

**AN ORDINANCE TO AMEND CHAPTER 36 OF THE CITY CODE TO CLARIFY
THE CITY'S LOITERING DEFINITION**

#0143

Sponsor:

**Council
Member
Johnson**

WHEREAS, the United States Constitution requires that criminal laws be defined in such a way that they are not overbroad, vague, or criminalize lawful assembly, protest, or involuntary homelessness;

WHEREAS, City Council and the Administration wish to improve the current loitering ordinance by clarifying its language and more precisely defining its scope for the benefit of the health and safety of the people of the City of Wilmington.

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

SECTION 1. Chapter 36 of the City Code is hereby amended by deleting the stricken language and adding the underlined language 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 in the city 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 in a public place, within 50 feet of a single-family or multifamily residence, ~~or within 50 feet of a school building~~, 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, the person stands, sits, or remains:

- ~~(1) The person fails or refuses to move on when lawfully ordered to do so by any police officer;~~
- ~~(2)(1) The person stands, sits idly or loiters upon~~ 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 block~~ or ~~hinder~~ intentionally slow 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 an order~~ from either a law enforcement officer or from any other person blocked or intentionally slowed in their passage;
- ~~(3) The person loiters stands, sits or remains in a public place for the purpose of solicitation as set forth in section 36-93; or~~
- ~~(4)(2) The person loiters, prowls, wanders or creeps in a public place at~~ At a time or in a manner not usual for law-abiding individuals under circumstances that warrant an immediate and reasonable 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;
- ~~(3) In or near a school building or grounds, not having any reason or relationship involving custody of or responsibility for a student and not having written permission from anyone authorized to grant permission under circumstances that warrant immediate and reasonable alarm for the safety of persons or property in the vicinity;~~
- ~~(4) For the purpose of unlawful gambling;~~
- ~~(5) For the purpose of committing a "Sexual Offense" as defined in 11 Del. C. Section § 761(i);~~
- ~~(6) For the purpose of unlawfully buying, distributing, or consuming an alcoholic beverage;~~
- ~~(7) For the purpose of spying upon or invading the privacy of another person;~~
- ~~(8) For the purpose of unlawfully buying, distributing, or using a controlled substance; or~~

- (9) At or near an automatic teller machine for purposes of committing a theft.
- (c) In determining whether a person is loitering, along with any other relevant fact or conduct, a law enforcement officer may consider the following circumstances:
- (1) Flight upon the appearance of a law enforcement officer;
 - (2) Refusal to provide proof of identification;
 - (3) Failure to provide a reasonable explanation upon request;
 - (4) Attempted or actual concealment of themselves or an object; and
 - (5) Threatening or harassing conduct or language.
- (d) Unless flight or other circumstances make it impracticable or unsafe, before a person may be arrested for a violation of this section, they must be afforded an opportunity to dispel any alarm for safety or other concern that they are violating this section by providing identification and explaining their presence and conduct.
- (e) It is defense to prosecution under this section that:
- (1) The law enforcement officer did not afford the person an opportunity to explain their presence or conduct; or
 - (2) A true explanation was provided to the law enforcement officer and, if believed, would have dispelled a reasonable law enforcement officer's alarm or concern.
- (f) A person may not be arrested under this section for orderly protest, lawful assembly, or solely because they are without regular housing to live or sleep in.
- ~~(e)~~(g) *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)~~(h) *Penalties.* Any person who violated the provisions of this section shall be fined \$100.00 for his first offense, \$250.00 for a second offense, \$450.00 for a third offense, and \$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. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....November 20, 2025
Second Reading.....November 20, 2025
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2026.

Mayor

SYNOPSIS:. This Ordinance amends the City’s Loitering ordinance to clarify and narrow the scope of the conduct it prohibits and to expressly exclude from its application lawful and constitutionally protected conduct such as assembly, protest and a person’s involuntary unhoused status of persons in a public place.

FISCAL IMPACT STATEMENT: The passage of this Ordinance is not expected to have any appreciable fiscal impact.