

## **ORDINANCE NO. 04-2022**

### **AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA, RELATING TO PUBLIC SOLICITATION; REPEALING CHAPTER 30; CREATING A NEW CHAPTER 30 RELATED TO PUBLIC SOLICITATION; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Pinellas County Sheriff's Office, which provides for law enforcement within the City, confirms that it has experienced calls for service involving complaints of aggressive panhandling within the City; and

**WHEREAS**, aggressive begging, panhandling, or soliciting usually includes approaching or following pedestrians, repetitive begging, panhandling, or soliciting despite refusals, the use of abusive or profane language, unwanted physical contact, or the intentional blocking of pedestrian traffic; and

**WHEREAS**, increases in aggressive begging, panhandling, or soliciting throughout the City is extremely disturbing, startling and disruptive to residents and businesses, and contributes not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation, and disorder; and

**WHEREAS**, the presence of persons who panhandle, beg, or solicit from other persons at or near outdoor cafes, automated teller machines, and certain other public places as more particularly described in this Ordinance is especially troublesome because said persons cannot readily escape from the undesired conduct, and such activity often carries with it an explicit or implicit threat to both persons and property; and

**WHEREAS**, safety concerns increase between the hours of dusk and dawn due to the fact that the public cannot see individuals approaching and cannot thus avoid intimidating, aggressive or other unwanted behavior and as a consequence, individuals who are approached by people panhandling, soliciting or begging are more likely to feel fear and intimidation and to be startled; and

**WHEREAS**, the City Council is aware that the regulation of solicitation has constitutional implications and is informed by decades of legal pronouncements from the federal courts; and

**WHEREAS**, the City recognizes that the First Amendment does not guarantee access to property just because it is owned by the government, and it does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Bloedorn v. Grube*, 631 F.3d 1218, 1230 (11<sup>th</sup> Cir. 2011); and

**WHEREAS**, the City recognizes that the government, like any private landowner, may preserve the property under its control for the use to which it is lawfully dedicated. *Bloedorn*, 631 F.3d at 1231; and

**WHEREAS**, traditional public fora include public areas such as streets and parks that, since “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Bloedorn*, at 631 F.3d at 1231 (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983)); and

**WHEREAS**, commercial speech has been variously described as speech which does “no more than propose a commercial transaction,” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976) (quoting *Pittsburgh Press Co. v. Human Relations Comm’n*, 413 U.S. 376, 385 (1973)), or as “expression related solely to the economic interests of the speaker.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 561 (1980); and that such speech is “the offspring of economic self-interest,” *id.* at 564 n. 6, analytically separated from other varieties of speech by a “commonsense distinction” *Id.* at 562 (quoting *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 455–456 (1978) (internal quotation marks omitted)); and

**WHEREAS**, in this way, commercial speech is not a “rigid classification” dependent on any definite set of characteristics. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 81 (1983) (Stevens, J., concurring in the judgment); and

**WHEREAS**, persons engaging in hand-billing, barking, greeting, or similar activities, wherein such persons in commercial districts approach potential customers and attempt, through verbal, non-verbal and written communication, to get the potential customers to visit a commercial establishment or otherwise to engage in a commercial transaction, are engaged in commercial speech. *FF Cosmetics FL Inc. v. City of Miami Beach, Florida*, 129 F.Supp.3d 1316 (S.D. Fla. 2015); and

**WHEREAS**, while a law drawing a distinction between commercial and non-commercial speech is not a mere time, place, and manner restriction (*City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 430 (1993)), a government may make a “common-sense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech.” See *Ohralik*, 436 U.S. at (1978); and

**WHEREAS**, the constitution in reality grants “less protection to commercial speech than to other constitutionally safeguarded forms of expression.” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 64-65 (1983); and

**WHEREAS**, a regulation of commercial speech must serve a legitimate, substantial interest and “[t]o find a ‘substantial interest,’ a court must conclude both that the interest advanced by the state is legitimate in theory, and that that interest is in remedying a problem that exists in fact (or probably would exist, but for the challenged legislation).” *Sciarrino v. City of Key West, Fla.*, 83 F.3d 364, 367 (11<sup>th</sup> Cir. 1996); and

**WHEREAS**, although the City “may not rely on ‘mere speculation or conjecture’” to justify the ordinance, neither must it “present ‘empirical data ... accompanied by a surfeit of background information.’” *Falanga v. State Bar of Ga.*, 150 F.3d 1333, 1340–41 (11<sup>th</sup> Cir. 1998) (quoting *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)); and

**WHEREAS**, promoting aesthetics and preventing obstructions to the orderly flow of pedestrian traffic on public sidewalks constitute substantial government interests. *Metromedia Inc. v. City of San Diego*, 453 U.S. 490, 507–08 (1981)), *One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1287-88 (11<sup>th</sup> Cir. 1999), *International Caucus of Labor Comm.'s v. City of Montgomery*, 111 F.3d 1548, 1551 (11<sup>th</sup> Cir. 1997); and

