



CITY of WILMINGTON

North Carolina

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02/17/2009

City Council
City Hall
Wilmington, North Carolina 28401

Dear Mayor and Councilmembers:

Since your meeting on January 6, 2009, I have reviewed comments received on the proposed amendments to the City's solicitation ordinance (Section 6-16) and riverfront park performer ordinance (Section 7-38). It is proposed that Section 6-16 be further amended to eliminate the permit requirement for street performers outside riverfront park. In addition, street performers would be permitted in the median of Market Street between Front and Water Streets. These changes will eliminate the need to amend Section 7-38 of the City Code. As revised, the proposed amendments to Section 6-16 will prohibit solicitation on Market Street between Second Street and the river and Water and Front Streets between Dock and Princess Streets except for street performers that comply with the same limitations that apply to performers in riverfront park. In addition, there is a total prohibition on solicitation on the riverwalk. These amendments will limit solicitation in the area of the city where tourism and other activities are concentrated while providing a reasonable alternative for first amendment activities. The proposed amendments to Section 6-16 also include prohibitions on solicitation at any sidewalk cafe, while under the influence of alcohol or controlled substances, after sunset or before sunrise (except for street performers in certain areas), in the median of any street (except for Market Street between Front and Water Streets), from persons standing in line waiting to be admitted to a commercial establishment, or in the area of any street corner.

Passage of the attached amendment is recommended.

Respectfully submitted,

Thomas C. Pollard
City Attorney



Introduced By: Thomas C. Pollard, City Attorney

Date: 01/06/2009

**Ordinance Amending Section 6-16 of the Wilmington City Code
Relating to Solicitation**

LEGISLATIVE INTENT/PURPOSE:

Section 6-16 of the City Code prohibits the solicitation of immediate donations of money in an aggressive manner or in specific locations in the City, including any public areas in the Central Business District (CBD), the Historic District (HD) and the Historic District Mixed Use (HDMU) district.

The New Hanover County District Court recently ruled that the total prohibition on panhandling in the CBD, HD and HDMU districts was unconstitutional.

The City Council has previously determined that downtown should be developed as the cultural and tourist hub of the region and should regain strength as a retail, office and residential center as well as an entertainment destination. Panhandling is inconsistent with a positive tourist experience and the goal of attracting new residential, retail and office development to the downtown area. With the addition of the convention center to the downtown area, it is important to ensure a safe and pleasant environment for visitors and residents and eliminate nuisance activity.

Tourism, entertainment and retail activities in the CBD are currently concentrated and have traditionally been concentrated on Market Street between Second Street and the Cape Fear River and in the zero blocks of Front and Water Streets. Because of the intensity of activities in this area, it is important to avoid conflicts between activities and to ensure the safety of pedestrians and vehicular traffic. Therefore, it is important to limit solicitation for money in this area.

Recognizing that solicitation is entitled to First Amendment protection, it also is important to provide alternate channels of communication.

Restricting solicitation only in the portions of the CBD with concentrated tourism, entertainment and retail activities while allowing passive non-verbal solicitation associated with street performances will ensure that there are ample alternatives for communication while limiting more intrusive and intimidating verbal requests for money.

Solicitation after dark and by persons under the influence of alcohol or controlled substances is particularly threatening to visitors and residents. In addition, the prohibition of solicitation from persons that are particularly vulnerable such as persons standing in line, patronizing sidewalk cafes, or in areas of the Riverwalk with restricted access will ensure the protection of tourism and enhancement of public safety.

THEREFORE, BE IT ORDAINED:

Section 1. That subsection (b) of Section 6-16 of the City Code is hereby rewritten to read as follows:

"(b) *Prohibited acts:* It shall be unlawful for any person to solicit, beg or ask for money or other things of value, to exhibit oneself for the purpose of soliciting, begging or asking for money or other things of value, or to solicit or otherwise offer the sale of goods or services:

- (1) In an aggressive or intimidating manner in a public area;
- (2) In any public transportation vehicle owned or operated by the Cape Fear Public Transportation Authority, or at any station or stop for such vehicle;
- (3) Within fifteen (15) feet of any entrance or exit of any bank or financial institution, or within fifteen (15) feet of any automated teller machine without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
- (4) While the person being solicited is standing in line waiting to be admitted to a commercial establishment;
- (5) On private property, if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;
- (6) From any operator or passengers of a motor vehicle that is on a public street; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle;
- (7) At any sidewalk cafe permitted pursuant to Section 4-109 of the City Code, provided such areas are in active use at the time;
- (8) While under the influence of alcohol or after having illegally used any controlled substance as defined in the North Carolina Controlled Substances Act;
- (9) After sunset or before sunrise, unless solicitation is allowed in accordance with Section 7-38 of the City Code;
- (10) In the median of any street except for the median of Market Street between the western line of Front Street and the eastern line of Water Street;
- (11) In or on the Riverwalk as defined in Section 7-38 of the City Code;
- (12) In the area of any street corner included in a triangle created by connecting the point formed by the intersection of curb lines and points equal to the width of the sidewalk from said intersection measured along each curb line; or
- (13) In any public area on the following streets:
 - a. Water Street between the northern line of Dock Street and the southern line of Princess Street;
 - b. Front Street between the northern line of Dock Street and the southern line of Princess Street; and
 - c. Market Street between the western line of Second Street and the western line of Water Street.

This prohibition is not intended to apply and shall not apply to:

- (i) Any person, business or organization holding a valid license or permit issued by the city;
- (ii) A performer as defined in Section 7-38 (b)(1) of the City Code performing in compliance with the requirements of Section 7-38(d)(1) through (11) of the City Code; or
- (iii) Any person, business or organization taking part in any festival or other activity under a permit from the city."

Section 2. A violation of this ordinance shall subject the offender to the penalties set forth in

Section 6-1 of the City Code.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Section 5. This ordinance shall be effective immediately upon its adoption.

Bill Saffo, Mayor

Adopted at a _____ meeting
on _____, .

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney