

SECOND AMENDED ORDINANCE 01-19

By: Monique Lampke

An Ordinance to Repeal Section 648.12 of the City of Bexley's Codified Ordinances, and to create Chapter 649 in order to regulate pedestrian or vehicular interference and provide ATM privacy, and to create Section 832.05, to provide for charitable solicitation in the roadway.

Whereas, the City currently has an ordinance concerning suspicious persons that defines a suspicious person as any person who goes about begging or places himself in or upon any public place to beg; and

Whereas, the United States Supreme Court has issued a decision calling into question the constitutionality of a complete prohibition against panhandling; and

Whereas, the City has other means of ensuring compliance with the intent and purpose of section 648.12 that are within constitutional limitations; and

Whereas, Chapter 649 is proposed as detailed in Section 2 herein, in order to provide protections for residents against aggressive distribution;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1.

That section 648.12 of the City's Codified Ordinances is hereby repealed.

Section 2.

That Chapter 649 of the City's Codified Ordinances is hereby created as follows:

Chapter 649 - PEDESTRIAN OR VEHICLE INTERFERENCE; ATM PRIVACY

649.01 Distribution in a right-of-way.

(a) No person shall engage in distribution with the driver or occupant of a vehicle in a right-of-way unless such vehicle is lawfully stopped, standing, or parked in compliance with chapter 4511 of the Revised Code and title VII of the Revised Code.

(b) No person who is within a right-of-way shall engage in distribution with the driver or occupant of a vehicle stopped in a right-of-way in obedience to a traffic control signal. However, a person may engage in distribution with the occupant of a vehicle in a right-of-way so long as the person remains on the surrounding sidewalks and not in or on the right-of-way itself, including any medians or traffic islands within the right-of-way.

(c) No person, being the driver or occupant of a vehicle in a right of way, shall engage in distribution with another who is not an occupant of the vehicle unless such vehicle is lawfully stopped, standing, or parked in compliance with chapter 4511 of the Revised Code and title VII of the Revised Code.

(d) No person, being the driver or occupant of a vehicle stopped in a right of way in obedience to a traffic control signal, shall engage in distribution with another who is not an occupant of the vehicle. However, a driver or occupant of a vehicle in a right of way may engage in distribution with another who is not an occupant of the vehicle so long as the person remains on the surrounding sidewalks and not in the right of way itself, including any medians or traffic islands within the right of way.

(e) Whoever violates this section is guilty of distribution in a right-of-way, a misdemeanor of the fourth degree. When a person has been previously convicted of a violation of section 2333.01, or any other substantially similar state statute or municipal ordinance, the offense of distribution in a right of way is a misdemeanor of the third degree.

(f) For the purpose of this section, the term "distribution" means "an exchange or an attempt to exchange a physical item between two or more individuals."

(g) All other words and phrases used in this section shall have the same meanings as defined in section 4511.01 of the Ohio Revised Code.

(h) A violation of subsection (A), (B), (C), or (D) is a strict liability offense.

649.02 Aggressive distribution.

(a) No person shall engage or attempt to engage in distribution in the following manners:

(1) By knowingly touching or grabbing another person or that person's property without that person's consent.

(2) By knowingly following another person and continuing to engage or attempt to engage in distribution with that person after that person has made an affirmative communication that the person is unwilling or unable to engage in distribution.

(b) Whoever violates this section is guilty of aggressive distribution, a misdemeanor of the second degree. When a person has been previously convicted of a violation of section 2333.02, or any other substantially similar state statute or municipal ordinance, aggressive distribution is a misdemeanor of the first degree.

(c) For the purpose of this section, the term "distribution" means "an exchange or an attempt to exchange a physical item between two or more individuals."

649.03 ATM privacy.

- (a) No person shall knowingly approach within three feet of any person who is actively using an automated teller machine without that person's consent.
- (b) "Automated teller machine" means a fixed device linked to a financial institution's account records which is able to carry out transactions, including but not limited to, account transfers, deposits, withdrawals, balance inquiries, and mortgage and loan payments.
- (c) Whoever violates this section is guilty of invasion of ATM privacy, a misdemeanor of the fourth degree. When a person has been previously convicted of a violation of section 2333.03, or any other substantially similar state statute or municipal ordinance, the offense of violating ATM privacy is a misdemeanor of the third degree.

649.04 Obstructing city right-of-way.

- (a) A person commits an offense if, without legal privilege or authority to do so, the person recklessly:
 - 1) Obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from the person's acts alone or from the person's acts and the acts of others; or
 - 2) Disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is, a peace officer or a person with the authority to control the use of the premises when the request/order is made in order to prevent the obstruction of a highway or any of the areas mentioned in subsection (1)
- (b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.
- (c) An offense under this section is a misdemeanor of the fourth degree. When a person has been previously convicted of a violation of section 649.04, or any substantially similar statute or municipal ordinance, the offense of obstructing a city right of way is a misdemeanor of the third degree.

Section 3.

That Section 832.05 of the City's Codified Ordinances is hereby created as follows:

832.05. Permit to solicit charitable contributions in the roadway

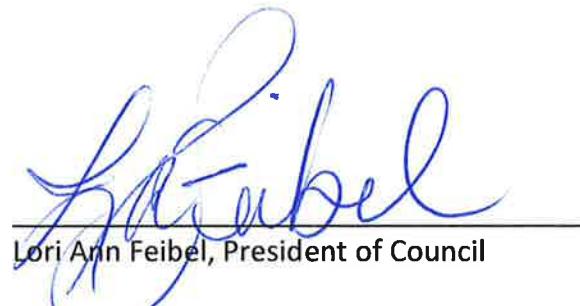
- (a) The Safety Director shall issue a permit to solicit contributions on a street, highway or roadway from the driver or occupants of a vehicle when all requirements of paragraph (b) of this section have been met. There shall be no charge for permits issued under this section.
- (b) Certain charitable organizations may apply for and obtain a permit to solicit contributions in the street, highway or roadway, but not on a freeway as provided in Section 4511.051(A), Ohio Revised Code, when a permit is issued by the Safety Director as follows:
 - a. The Safety Director shall prescribe a form and receive applications to solicit contributions on a street, highway or roadway, and shall adopt rules and regulations to implement this section.
 - b. An application may be made only by a charitable organization that has received from the Internal Revenue Service a currently valid ruling or determination letter recognizing the tax-exempt status of the organization pursuant to Section 501(C)(3) of the Internal Revenue Code, as amended. Said Internal Revenue Service ruling or determination must be attached to the application prescribed by the charitable solicitations board.
 - c. An application to solicit in the street, highway or roadway shall state the date and times for which the permit is sought. A permit under this section shall not be issued to a charitable organization for more than one (1) day each calendar year during the hours of 8:00 a.m. and 6:00 p.m. on that date or during daylight hours on such date.
 - d. The application to solicit in the street, highway or roadway shall specify the locations or intersections for which the permit is sought, and shall list the names and addresses of all agents authorized to solicit on behalf of the organization.
 - e. The application shall be accompanied by a paid up liability insurance policy or certificate of insurance in the amount of not less than one million dollars (\$1,000,000) that insures the charitable organization for any and all claims that may arise as a result of soliciting contributions in the street, highway or roadway and which insurance policy contains a clause that names the city and its officers, agents or employees as an additional named insured under such policy.
 - f. The application may be accompanied by a statement from the Chief of Police and Service Director that the proposed solicitation in the street, highway or roadway at the specified locations on the date stated in the permit will not cause excessive traffic congestion or hazard and does not conflict with a previously issued parade permit or scheduled public event. The Safety Director must make both an inquiry and a determination on those subjects prior to the issuance of a permit and conclude that with or without such letters, the proposed solicitation in the street, highway or roadway will not cause excessive traffic congestion or hazard and does not conflict with a previously issued parade permit or scheduled public event.

Section 4.

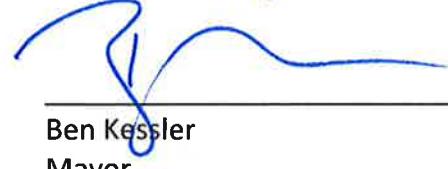
That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: APRIL 9, 2019

Attest: Ben Kessler
Clerk of Council


Lori Ann Feibel, President of Council

APPROVED: April 9, 2019


Ben Kessler
Mayor

First Reading: 1-22-19
Second Reading: 2-5-19
Third Reading: 2-19-19
Tabled: 2-19-19
Passed: April 9, 2019