

ORDINANCE NO. 2022.7.12.2

AN ORDINANCE OF THE CITY OF FLATONIA, TEXAS, AMENDING CHAPTER 6 OF THE FLATONIA CODE OF ORDINANCE HEALTH AND SANITATION TO ADD SECTION 6.04 LOITERING, CAMPING, AND SOLICITATION; ESTABLISHING A PROHIBITION AGAINST LOITERING, CAMPING, AND HARASSING SOLICITATION IN PUBLIC AREAS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR RELATED MATTERS.

Whereas, in 2021 the State of Texas established a ban on camping within Texas Penal Code Section 48.05; and

Whereas, Texas law allows a municipality to establish its own ordinances regulating camping, loitering, and solicitation; and

Whereas, the City Council for the City of Flatonia finds that loitering, camping, and solicitation pose a risk to public safety; and

Whereas, the City Council for the City of Flatonia desires to regulate the manner and location of loitering, camping, and harassing solicitation within public areas of the City of Flatonia.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLATONIA, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Ordinance Prohibiting Loitering, Camping, and Solicitation in Public Areas.
Chapter 6 of the City of Flatonia Code of Ordinances "Health and Safety" is hereby amended to include Section 6.04 "Loitering, Camping, and Solicitation."

Section 6.04 Loitering, camping, solicitation in public area.

(a) *Definitions.* The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Automated teller machine. A device, linked to a bank's account records, which is able to carry out banking transactions.

Automated teller facility. The area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.

Bank. Includes savings banks, savings and loan associations, credit unions, trust companies, or similar financial institutions.

Camp. To reside temporarily in a place, with shelter

Camping. The use of a public area for living accommodation purposes including, storing personal belongings; making a campfire; using a tent, shelter, vehicle, or other structures and/or materials for a living accommodation; carrying on cooking activities; or digging or earth breaking activities.

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Check cashing business. A person or entity that is in the business of cashing checks, drafts, or selling or cashing money orders for consideration.

Harassing. Aggressively approaching or following a pedestrian or vehicle, repetitive soliciting despite refusals, the use of abusive, profane, or offensive language that causes fear and intimidation, intentional or reckless unwanted physical contact or a threat thereof, and/or the intentional blocking of pedestrian and vehicular traffic.

Loitering. Sitting, lying down, sleeping, or stowing personal belongings in or on a public area, without the express permission of the entity or person who owns or otherwise controls such public areas.

Public area. An area that is accessible to the public including a street, highway, park, sidewalk, parking lot, alleyway, pedestrian way, and the common areas of a school, hospital, apartment building, office building, transport facility, shop, business, bank, rights-of-way between a roadway and the abutting property line or structure, and/or upon public rights-of-way.

Shelter includes a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of temporary, semipermanent, or permanent shelter, other than clothing or any handheld device, designed to protect a person from weather conditions that threaten personal health and safety.

Solicit. To request, by spoken, written, or printed word or by other means of communication a donation or transfer of money, food, or any other thing from another person, regardless of the solicitor's purpose or intended use of the money or other thing, and regardless of whether consideration is offered.

(b) *Loitering prohibited.*

(1) Loitering in public areas prohibited. A person commits an offense if the person, after being notified by a law enforcement officer or the person that owns or controls the property that a person's activities violate a city regulation, fails to vacate the property in question.

(2) *Defenses.* It is a defense to prosecution under subsection (a) that a person:

- (A) Was sitting or lying down because of a medical emergency.
- (B) As a result of a disability, used a wheelchair or similar device to move about;
- (C) Participated in or viewed a parade, festival, performance, rally, demonstration, or similar event;
- (D) Waited in line to purchase a ticket to or attend a performance or a public event, to enter an establishment, or to purchase food or other items for sale;
- (E) Sat on a chair or bench that was supplied by an agency, entity, individual or business, unless the agency, entity, individual, or business requested that the person leave the chair or bench provided; or
- (F) Operated or patronized a commercial establishment that conducts business on the sidewalk, during the time business was being conducted thereon.

(c) *Camping prohibited.*

(1) Camping in public areas prohibited. A person commits an offense if the person intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place.

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(2) The actor's intent or knowledge may be established through evidence of activities associated with sustaining a living accommodation that are conducted in a public place, including:

- (A) Cooking
 - (B) Making a fire;
 - (C) Storing personal belongings for an extended period;
 - (D) Digging; or
 - (E) Sleeping.
- (4) This section does not apply to permitted camping or cooking in a park in compliance with park regulations or if the person is engaged in a sanctioned outdoor cooking event.
- (5) It shall be unlawful for any person to camp within the fenced area of the swimming pool, playground areas, basketball courts or surrounding area owned by the city.
- (6) It is an affirmative defense to prosecution under this subsection that a person is camping in an area designated as a camping area by the City and/or parks department, owns the property, or has secured the permission of the property owner to camp in a public area unless such activities are otherwise prohibited by state or local regulations.

(d) Solicitation Prohibited

- (1) Harassing solicitation prohibited. A person commits an offense if the person solicits in a harassing manner in:
- (A) A public area.
 - (B) At a transportation stop;
 - (C) Within twenty-five (25) feet of:
 - (i) An automated teller facility.
 - (ii) The entrance to a bank.
 - (iii) The entrance or exit of a check cashing business.
 - (D) At a marked crosswalk;
 - (E) On either side of the street on a block where a school attended by minors, or a childcare facility has an entrance or exit;
 - (F) At a sidewalk eatery.
- (e) *Penalty for violations.* A person committing an offense of this section, and upon conviction thereof, shall be guilty of a class c misdemeanor and shall be subject to a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00).

Section 3. Repeal of Conflicting Ordinances. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of the most restrictive ordinance shall govern.

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Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 5. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED ON the 12th day of July, 2022.

CITY OF FLATONIA TEXAS

ATTEST:

Amelia Howe

City Secretary

Dennis E. Geesaman
Mayor Dennis Geesaman

