

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS REGULATING CERTAIN OFFENSES BY AMENDING CHAPTER 23, "MISCELLANEOUS OFFENSES" TO ADD ARTICLE XII TITLED "UNLAWFUL ACTIVITIES IN PUBLIC AREA"; PROVIDING A PURPOSE, DEFINITION, AND ENFORCEMENT AND PENALTY PROVISION IN DIVISION I, "GENERAL PROVISIONS"; PROVIDING PROHIBITIONS ON CAMPING AND OBSTRUCTION, AFFIRMATIVE DEFENSES, AND DISPOSITION OF BELONGINGS PROVISIONS IN DIVISION II, "CAMPING AND OBSTRUCTION PROHIBITED"; PROVIDING DEFINITIONS, PROHIBITIONS, AND OFFENSES IN DIVISION III, "AGGRESSIVE CONFRONTATION PROHIBITED"; PROVIDING PROHIBITIONS ON BEGGING IN DIVISION IV, "BEGGING ACTIVITY"; AND PROVIDING A SEVERABILITY CLAUSE, SAVINGS CLAUSE; OPEN MEETINGS CLAUSE AND EFFECTIVE DATE.

CHAPTER 23 IS AMENDED TO RESERVE NUMBERING IN ARTICLE XI, CHILD SAFETY ZONES, FOR FUTURE USE

WHEREAS, the City of Kyle, Texas (herein the "City") is a home rule municipality having authority to utilize police power regulation for the health, safety and general welfare of the persons who live and conduct business in the City; and

WHEREAS, the City finds that managing the use of public areas supports the City's economic development, public safety, and service delivery goals and policies; and

WHEREAS, the following regulations are necessary to preserve and protect the health, safety, and welfare of the City's residents and businesses and visitors to the City.

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

SECTION 1. FINDINGS OF FACT. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT OF CHAPTER 23. Chapter 23 of the Code of Ordinances of the City is hereby amended to reserve numbering in the Article XI. - Child Safety Zones as follows:

Sec. 23.295. – 23.299. – Reserved.

ARTICLE XII. UNLAWFUL ACTIVITIES IN PUBLIC AREA

SECTION 3. ADDITION OF ARTICLE XII. Chapter 23 of the Code of Ordinances of the City is hereby amended by adding Article XII. – Unlawful Activities in Public Area to read as follows:

ARTICLE XII. – UNLAWFUL ACTIVITIES IN PUBLIC AREA

DIVISION I. GENERAL PROVISIONS

Sec. 23-300. - Purpose.

The purpose of this article is to ensure the public areas within the city can be maintained in a clean, safe, and unobstructed manner for use and enjoyment by residents, business operators, and visitors; to ensure the public area is available for use and enjoyment by residents, business operators, and visitors without fear of intimidation; and to ensure law enforcement and other response personnel and vehicles can safely access public areas during emergency events.

Sec. 23.301. – Public Area.

In this article *public area* means an outdoor area accessible to the public including a street, median, highway, park, parking lot or garage, alleyway, sidewalk, pedestrian way, recreation space, bus stops, train stops, and the common areas of a school, hospital, office building, apartment building, or business.

Sec. 23.302. - Enforcement; penalty.

(a) The administration of this article shall be the responsibility of the police department, the code enforcement officer, or such department, officer or city employee designated by the city manager.

(b) The violation of any provision of this article is a class C misdemeanor offense. Each day or part of a day during which the violation is committed, continued, or permitted shall constitute a separate offense, and each offense, upon conviction, is punishable by a fine up to \$500.00.

Sec. 23.303. – Sec. 23.309. Reserved.

DIVISION II. CAMPING AND OBSTRUCTION PROHIBITED

Sec. 23.310. - In this article *camping* means the use of a public area for living accommodation purposes, by engaging in any of the following in the public area:

- (a) Storing personal belongings;
- (b) Making a campfire;
- (c) Using a tent or shelter or other structure or vehicle for a living accommodation;
- (d) Carrying on cooking activities; or
- (e) Digging or breaking earth for the purpose of engaging in one of the activities described in section 23.310(a)-(d).

ARTICLE XII. UNLAWFUL ACTIVITIES IN PUBLIC AREA

Sec. 23.311. – Camping prohibited; violations

- (a) Camping in a public area within the city limits is prohibited.
- (b) A person commits an offense under this article if the person camps in a public area not designated as a camping area by the city.
- (c) A person commits an offense under this article if the person engages in any of the activities listed in section 23.310 and if it reasonably appears from the totality of the circumstances, that the person conducting the activity is using a public area for living accommodation purposes, regardless of the person's intent or engagement in other activities.
- (d) This section does not apply to permitted camping or cooking in a park in compliance with city park regulations.
- (e) This section does not apply to campgrounds located on private property with the consent of the property owner and that complies with applicable laws, ordinances, and regulations.
- (f) This section does not apply to the act of merely falling asleep in a public area.

Sec. 23.312. – Obstruction prohibited.

