

ORDINANCE NO. 2886-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA; AMENDING SECTION 62-77 OF THE MUNICIPAL CODE AND ADDING NEW SECTION 62-79, TO PROMOTE PUBLIC PEACE AND ORDER IN RESIDENTIAL AREAS AND TO PROMOTE THE IMPORTANT VALUE OF TRANQUIL AND HARMONIOUS NEIGHBORHOODS IN THE CITY OF WINTER PARK BY REGULATING WITHIN A DEFINED BUFFER AREA ALL PICKETING, REGARDLESS OF THE CONTENT OF THE COMMUNICATION, AND ALLOWING A RESIDENT TO POST A "NO LOITERING" SIGN ON HIS OR HER PROPERTY WHEN A PROTEST OR PICKETING ACTIVITY IS OCCURRING ON A SIDEWALK, RIGHT-OF-WAY, STREET OR OTHER PUBLIC AREA ABUTTING THE SUBJECT PRIVATE PROPERTY OR WITHIN THE DEFINED BUFFER; PROVIDING FOR ALTERNATIVE AREAS FOR PROTEST AND PICKETING; PROVIDING FOR ENFORCEMENT; PROVIDING A SAVINGS CLAUSE AND SEVERABILITY; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.

RECITALS AND LEGISLATIVE FINDINGS

WHEREAS, an emergency ordinance was enacted at the City Commission meeting held August 27, 2012, concerning this subject, and the emergency ordinance will stand repealed as of the 61st day following the date on which it was adopted unless the Commission reenacts the ordinance under regular procedures; and

WHEREAS, there has occurred in the City of Winter Park a documented series of protest or picketing activity specifically targeted against an individual residing in a single family home, and the Commission finds that this individual has feared for her safety as a result of this picketing activity, and has feared also for the safety of her family; and

WHEREAS, the City finds that there have been reported instances during the last several years in which the domestic tranquility has been disturbed in residential areas by organized picketing and protest in residential areas directed against specific targeted residents living in those areas (including but not limited to the recent reported events wherein Occupy Wall Street and other activists through means of organized protest transported protesters into residential neighborhoods and conducted picketing and protest activities outside the homes of bank and financial industry executives such that family members inside the homes were placed in well-founded and reasonable fear for their safety); and

WHEREAS, the United States Supreme Court in *Carey v. Brown*, 447 U.S. 455 (1980) stated and found that: "the State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Id.* at 471; and

WHEREAS, the United States Supreme Court in *Frisby v. Schultz*, 487 U.S. 474 (1988) found and stated that: "our prior decisions have often remarked on the unique nature of the home, the last citadel of the tired, the weary and the sick." *Id.*, at 484, *citing Gregory v. Chicago*, 394 U.S. 111, 125 (1969); and

WHEREAS, the United States Supreme Court has found that "preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value." *Carey v. Brown*, 447 U.S. at 471; and

WHEREAS, The United States Supreme Court in *Frisby v. Shultz*, 487 U.S. 474 (1988) found and stated the following:

"One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear [citations omitted], the home is different. That we are often captives outside the sanctuary of the home and subject to objectionable speech does not mean we must be captives everywhere." *Frisby v. Schultz*, 487 U.S. at 484, *citing, Rowan v. Post Office Department*, 397 U.S. 728 (1970); and

WHEREAS, in *Frisby v. Shultz*, the Supreme Court recognized that a special benefit that citizens enjoy is the benefit of "privacy ... within their own walls, which the State may legislate to protect." Moreover, there is an important societal interest "to avoid intrusions" into the domestic tranquility of persons residing in their homes and, as the Court stated in *Frisby*, "we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom." *Id.* at 485; and

WHEREAS, in *Frisby v. Shultz*, the United States Supreme Court by a judgment of 6:3 upheld the constitutionality of a municipal ordinance in Brookfield, Wisconsin that provided the following:

"It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield."; and

WHEREAS, the Brookfield ordinance that was upheld recited as its primary purpose "the protection and preservation of the home" through assurance "that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility and privacy."; and

WHEREAS, the City Commission of the City of Winter Park hereby enacts this ordinance for the primary purposes of protecting and preserving the homes in Winter Park and to provide for the members of the community who reside in such single family homes and dwellings a feeling of well-being, tranquility and privacy; and

WHEREAS, in *Frisby v. Schultz*, the Supreme Court recognized that there is a difference between picketing that is narrowly directed at the household and not the public –and that a ban on picketing on or about residences may be accomplished in accordance with constitutional requirements, even where some picketers may have a broader communicative purpose but the general activity "nonetheless inherently and offensively intrudes on residential privacy"; and

WHEREAS, the City Commission seeks to prevent picketing that is targeted against specific residents (even though there may be a broader message, at least in the minds of one or more of the picketers) where the picketing, as recognized by the Supreme Court in *Frisby* may have a "devastating effect ... on the quiet enjoyment of the home"; and