**WHEREAS**, ensuring the public's safety on roads is a compelling government interest. *Bischoff v. Florida*, 242 F.Supp.2d 1226, 137 (M.D. Fla. 2003); and

**WHEREAS**, “municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression.” *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806 (1984)); and

**WHEREAS**, “[e]ven solicitation that is neither fraudulent nor deceptive may be pressed with such frequency or vehemence as to intimidate, vex, or harass the recipient.” *Edenfield*, 507 U.S. at 769; and

**WHEREAS**, the Supreme Court has made explicit that “protection of the public from these aspects of solicitation is a legitimate and important state interest.” *Ohralik*, 436 U.S. at 462; and

**WHEREAS**, “[a] sidewalk, although specifically constructed for pedestrian traffic, also constitutes a public forum.” *Naturist Society, Inc. v. Fillyaw*, 958 F.2d 1515, 1521-23 (11<sup>th</sup> Cir. 1992); and

**WHEREAS**, in traditional public fora, such as the city streets and sidewalks, the courts permit governments to “enforce regulations of the time, place, and manner of expression which [1] are content-neutral, [2] are narrowly tailored to serve a significant government interest, and [3] leave open ample alternative channels of communication.” *Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11<sup>th</sup> Cir. 1999); and

**WHEREAS**, regulation of solicitation must “‘demonstrate that the challenged regulation advances [its asserted] interest[s] in a direct and material way.’” *Harrell v. Fla. Bar*, 608 F.3d 1241, 1270 (11<sup>th</sup> Cir. 2010) (quoting *Went For It, Inc.*, 515 U.S. at 625–26); and

**WHEREAS**, “[b]oth the Supreme Court and [the Eleventh Circuit] have noted that anecdotal evidence may support a conclusion that the challenged regulation directly and materially serves the State's substantial interest.” *Wollschlaeger v. Governor of Florida*, 797 F.3d 859, 898 (11<sup>th</sup> Cir. 2015), and that “a partial solution to a city's aesthetic problems may still directly advance the city's goals [because] [t]he Constitution does not require the City to choose between curing all of its aesthetic problems or curing none at all.” *Don's Porta Signs, Inc. v. City of Clearwater*, 829 F.2d 1051, 1053 (11<sup>th</sup> Cir. 1987); and

**WHEREAS**, the First Amendment requires a “‘fit’ between the legislature's ends and the means chosen to accomplish those ends, ... a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is ‘in proportion to the interest served,’ ... that employs not necessarily the least restrictive means but ... a means narrowly

tailored to achieve the desired objective.” *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469 at 480, 481 (1989); and

**WHEREAS**, a local government’s policy decision to address some contributors to street and sidewalk congestion but not others is not a constitutional violation. *Sciarrino v. City of Key West*, 83 F.3d 364, n. 7 (11<sup>th</sup> Cir. 1996) (holding, “we cannot accept Appellant’s argument that because there are other sources of congestion, harassment, and litter, the ban on the distribution of written material in connection with a business is not a reasonable fit between the goal of preventing litter as the means used to accomplish that goal”); and

**WHEREAS**, a government regulating solicitation activities has a duty to at least explore less intrusive alternatives than a blanket ban on commercial solicitations. *Fane v. Edenfield*, 945 F.2d 1514, 1519 (11<sup>th</sup> Cir. 1991) *aff’d*, 507 U.S. 761 (1993); and

**WHEREAS**, the City Council has engaged in this process both as to the provisions of this Ordinance concerning commercial solicitations as well as aggressive panhandling, and has not elected to completely ban all commercial solicitation within the City nor to ban all forms of begging or panhandling in the City so as to allow the more limited and tailored measures contained in this Ordinance to generate the desired reduction in the negative effects outlined in these findings; and

**WHEREAS**, in an effort to ensure its regulations are not overly broad, the City Council does not in this Ordinance ban commercial solicitations where the solicitor knows the person solicited, nor where the solicitations are invited, nor on private property open to the public; and

**WHEREAS**, the act of panhandling or begging is speech entitled to First Amendment protection. *See Loper v. New York City Police Dept.*, 999 F.2d 699, 704 (2d Cir. 1993) (holding “begging is at least ‘a form of speech’” because of the lack of material distinctions between begging and other forms of charitable solicitation); and

**WHEREAS**, soliciting “donations or payment” for charitable reasons is a form of speech protected by the First Amendment. *See Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980) (“[C]haritable appeals for funds, on the street or door to door, involve a variety of speech interests — communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes — that are within the protection of the First Amendment”); and

