* A person is guilty of loitering under this section when, within 50 feet of a single-family or multifamily residence, or within 50 feet of a business which is open to the general public and which serves food or drink for consumption on or off the premises or which provides entertainment, or within 50 feet of any vacant property in either a residential or commercial district:
- (1) The person fails or refuses to move on when lawfully ordered to do so by any police officer;
 - (2) The person stands, sits idly or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk, or doorstep, in any street or way open to the public in this city so as to obstruct or hinder the free and convenient passage of other persons walking, riding or driving over or along such pavement, walk, street or way, and shall fail to make way, remove or pass, after reasonable request from any other person;
 - ~~(3) The person loiters, remains or wanders about in a public place for the purpose of begging;~~
 - ~~(4)~~ (3) The person loiters or remains in a public place for the purpose of solicitation as set forth in section 36-93; or
 - ~~(5)~~ (4) The person loiters, prowls, wanders or creeps in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Unless flight by the accused or other circumstances make it impracticable, a police officer shall, prior to any arrest for an offense under this subsection, afford the accused an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence or conduct. No person shall be convicted of an offense under this subsection if the police officer did not comply with the preceding sentence, or if it appears that the explanation given by the accused was true and, if believed by the police officer at the time, would have dispelled the alarm.
- (c) *Notice to the public.* The owner or proprietor of any business which is included within the provisions of this section shall post a sign or signs in the business

premises which shall clearly state for customers to read the prohibition of loitering under this section and the penalties for violation thereof.

- (d) *Penalties.* Any person who violated the provisions of this section shall be fined ~~\$250.00~~ \$100.00 for his first offense, ~~\$500.00~~ \$250.00 for a second offense, ~~\$750.00~~ \$450.00 for a third offense, and ~~\$1,000.00~~ \$500.00 for every subsequent offense. These fines shall not be subject to suspension or reduction for any reason. The current offense shall be considered a subsequent offense to any offense or offenses for the same violation which have occurred within the past five years.

SECTION 2. Chapter 36 of the Code is hereby amended by striking Article VII (§§ 36-221 through 36-227) in its entirety and re-numbering Articles VIII and IX as follows:

~~**ARTICLE VII. — OFFENSES INVOLVING REGULATIONS OF PANHANDLING AND FRAUDULENT SOLICITATION**~~

~~**Sec. 36-221. — Definitions.**~~

~~For purposes of this article and the sections thereof, "panhandling" is defined as any solicitation made in person requesting an immediate donation of money. 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, is a donation for the purposes of this article. Panhandling does not include passively standing or sitting 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.~~

~~**Sec. 36-222. — Time of panhandling.**~~

~~Any person who panhandles after sunset or before sunrise is guilty of a violation of this article of this chapter of the city Code.~~

~~**Sec. 36-223. — Place of panhandling.**~~

~~Any person who panhandles when the person solicited is in any of the following places is guilty of a violation of this article:~~

- ~~(1) At any bus stop or train stop;~~
- ~~(2) In any public transportation vehicle or facility;~~
- ~~(3) In any vehicle on any city street; or~~

- (4) ~~On private property, unless the panhandler has permission from the owner or the occupant.~~

~~Sec. 36-224. Manner of panhandling.~~

~~Any person who panhandles in any of the following manners is guilty of a violation of this article:~~

- (1) ~~By coming within three feet of the person solicited until that person has indicated that he or she does wish to make a donation;~~
- (2) ~~By blocking the path of the person soliciting along a sidewalk or street;~~
- (3) ~~By following a person who walks away from the panhandler;~~
- (4) ~~By using profane or abusive language, either during the solicitation or following a refusal;~~
- (5) ~~By panhandling in a group of two or more persons; or~~
- (6) ~~By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.~~

~~Sec. 36-225. False or misleading solicitation.~~

~~Any person who knowingly makes any false or misleading representation in the course of soliciting a donation is guilty of a violation of this article. False or misleading representations include, but are not limited to, the following:~~

- (1) ~~Stating that the donation is needed to meet a specific need, when the solicitor 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 solicitor 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 solicitor is neither a present nor former member of the service indicated;~~
- (5) ~~Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;~~
- (6) ~~Use of any make-up or device to simulate any deformity; or~~
- (7) ~~Stating that the solicitor is homeless, when he is not.~~

