

ORDINANCE NO. 660

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Chapter 9A.04 of the Lakewood Municipal Code; related to Aggressive Begging.

WHEREAS, in July 2016, the Washington Supreme Court in City of Lakewood v. Willis, 186 Wn.2d 210, 375 P.3d 1056 (2016) invalidated two provisions of chapter 9A.04 of the City of Lakewood Municipal Code relative to Aggressive Begging as violating the First Amendment of the United States Constitution;

WHEREAS the purpose of streets, highways, and roads is to move people and goods both safely and efficiently and streets, highways, and roads are not designed for the purpose of soliciting funds. Direct personal solicitation from drivers distracts them from their primary duty to watch the traffic and potential hazards in the road, observe all traffic control signals or warnings, and prepare to move through the intersection; and

WHEREAS laws which are narrowly tailored to serve the significant governmental interest in traffic flow and roadway safety have been upheld, including a ruling from the Fifth Circuit of the United States Court of Appeals, which upheld an ordinance that prohibited individuals from soliciting the occupants of vehicles while the individual was in the street or roadway, street or roadway shoulder, or neutral ground of any street or roadway in International Society for Krishna Consciousness of New Orleans, Inc. v. City of Baton Rouge, 876 F.2d 494 (5th Cir. 1989); and

WHEREAS legislation which prohibits pedestrians from entering traffic to approach traffic has been held to "serve[s] a compelling interest at the heart of the government's function: public safety" in Houston Chronicle Publishing Co. v. City of League City, Texas, 488 F.3d 613 (5th Cir. 2007); and

WHEREAS in the City of Lakewood, police documents thirty-four recorded accidents involving pedestrians in 2011. One pedestrian was killed in these accidents. Twenty-seven people were injured in these accidents; and

WHEREAS in the City of Lakewood, police documents forty-three recorded accidents involving pedestrians in 2012. Thirty two-people were injured in these accidents; and

WHEREAS in the City of Lakewood, police documents forty-three recorded accidents involving pedestrians in 2013. Thirty people were injured in these accidents; and

WHEREAS in the City of Lakewood, police documents forty recorded accidents involving pedestrians in 2014, one of which was a fatality. Twenty-six people were injured in these accidents; and

WHEREAS in the City of Lakewood, police documents fifty-six recorded accidents involving pedestrians in 2015, one of which was a fatality. Thirty-four people were injured in these accidents; and

WHEREAS in the City of Lakewood, police documents fifty-six recorded accidents involving pedestrians through mid-December 2016, one of which was a fatality. Thirty-three people were injured in these accidents; and

WHEREAS the Lakewood Police Department received no less than 193 calls for service (CFS) for panhandling in 2011, 130 in 2012, 145 in 2013, 163 in 2014, 176 in 2015 and 83 CFS through mid-December 2016; and

WHEREAS, a safety hazard has been identified with pedestrians attempting to interact with the drivers and passengers of vehicles at busy intersections within the City of Lakewood, including pedestrians leaving the edge of the curb and actively entering the roadway; and

WHEREAS, the practice of pedestrians interacting with the drivers and passengers of vehicles while the pedestrian is in the roadway has been identified as being unsafe for both the pedestrians and for traffic in general; and

WHEREAS, the practice of pedestrians interacting with the drivers and passengers of vehicles while the pedestrian is in the roadway constitutes an impediment to the normal and safe flow of traffic in the City of Lakewood; and

WHEREAS, the City may impose reasonable time, place and manner restrictions in a traditional public forum that serve the City's significant public safety interests; and

WHEREAS, the City finds that limiting the interaction between pedestrians and occupants of vehicles at intersections controlled by traffic signal lights promotes the safety of not only pedestrians but also vehicular traffic and, leaves open ample alternative channels of communication;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1: Section 9A.04.020 LMC titled "Definitions" is amended to read as follows:

A. Aggressive Begging means: (a) begging with intent to intimidate another person into giving money or goods by any means including repeated requests for money while approaching or following the person from whom funds are being requested; (b) continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting; (c) soliciting from anyone who is waiting in line; (d) following a person with intent to solicit money or other things of value; (e) begging with use of false, misleading information, where the person knew or reasonably should have known of the falsity or misleading nature of the information; (f) (c) begging with or involving activities that are unsafe or dangerous to any person or property; (g) begging in a manner that exploits children; or (e) willfully providing or

delivering, or attempting to provide or deliver unrequested or unsolicited services or products with a demand or exertion of pressure for payment in return.