**WHEREAS**, soliciting financial support is “undoubtedly subject to reasonable regulation.” *Village of Schaumburg*, 444 U.S. at 632; and

**WHEREAS**, City enforcement staff are entitled to inquire whether a speaker’s words or actions fit the definition of “panhandling” since “[i]t is common in the law to examine the content of a communication to determine the speaker’s purpose.” *Hill v. Colorado*, 530 U.S. 703, 721 (2000) (finding a measure that restricted the purposes for which persons could be approached near medical facilities to be content neutral); and



**WHEREAS**, the Court in *Hill* explained that “[i]t may not be the content of the speech, as much as the deliberate ‘verbal or visual assault,’ that justifies proscription” enacted by the legislative body. *Hill*, 530 U.S. at 716; and

**WHEREAS**, the courts examine proscriptions on begging or panhandling by considering, among other factors, whether the proscription leaves open adequate alternative venues to perform such conduct and thus, for instance, an ordinance suppressing begging in the Fort Lauderdale Beach area was materially mitigated by the allowance of begging in streets, on sidewalks, and in many other public fora throughout that city. *Smith v. City of Ft. Lauderdale*, 177 F.3d 954, 956-57 (11<sup>th</sup> Cir. 1999); and

**WHEREAS**, a 2002 United States Department of Justice publication discussing robberies at ATMs contained the following guideline for communities seeking to reduce ATM robberies:

**Prohibiting loitering and panhandling near ATMs.** Some ATM robbers loiter around ATMs waiting for a suitable victim, and some ATM robberies are extreme cases of aggressive panhandling. Laws that prohibit loitering and panhandling near ATMs give police authority to keep opportunistic offenders away from potential victims.

See, *Problem-Oriented Guides for Police Series No. 8 Robbery at Automated Teller Machines*, by Michael S. Scott, Sept. 2002 by the U.S. Dept. of Justice Office of Community Oriented Policing Services, published at:

<https://pdfs.semanticscholar.org/9560/ff6cf46f52180cc1903e5e9f7341f95fe28c.pdf>; and

**WHEREAS**, the City Council therefore finds that the prohibition upon soliciting or panhandling within 20 feet of any automated teller machine is necessary to preserve the safety of bank patrons because these patrons are vulnerable to criminal activity and coercion as they may be in possession of a large amount of cash or have the ability to immediately withdraw a large amount of cash; and

**WHEREAS**, Chapter 30 of the City Code currently addresses the topic of peddlers and solicitors by prohibiting all soliciting and begging within public property; and

**WHEREAS**, the City Attorney has reviewed the current code and has advised that, considering the prevailing caselaw and the actual experiences of the City regarding begging and soliciting, that a new Chapter 30 should be adopted which addresses the most significant negative impacts of aggressive soliciting while ensuring constitutional rights are addressed; and

**WHEREAS**, the City Council finds that the provisions of this Ordinance are in the best interests of the health, safety, welfare and economic well-being of the City, its residents, visitors and businesses.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Seminole, Florida:

**Section 1.** Chapter 30 of the Seminole City Code is hereby repealed in its entirety.

**Section 2.** A new Chapter 30 of the Seminole City Code, entitled Public Solicitation, is hereby created as follows:

## **Chapter 30 – PUBLIC SOLICITATION**

### **ARTICLE I: GENERAL PROVISIONS**

#### **Sec. 30-1. Legislative intent.**

a. The intent of the Seminole City Council in adopting this chapter is to maintain safety and to ensure the general welfare of residents of and visitors to the city. It is also the intent of this article that persons who do not desire to be the object of the attentions of a panhandler or solicitor be given the right to be free from coercion, harassment, and fear. It is not the City Council's intent that this section be interpreted or applied in a way that would violate free speech rights.

b. It is not the purpose or intent of this chapter to prohibit begging, panhandling, or soliciting in public areas when such activities will not cause public health, welfare, and safety concerns. The adoption of this chapter is timely and appropriate because current city ordinances are insufficient to address the problems associated with aggressive panhandling while also ensuring persons wishing to peacefully solicit for donations have the ability to do so in at reasonable times, in a reasonable manner, and in reasonable places. The restrictions contained in this chapter are designed and intended not to be overbroad or vague and are narrowly-tailored to serve the city's substantial interests. Moreover, this chapter only restricts begging, panhandling, and soliciting of a certain nature and only in certain public places while preserving ample alternative areas for the valid exercise of constitutional speech rights. The chapter is not intended to limit any persons from exercising their constitutional right to beg, panhandle or solicit funds, picket, protest, or engage in other constitutionally protected activity. Its goal is instead to protect citizens from the fear and intimidation accompanying certain kinds of begging, panhandling, or solicitation that have become an unwelcome activity in the city.