WHEREAS, the Supreme Court in *Frisby v. Schultz* found that it is "beyond doubt" that there is a devastating effect of targeted picketing on the quiet enjoyment of the home, and that:

"To those inside ... the home becomes something less than a home when and while the picketing ... continues. The tensions and pressures may be psychological, not physical, but they are not, for that reason, less inimical) to family privacy and ... domestic tranquility." *Frisby v. Shultz*, 487 at 486, *citing*, *Carey v. Brown*, 447 U.S. at 478; and

WHEREAS, the Supreme Court in *Frisby* found that the First Amendment allows the government to prohibit offensive speech as intrusive when a captive audience in their homes is the target of such speech and cannot avoid the objectionable speech, citing *Consolidated Edison Co. v. Public Service Comm'n of New York* 447 U.S. 530, 542 (1980); and

WHEREAS, the Supreme Court found that persons in their homes, when targeted by focused picketing, may be viewed as "just such a captive"; and that the resident is "figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing the resident is left with no ready means of avoiding the unwanted speech." *Frisby v. Shultz*, 487 U.S. at 487; and

WHEREAS, in *Carey v. Brown*, 447 U.S. 455, 478 (1980) the Supreme Court characterized as "evil" the targeted residential picketing which constitutes "the very presence of an unwelcome visitor at the home"; and

WHEREAS, because the picketing prohibited by the Brookfield ordinance that was upheld as constitutional in *Frisby* concerned only speech directed primarily at those who are presumptively unwilling to receive it, "the state has a substantial and unjustifiable interest in banning it."; and

WHEREAS, the City Commission of the City of Winter Park finds that this ordinance is narrowly tailored to prohibit only that picketing activity as that which was prohibited by the Brookfield ordinance that which was upheld in *Frisby v. Schultz*, and

based on the authority cited herein it has a compelling interest of the highest order in enacting this local law; and

WHEREAS, the restrictions presented in this ordinance are content and viewpoint neutral and apply to all picketing activity, defined as that which is directed primarily at targeted individuals residing in the home.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, HEREBY ORDAINS AS FOLLOWS

Section 1. Incorporation of Recitals as Legislative Findings. The recitals of this ordinance, stated hereinabove, are all incorporated herein and constitute the legislative findings of the City Commission of the City of Winter Park in support of the adoption of this ordinance. The recitals are made fully a part of this ordinance as if set out in a section hereunder.

Section 2. Enactment Of New Section 62-79, Entitled "Prohibition Against Picketing Before Or About A Dwelling Unit." There is hereby codified a new Section 62-79 in the Municipal Code of the City of Winter Park, providing as follows:

"62-79. Prohibition Against Picketing Before Or About A Dwelling Unit.

(A) Definitions:

- (1) "Picket"; "Picketing"; and "Protest". The terms "picket", "picketing" and "protest" shall all mean, for purposes of this Section, any assembly of one or more persons, who, through conduct, speech or other form of expression, criticize, protest or complain about any matter in which a particular person, group of persons or type of person is specifically targeted for protest, complaint or criticism, and where such assembly stands, loiters, congregates or mills before or about a dwelling unit in which a person who is a target or subject of such protest resides or is perceived to reside.

One or more persons may be considered picketing or protesting within the meaning of this Section even if the message being communicated is intended to be heard or seen by persons in addition to the resident or residents inside a dwelling unit.

- (2) The term "dwelling unit" shall mean a building or portion thereof that is designed for residential occupancy, and shall include single family homes, zero lot line residences, townhomes or connected homes, and duplexes, and other single and multi-family dwelling units located in the R-1AAA lakefront district, R-1AA, R-1A, R-2, R-3, R-4 and PURD zoning districts. Where a single family

residence is grandfathered in another zoning district and is still used for single family residential purposes it shall be included in this definition. Excluded from this definition are apartment buildings and condominiums located in a commercial zoning district.

