

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 ENTITLED "MISCELLANEOUS OFFENSES" BY AMENDING SECTION 42-11 "NO PANHANDLING/NO SOLICITATION AREAS", REDEFINING THE PROHIBITED AREAS WITHIN THE CITY OF KEY WEST; PROVIDING FOR THE ESTABLISHMENT OF ALLOWABLE PANHANDLING ZONES WITHIN PROHIBITED AREAS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West recognizes tourism as its primary industry by hosting an average of 1,650,577 tourists annually (2009/2010), collects an average of \$10,417,057.00 in bed tax and has a 7.2% average unemployment rate according to the Key West Chamber of Commerce; and

WHEREAS, the City Commission for the City of Key West finds that the areas now defined herein as Mallory Square, Clinton Square, and the Core Commercial Tourist Area are the primary areas in which tourists congregate and for which the businesses in these areas depend; and

WHEREAS, the City Commission for the City of Key West finds that panhandlers often stand on the sidewalks causing vehicular and pedestrian traffic congestion and hazards within the prohibited areas described herein; and

WHEREAS, the City Commission for the City of Key West finds that the vehicular and pedestrian traffic in the prohibited areas is highly congested and the proposed ordinance revisions would serve to promote the safety and welfare of the citizens and visitors of the City of Key West; and

WHEREAS, the proposed revision leaves open ample alternative areas throughout the majority of the City of Key West to solicit alms in a non-aggressive manner; and

WHEREAS, the City Commission for the City of Key West finds that the current panhandling ordinance has proven to be ineffective in addressing the overwhelming panhandling issues in the prohibited areas within the City; and

WHEREAS, The City Commission for the City of Key West finds that there is a distinction between panhandlers and the homeless, and does not intend this ordinance to be a pretext for removing homeless individuals from the City's streets; and

WHEREAS, the City Commission for the City of Key West, after taking testimony from representatives of the Key West Police Department, the Code Compliance Department, the Chamber of Commerce and interested business owners and citizens within the proposed affected areas finds that the City has a significant governmental interest in protecting

the vitality of its tourism industry and that the presence of panhandlers in the prohibited areas described herein has a significant negative impact on businesses, public safety and the tourism industry for which the City of Key West critically depends; and

WHEREAS, the proposed revisions contained herein are narrowly tailored and are a constitutionally valid, content-neutral time, place and manner regulations to meet these compelling governmental interests; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 42-11 of the Code of Ordinances is hereby amended as follows*:

Sec. 42-11. - No panhandling/no solicitation areas.

(a) Definitions.

Clinton Square shall mean that area of the Historic District, including its streets and sidewalks, and its

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

interior park, bounded by Whitehead Street from Greene Street to Front Street, Front Street from Whitehead Street/David Wolkowsky Street to Greene Street, and Greene Street from Front Street to Whitehead Street.

Core Commercial Tourist Area shall mean:

- (1) All areas of public and semi-public sidewalks, streets and rights of way bordered by Whitehead Street to the west, the Atlantic Ocean to the south, Simonton Street to the east and the Key West harbor to the north including all intersecting and side streets, more particularly described in Exhibit A;
- (2) The entire length of Front, Caroline and Greene Streets;
- (3) The area commonly known as the Key West Bight including all public and semi-public lease hold areas and common areas bordered by Caroline Street to the south, Elizabeth Street to the west, Trumbo Road to the east and the Key West harbor to the north including the Harborwalk from Front Street to Grinnell Street, more particularly described in Exhibit B;
- (4) The entire length of Atlantic Blvd extending to the Atlantic Ocean, Bertha St. from Atlantic Blvd.

to S. Roosevelt Blvd., and S. Roosevelt Blvd. from
Bertha St. to Flagler Ave., more particularly
described in Exhibit C.

Mallory Square shall mean ~~the entire dimensions~~ all public
and semi-public areas of Mallory Square including its pier,
parking lot, the Waterfront Playhouse, the Sculpture
Garden, and that portion of any other structure facing
Mallory Square; Tift Alley; and Wall Street ~~from the
perimeter wall of the Mallory Square Parking Lot to
Fitzpatrick Street~~ bordered by Front St. to the south,
Duval St. to the east, Clinton Square Market to the west
and the Key West Harbor to the north, more particularly
described in Exhibit D.

Panhandling shall mean begging or asking or soliciting
money or goods for charity or personal gain, whether by
word, bodily gestures, signs or other means.

Solicitation shall mean an offer by a person to perform a
service or to sell a good in exchange for money or other
type of compensation. For the purposes of this section,
solicitation shall not mean such an offer by:

(1) A person who holds a business tax receipt issued by the city for a business location when the offer is made at such location;

(2) A person who holds a mobile vendor's license, a coconut palm frond permit, or other specific license or permit issued by the city; or

(3) A person who holds a street performer or street artist permit pursuant to section 6-2 of the Code of Ordinances.

Southernmost Point shall mean that area of the Historic District, including the Southernmost Point Monument and including the sidewalks and streets bounded by South Street from Duval Street to Whitehead Street and Whitehead Street from South Street to United Street.

(b) Prohibition. Panhandling and solicitation are prohibited (in) (at):

(1) Clinton Square,

(2) Mallory Square,

(3) The Core Commercial Tourist Area,

(4) ~~and at the Southernmost Point. Panhandling and solicitation are prohibited on Simonton Street, Duval~~

~~Street and Whitehead Street between and including
Front Street and Angela Street.~~

(5) While under the influence of alcohol or a
controlled substance,

(6) any city designated park,

(7) the fenced in area of the city cemetery,

(8) White Street Pier from Atlantic Blvd. to the
Atlantic Ocean,

(9) Within twenty (20) feet of any:

i. entrance to any financial institution or
automatic teller machine,

ii. parking meters or parking pay stations,

iii. lawfully permitted outdoor dining area,

iv. public or private transit stop, taxi stand,
taxis while loading or unloading passengers, or

public transit vehicles,

v. any designated historic monument, site or
tourist attraction,

The city manager shall post signs in each area
advising the public of this prohibition.

(c) Non-Aggressive Panhandling will be permitted at all
other areas within the City of Key West not contained in

paragraph (b) above. Non-Aggressive Panhandling will also be permitted within the Core Commercial Tourist Area in designated zones at Mallory Square and Simonton Street Beach, more particularly described in Exhibit E. The City Manager shall post signs prominently designating said permitted panhandling zones. The City Commission for the City of Key West may change, alter or move permitted panhandling areas by passage of Resolution.

~~(e)~~ (d) Penalty. A violation of this section shall be punishable in accordance with section 1-15 of the Code of Ordinances.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2011.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2011.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2011.

Filed with the Clerk _____, 2011.

CRAIG CATES, MAYOR

CHERYL SMITH, CITY CLERK