~~Sec. 36-226. Permit requirement.~~

- (a) ~~No person shall panhandle on five or more days in a single calendar year without a permit issued by the police department. A person who has been issued a permit shall keep it on his or her person at all times while panhandling and show it to any police officer upon request. No person whose permit has been revoked shall panhandle for a permit of two years following~~

~~the revocation. Any person who violates this subsection is guilty of a violation of this article.~~

- ~~(b) — The police department shall issue the permit, without fee, to any eligible person who presents himself at the public safety building, states his true name, presents a photo identification or signs a declaration under penalty of perjury that he has no such identification, and permits himself to be photographed and fingerprinted.~~
- ~~(c) — A person is ineligible for a permit if and only if within the past five years he (1) has been convicted of two or more violations of this article, (2) has had a permit revoked pursuant to subsections (e) or (f) of this section, or (3) has been convicted of two or more offenses under the law of any jurisdiction which involve aggressive or intimidating behavior while panhandling or false or misleading representations while panhandling.~~
- ~~(d) — If the police department is unable to determine eligibility within 24 hours of the application, the department shall issue a permit good for 30 days and determine eligibility for a regular permit before the temporary permit expires. The regular permit shall expire three years from the date of issuance. Along with the permit, the police department shall give the applicant a copy of this article.~~
- ~~(e) — Any person who makes any false or misleading representation while apply for a permit under this section is guilty of a violation of this article. Upon conviction of violation of this subsection, the police department shall revoke any permit issued to the subject defendant under this section.~~
- ~~(f) — If a permit is issued to a person under this section and that person subsequently commits and is convicted of a violation of any provision of this article, the police department shall revoke the permit.~~

~~Sec. 36-227. - Violations; penalties.~~

~~Each section of this article is distinct and any violation of any section is a separate violation of this article. A conviction of a violation of any section of this article shall be punishable by a fine in an amount not to exceed \$500.00.~~

ARTICLE ~~VIII.~~ VII. - SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Sec. 36-~~228~~ 221. - Definitions.

Sec. 36-~~229~~ 222. - Prohibitions.

Sec. 36-~~231~~ 223. - Violations and penalties.

Sec. 36-~~232~~ 224. - Signs.

Sec. ~~36-233~~ 225. - Places of employment.

Sec. ~~36-234~~ 226. - Enforcement.

Sec. ~~36-235~~ 227. - General provisions.

Secs. ~~36-236—36-257~~ 36-228 – 36-235. - Reserved.

ARTICLE ~~IX~~, VIII. - LITTER CONTROL

Sec. ~~36-258~~ 236. - Definitions.

Sec. ~~36-259~~ 237. - Exemption for mail and newspapers.

Sec. ~~36-260~~ 238. - Penalties.

Sec. ~~36-261~~ 239. - Throwing in public places generally.

Sec. ~~36-262~~ 240. - Placement in receptacles to prevent scattering.

Sec. ~~36-263~~ 241. - Sweeping, etc., into gutters, etc., prohibited; duty to keep sidewalks clean.

Sec. ~~36-264~~ 242. - Spilling contents from vehicles; depositing mud, etc., from wheels of vehicles.

Sec. ~~36-265~~ 243. - Throwing or distributing handbills in public places.

Sec. ~~36-266~~ 244. - Placing handbills in or upon vehicles.

Sec. ~~36-267~~ 245. - Posting notices, etc., prohibited.

Sec. ~~36-268~~ 246. - Littering.

Sec. ~~36-269~~ 247. - Enforcement.

Secs. ~~36-270~~ 36-248 - 36-294. - Reserved.

SECTION 3. This Substitute Ordinance shall be deemed effective upon signing by the Mayor.

First Reading.....November 21, 2019
Second Reading.....November 21, 2019
Third ReadingJanuary 16, 2020

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020

Mayor

SYNOPSIS: This Substitute Ordinance amends Chapter 36 of the Wilmington City Code by deleting Section 36-68(b)(3) relating to the crime of loitering for the purpose of begging and Sections 36-221 through and including Section 36-227 relating to the regulation of panhandling. It also reduces the fines that may be imposed for violations of the remaining provisions of Section 36-68 related to loitering.

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