- (3) The term “buffer area” shall mean that area of public property, including any park, public street, public right-of-way, or sidewalk, located within an area that extends fifty (50) linear feet in any direction measured from the property line of a dwelling unit. Privately owned property shall not be considered to be included in the buffer area, although the laws of trespass shall apply.
- (B) Findings. It is essential to the harmony, peace and tranquility of persons residing in residential dwelling units in the City of Winter Park that they feel free in their own homes, and safe from protests and picketing activity that targets them or that is directed at them because the persons picketing have assumed that the residents are a member of a group or a type being targeted. The importance of peace and tranquility in one's own home is of compelling significance, and is of crucial importance in the City of Winter Park. The City intends to protect this interest through its governing Code of Ordinances as allowed by law. See, *Frisby v. Shultz*, 487 U.S. 474 (1988) and *Cary v. Brown*, 447 U.S. 455 (1980).
- (C) Prohibition Against Protest And Picketing Before Or About A Dwelling Unit. It shall be unlawful for any person or persons to picket, protest or conduct any picketing or protesting activity within a buffer area of 50 feet from the property line of any dwelling unit in the City of Winter Park. It shall also be unlawful for any person or persons to picket, protest or conduct any picketing or protesting activity in any park, public street, public right-of-way, or on a sidewalk, where such activity impedes or interferes with the rights of others to travel on or in such areas in a safe manner, consistent with the traditional pedestrian, bicycle or motor vehicle use of such areas.
- (D) Enforcement And Penalty For Violation. A person violating the provisions of this Section shall be guilty of an offense punishable as provided in Section 1-7 of the Municipal Code. In addition, a knowing violation of this Section shall constitute a second degree misdemeanor, and enforcement methods may include but are not limited to the issuance of a citation, summons, notice to appear in county court or arrest for violation of municipal ordinances as provided for in Chapter 901, including Section 901.15(1), Florida

Statutes. Enforcement may also be made pursuant to the provisions of Chapter 162, Florida Statutes, including Section 162.22, Florida Statutes, such that a person convicted of violating this Section may be sentenced to pay a fine not to exceed \$500 for each violation and may be sentenced to a definite term of imprisonment not to exceed 60 days in a facility as authorized by law.

- (E) These Provisions Supplement Other Provisions of the Municipal Code: The provisions of this Section supplement other provisions of law and the Municipal Code that protect the public order and safety, including but not limited to those provisions of law prohibiting obstruction or interference with passage on a public right-of-way, sidewalk or street, and those laws that prohibit trespass, assault, battery, destruction of property or other injury to person or property.
- (F) Alternative Means. The City Manager shall, on application, make available City owned land reasonably near or abutting a residential zoning district for any protest or picket, subject to all laws applying to the conduct of persons engaged in the picket. And, nothing herein prohibits a protest or picketing in a commercially zoned area, so long as the conduct of such is otherwise lawful.”

Section 3. Section 62-77 Entitled "Loitering-Generally" Is Amended By Adding The Following Provision At The End Of The Section:

"A person regularly residing in a 'dwelling unit', as that term is defined in Section 62-79, may post a 'no loitering' sign on the property of such residence in which the person regularly resides, and an officer of the City may enforce this section against any person remaining in a public area, including a park, sidewalk, street, public right-of-way, after the sign is posted, who loiters, stands, sits or lies before or about the dwelling unit on which property the 'no loitering' sign is posted, or remains on public property within a buffer area as defined in Section 62-79, of fifty (50) feet from the property line of such residence.

These Provisions Supplement Other Provisions of the Municipal Code: The provisions of this Section supplement other provisions of law and the Municipal Code, including Section 62-79, that protect the public order and safety, including but not limited to those provisions of law prohibiting obstruction or interference with passage on a public right-of-way, sidewalk or street, and those laws that prohibit trespass, assault, battery, destruction of property or other injury to person or property."

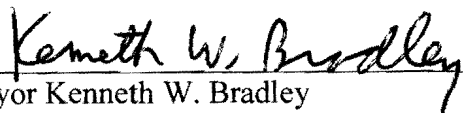
Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court, whether for substantive, procedural, facial or other reasons, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 5. Savings Clause. The decisions of the Supreme Court in *Frisby v. Schultz*, 47 U.S. 474 (1988); *Carey v. Brown*, 447 U.S. 455 (1980); and, *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753 (1994) do not give a specific number of feet for a buffer that will satisfy a constitutional challenge with respect to an ordinance designed to protect residential dwelling units. Accordingly, if a court shall determine that the 50 foot buffer area provided in this ordinance is too large, then the court shall enforce such buffer that it finds will satisfy the constitutional requirements for a buffer protecting residential dwelling units, and this ordinance and the subject Code sections contained herein, shall be deemed amended to reflect the buffer area as a court may declare will satisfy constitutional requirements.

Section 6. Codification. Section 2 and Section 3 that amend the City Code, shall be codified in the City Code as specified therein. Any section, paragraph number, letter or heading within the Code may be changed or modified as necessary to effectuate the codification. Grammatical, typographical and similar or like errors may be corrected in the Code, and additions, alterations and omissions not affecting a material substantive change in the construction or meaning of this Ordinance may be freely made.

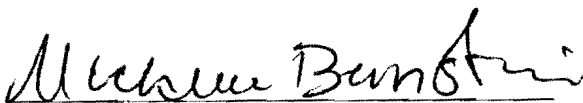
Section 7. Effective Date Of Ordinance. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

Adopted by the City Commission of the City of Winter Park, Florida in a regular meeting assembled on the 24th day of September, 2012.



Mayor Kenneth W. Bradley

ATTEST:



Cynthia S. Bonham, City Clerk