

ORDINANCE NO. 2975-14

AN ORDINANCE AMENDING OFFENSE OF LOITERING WITHIN THE CITY OF WINTER PARK; AMENDING DIVISION 1, OF ARTICLE IV, OF CHAPTER 62, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CITY CODE, SECTION 62-77, LOITERING - GENERALLY; PROVIDING FOR CONFLICTS; CODIFICATION, SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, on September 24, 2012, the City Commission of the City of Winter Park enacted Ordinance 2688-12, prohibiting targeted picketing of a residence, and as part of such enactment, added an additional section to the ordinance prohibiting loitering that allowed a person regularly residing at a dwelling unit to post a "no loitering" sign at the residence, and after the posting of such sign, an officer of the City could enforce the no loitering provision against anyone who loiters, stands, sits, or lies before or about a 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; and

WHEREAS, on March 20, 2014, the 11th Circuit Court of Appeal issued an opinion entitled *Bell v. City of Winter Park*, Case No. 13-11499, expressing doubt as to the constitutionality of the above-described amendment to the loitering ordinance, as it would allow a private citizen to control speech within a buffer zone located within a traditional public forum; and

WHEREAS, the City Commission of the City of Winter Park has determined that it is advisable and in the public interest to amend the loitering ordinance in accordance with the above-referenced opinion of the 11th Circuit Court of Appeal; and

WHEREAS, the City Commission of the City of Winter Park finds that this ordinance promotes the general welfare of the citizens of the City of Winter Park; and

WHEREAS, words with double underline shall constitute additions to the original text and ~~strike-through~~ text shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. AMENDMENT OF SECTION 62-77. Chapter 62, Offenses and Miscellaneous Provisions, Article IV, Section 62-77 is hereby amended to read as follows:

Sec. 62-77. Loitering—Generally.

It shall be unlawful for any person, after first being warned by a law enforcement officer, or where a "no loitering" sign has been posted, to loiter, stand, sit or lie in or upon any public or quasipublic sidewalk, street, curb, crosswalk, walkway area, mall or that portion of private property utilized for public use so as to unreasonably hinder or obstruct the free passage of pedestrians or vehicles thereon nor shall any person block or obstruct or prevent the free access to the entrance to any building open to the public. ~~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 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.~~

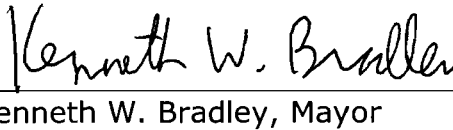
SECTION 2. CONFLICTS. All ordinance or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3. CODIFICATION. This ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

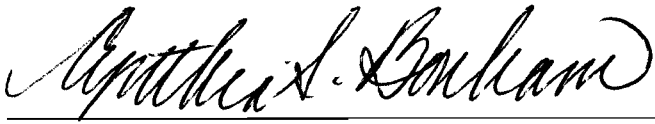
SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate,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

SECTION 5. EFFECTIVE DATE. 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 held on the 8th day of September, 2014.


Kenneth W. Bradley, Mayor

ATTEST:


Cynthia S. Bonham, MMC, City Clerk