- (a) Obstruction of access to or encroaching on public area designed or designated for foot or vehicular traffic such sidewalks and streets is prohibited.
- (b) Obstruction of public area designed or designated for pickup and delivery services such as bus stops and alleys is prohibited.
- (c) A person commits an offense under this article if the person places, maintains, or causes or allows to be placed or maintained, any object in such a manner as to block access and use of the public area to the degree that the object impedes the free passage on and use of the entire width of the area described in subsections (a) and (b).
- (d) This section does not apply to signs, barricades, or other traffic or pedestrian control devices lawfully in place; objects lawfully in place for the purpose of providing utilities or governmental services, or any other object otherwise permitted or required by law.
- (e) This section does not apply to obstruction of access to private property placed or installed by the property owner that complies with applicable laws, ordinances, and regulations.

Sec. 23.313. – Affirmative defenses

- (a) It is an affirmative defense to prosecution that a person owns the property or has secured the permission of the property owner to camp in a public area.
- (b) It is an affirmative defense to an alleged violation of this article if the person:
 - (1) Parks a motor vehicle on a street, or parking lot for the purpose of resting or sleeping in the vehicle because further operation would endanger the person or others due to the need for sleep;

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- (2) Sleeps or rests in the motor vehicle or in a trailer directly attached to the motor vehicle for a period not longer than four (4) hours; and
- (3) Is not intoxicated.

Sec. 23.314. - Disposition of belongings

- (a) Upon arrest of a person for violation of this article, the person will be provided an opportunity to designate belongings for safekeeping and to arrange for storing the belongings with a third party outside the public area.
- (b) If the person arrested for violation of this article declines to designate a third party, the person's belongings are rendered eligible for removal from the public area and for disposition by the city.

Sec. 23.315. – 23.324. – Reserved

DIVISION III. AGGRESSIVE CONFRONTATION PROHIBITED

Sec. 23.325. – Definitions

- (1) *Aggressive manner* means an action intending to cause a person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession by:
 - (a) making any physical contact with or touching another person in the course of the confrontation without the other person's consent when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative;
 - (b) following the person being confronted if that conduct is:
 - (i) intended to cause a person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - (ii) intended to intimidate the person being confronted into engaging in acts or behaviors the person would not otherwise do or perform;
- (2) *Aggressive confrontation* means to approach and harass, pressure or intimidate another person by words or actions in an aggressive manner reasonably calculated to immediately obtain a good, service, money, property, financial assistance, or other thing of value.

Sec. 23.326.- Aggressive confrontation prohibited; offenses.

- (a) Engaging in an aggressive confrontation with another person in a public area is prohibited.
- (b) A person commits an offense when during the course of an aggressive confrontation the person
 - (1) makes any physical contact with or touches another person without their consent;

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- (2) continues to confront a person within a three foot distance after the person has demanded that the confrontation cease;
- (3) blocks the safe or free passage of the person being confronted or requires the person to take evasive action to avoid physical contact with the person initiating or continuing the confrontation;
- (4) blocks the safe or free passage of a person operating a vehicle or bicycle, or similar equipment, to take evasive action to avoid physical contact with the person initiating or continuing the confrontation
- (5) uses obscene or abusive language or gestures toward the person being confronted in a manner that tends to incite an immediate breach of the peace.

Sec. 23.327.-23.334. Reserved.

DIVISION IV. BEGGING ACTIVITY

Sec. 23.335. - Begging in public areas.

- (a) In this division, beg or begging means any solicitation made in person requesting an immediate donation of money. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation to the seller of the item, is a donation for the purposes of this division. Begging does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.
- (b) It is unlawful for any person to aggressively beg or solicit money, donations of money, property, or financial assistance of any kind in a public area. A person begs or solicits money in an aggressive manner if it is done in any of the following ways:
 - (1) By coming within three feet of the person solicited, until that person has indicated that he does wish to make a donation;
 - (2) By blocking the path or interfering with passage of the person solicited along a sidewalk or street;
 - (3) By following a person who walks away from the beggar or solicitor;
 - (4) By using profane or abusive language, either during the solicitation or following a refusal; or
 - (5) By any statement, gesture, or other communication which a reasonable person in the situation would perceive to be a threat.
- (c) It is unlawful for any person to beg or solicit money, donations of money, property, or financial assistance of any kind when the person solicited is:
 - (1) At any bus stop or train stop;
 - (2) In any public transportation vehicle or facility;
 - (3) In any vehicle on a street; or

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- (4) On private property unless the beggar or solicitor has permission from the owner or occupant.
- (d) It is unlawful for any person to beg or solicit money, donations of money, property, or financial assistance of any kind in a public area between sunset and sunrise.
- (e) It is unlawful for any person to knowingly make a false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:
 - (1) Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;
 - (2) Stating that the donation is needed to meet a need which does not exist;
 - (3) Stating that the solicitor is from out of town and stranded, when that is not true;
 - (4) Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;
 - (5) Wearing or displaying an indication of physical disability, when the solicitor does not have the disability indicated;
 - (6) Use of any makeup or device to simulate any deformity; or
 - (7) Stating that the solicitor is homeless when that is not true.

Sec. 23.336.- 23.339. Reserved.

SECTION 4. SAVINGS CLAUSE. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting sex offender regulations and child safety zones that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared void.

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.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately from and after publication in accordance with the provisions of the City Charter and the Local Government Code.

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PASSED AND APPROVED on First Reading this ____ day of _____, 2021.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2021.

THE CITY OF KYLE, TEXAS

Travis Mitchell, Mayor

ATTEST:

Jennifer Holm, City Secretary