B. “Automated Teller Machine” means a machine, other than a telephone: (1) that is capable of being operated by a customer of a financial institution; (2) by which the customer may communicate with the financial institution a request to withdraw, deposit, transfer funds, make payment, or otherwise conduct financial business for the customer or for another person directly from the customer’s account or from the customer’s account under a line of credit previously authorized by the financial institution for the customer; and (3) the use of which may or may not involve personnel of a financial institution;

C. “Curb” means the lateral lines of a roadway, whether constructed above grade or not, which are not intended for vehicular travel.

CD. Financial Institution means any banking corporation, credit union, foreign exchange office. For purposes of this section, it shall also include any check cashing business.

DE. Major/Principal Arterial Intersections are the intersections of the principal arterials identified in Lakewood Municipal Code 12A.09.022.

EF. Begging means asking for money or goods as a charity, whether by words, bodily gestures, signs or other means.

FG. To intimidate means to coerce or frighten into submission or obedience or to engage in conduct which would make a reasonable person fearful or feel compelled.

GH. Public place means: (a) any public road, alley, lane, parking area, sidewalk, or other publicly-owned building, facility or structure; (b) any public playground, school ground, recreation ground, park, parkway, park drive, park path or rights-of-way open to the use of the public; or (c) any privately-owned property adapted to and fitted for vehicular or pedestrian travel that is in common use by the public with the consent, expressed or implied, of the owner or owners;

HI. “Public Transportation Facility” means a facility or designated location that is owned, operated, or maintained by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state for the purpose of facilitating bus and other public transportation.

IJ. Exploit means using in an unethical, selfish or abusive manner or in any other manner that seeks an unfair advantage; and

JK. On and Off Ramps refers to the areas commonly used to enter and exit public highways from any City roadway or overpass.

KL. “Public Transportation Vehicle” means any vehicle that is owned by a City, County, County Transportation Authority, Public Transportation Benefit Area, Regional Transit

Authority, or Metropolitan Municipal Corporation within the State for the purpose of facilitating bus and other public transportation.

M. “Roadway” means that portion of the public street including the vertical airspace above such portion of the public street, which is improved, designed or ordinarily used for vehicular travel, exclusive of the curb, berm or shoulder.

Section 2: Section 9A.04.025 LMC entitled “Prohibited Acts” is created to read as follows:

No person shall interrupt, distract or obstruct the free passage of vehicle or bicycle travel by walking on, standing on or going into any roadway used for vehicle or bicycle travel and contacting any vehicle, bicycle or occupant therein.

Section 3: Section 9A.04.020A LMC entitled “Restrictive Areas,” is amended to read as follows:

Begging shall be deemed a violation of this section of the municipal code under the following conditions: ~~(1) at on and off ramps leading to and from state intersections from any City roadway or overpass; (2) at intersections of major/principal arterials (or islands on the principal arterials) in the City;~~ (3~~1~~) within twenty five (25) feet of an ATM machine, or financial institution; (4~~2~~) within fifteen (15) feet of any (a) occupied handicapped parking space, (b) taxicab stand, or (c) bus stop, train station or in any public parking lot or structure or walkway dedicated to such parking lot or structure; (5~~3~~) before sunrise or after sunset at any public transportation facility or on any public transportation vehicle or (6~~4~~) while a person is under the influence of alcohol or controlled substances.

Section 4: Section 9A.04.030 LMC entitled “Violation” is created to read as follows:

Violation of this ~~section~~ chapter shall be a misdemeanor, punishable by a fine up to \$1000 or by a jail sentence of up to 90 days, or by both such fine and jail time.

Section 5: Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 6: Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this 21st day of February, 2017.

CITY OF LAKEWOOD

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Don Anderson, Mayor

Attest:

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Alice M. Bush, MMC, City Clerk

Approved as to Form:

Heidi A. Wachter  
Heidi A. Wachter City Attorney<sup>TM</sup>

DUE TO LACK OF MOTION  
THE ORDINANCE DIED  
2-21-17