#### **Sec. 30-2. Construction with other laws.**

a. *Solicitation of occupants of vehicles.* It is not the intent of the city to legislate with respect to matters regulated by § 98-1 of the Pinellas County Code, or Florida Statutes § 337.406. It is the intent of the city that § 98-1 of the Pinellas County Code, and Florida Statutes § 337.406 shall apply to all roads embraced by these laws unless expressly provided for in this article.

b. *Charitable solicitations.* It is not the intent of the city to legislate with respect to matters that are regulated by Article VII of Chapter 42 of the Pinellas County Code (as amended). It is the intent of the city that Article VII of Chapter 42 of the Pinellas County Code shall apply in all areas within the city except where expressly provided for in this chapter.

#### **Sec. 30-3. Definitions.**

For the purposes of this chapter, the following words and terms shall have the following meanings:

a. *Aggressive panhandling or soliciting:*

1. Continuing to panhandle or solicit from a person after that person has given the solicitor or panhandler a negative oral or physical response to such actions;
2. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting or panhandling;
3. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;
4. Using violent or threatening gestures toward a person during the course of soliciting or panhandling;
5. Persisting in closely following or approaching a person during the course of soliciting or panhandling, with the intent of asking that person for money or other things of value, after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or anything of value to the solicitor or panhandler; and
6. Using, while engaged in soliciting or panhandling, profane, obscene, or abusive language or conduct, or fighting words which are likely to provoke an immediate fearful or violent reaction from the person being solicited.

b. *Automated teller machine (ATM):* A device, linked to a financial institution's account record which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

c. *Automated teller machine facility:* An enclosed area comprised of one or more ATMs, and any adjacent space made available to ATM customers.

d. *Bus stop amenity:* Bus stop signs, benches, shelters or other structural features installed and maintained for the benefit of customers of a bus transit service.

e. *Financial institution:* Any bank, industrial bank, credit union, or savings association as defined in Florida Statutes § 220.62 and § 657.002, as may be amended from time to time.

f. *Panhandling:* A form of solicitation and means begging, asking, or soliciting money or goods for charity or personal gain, whether by word, bodily gestures, signs, or other means.

g. *Public place:* An area open to the public and includes, but is not limited to any alley, bridge, building, deck, driveway, parking lot, park, plaza, sidewalk, school grounds, street and other right-of-way 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.

## **ARTICLE II: PANHANDLING**

### **Sec. 30-10. Panhandling regulations.**

- a. No person shall engage in aggressive panhandling in any public place.
- b. No person shall engage in panhandling on any day after 11 p.m. or before 6 a.m.
- c. No person shall panhandle on or at the following locations:
  1. On private or residential property after having been asked to leave or refrain from soliciting or panhandling by the owner or other person lawfully in possession of such property;
  2. Within 20 feet of any ATM; provided, however, that when an ATM is located within an ATM facility, such distance shall be measured from the entrance or exit of the facility;
  3. Within 20 feet of a public restroom; or
  4. Within 20 feet of a bus stop or bus stop amenity.

### **Sec. 30-11. Enforcement.**

Any person or persons, firm, corporation, or association of persons who shall violate or fail to comply with any of the terms or provisions of this chapter shall, upon conviction, be punished as provided by § 1-15 of the city code. Each day that a violation occurs shall constitute a separate offense. Nothing in this subsection shall prevent enforcement of this section by county code, state law, or pursuant to the provisions of an administrative agency. Nothing in this chapter shall prevent the pursuit of separate charges under any other applicable local ordinance, or law.

**Section 3.** If any section, subsection, sentence, clause, provision, or word of this Ordinance is held invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.



**Section 4.** The Codifier shall codify the substantive amendments to the Seminole Code contained in Sections 1 and 2 of this Ordinance as provided for therein and shall not codify any other sections not designated for codification.


**Section 5.** Pursuant to Florida Statutes § 166.041 (4), this Ordinance shall take effect immediately upon adoption.

APPROVED ON FIRST READING: March 8, 2022

PUBLISHED: March 30, 2022

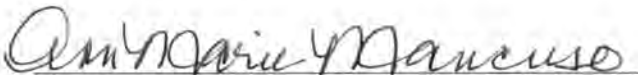
PASSED AND ADOPTED ON

SECOND AND FINAL READING: April 12, 2022

  
LESLIE WATERS, MAYOR

I, Ann Marie Mancuso, City Clerk of the City of Seminole, Florida, County of Pinellas, State of Florida, a municipal corporation do hereby certify the foregoing and hereto attached is a true and correct copy of Ordinance No. 04-2022 which is on file in the City Clerk's Office:

IN WITNESS WHEREOF, I hereunto set my hand and affixed the seal of the City of Seminole, Pinellas County, Florida, this 12 day of April, 2022.



Ann Marie Mancuso, City Clerk