

**Ordinance No.**

**AN ORDINANCE RELATING TO IMPROVING DOWNTOWN WALKABILITY BY CLARIFYING THE SCOPE OF PERMITTED AND PROHIBITED ACTIVITIES WITHIN AREAS OF RIGHTS-OF-WAY WITHIN DOWNTOWN OLYMPIA AND ELIMINATING THE REGULATIONS CONCERNING BUSKING; AMENDING SECTION 9.16.180 OF THE OLYMPIA MUNICIPAL CODE RELATING TO PEDESTRIAN INTERFERENCE; AMENDING SECTIONS 12.24.100 AND 18.42.180 OF THE OLYMPIA MUNICIPAL CODE, AND REPEALING CHAPTER 5.88, BUSKING, OF THE OLYMPIA MUNICIPAL CODE.**

WHEREAS, the City Council finds that the City has a compelling interest in: (1) encouraging and preserving a vital, pedestrian-friendly urban core, as more fully articulated in the Olympia Comprehensive Plan; (2) promoting tourism and business downtown; (3) preserving the quality of urban life and in protecting its citizens from intimidating, anti-social and/or threatening behavior; and (4) encouraging businesses and residences downtown where walking is a realistic alternative to vehicles that use fossil fuels; and

WHEREAS, the City Council finds that, especially in the downtown area that has high pedestrian traffic and an incidence of petty crime related to public disorder, individuals sitting, lying, vending and/or soliciting in the pedestrian right of way: (1) contribute to a sense of fear, intimidation and disorder for some citizens; (2) are disruptive to some residents, businesses, and customers; (3) discourage, block or inhibit the free passage of pedestrians; (4) contribute to the loss of access to and enjoyment of public places; and (5) undermine the realization of adopted goals and policies to improve the economic, environmental and cultural value of downtown; and

WHEREAS, because police officers are often not present when individuals engage in antisocial and/or threatening conduct while sitting, lying, soliciting or vending on downtown sidewalks, and/or because individuals engaging in such conduct often leave before police may arrive, existing provisions of the Olympia Municipal Code are not sufficient to deter such conduct; and

WHEREAS, the City Council wishes to amend the Olympia Municipal Code to prohibit specific conduct and behavior in an effort to advance Council goals of walkability and a liveable downtown; and

WHEREAS, the City Council wishes to amend the definition of "obstruct pedestrian or vehicular traffic" to identify and clarify particular behavior and/or conduct that constitutes pedestrian interference when occurring within specified boundaries in downtown Olympia, while not interfering with legitimate expression protected by the state and federal constitutions; and

WHEREAS, the City has received communications from the public concerning the safe and efficient movement of pedestrians and goods on the public sidewalks in downtown and the economic vitality of the downtown area; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington Constitution and any other applicable authority;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Recitals. The recitals above are findings of fact in support of this Ordinance.**

**Section 2. Amendment of OMC 9.16.180. Section 9.16.180 of the Olympia Municipal Code is hereby amended to read as follows:**

**9.16.180 Pedestrian interference**

A. A person is guilty of pedestrian interference if, in a public place, he or she:

1. Obstructs pedestrian or vehicular traffic; or
2. Aggressively panhandles; or
3. Panhandles within twenty-five (25) feet of an Automated Teller Machine (ATM) or parking pay station. The measurement shall be a straight line without regard to intervening structures or objects from the nearest part of the ATM or parking pay station.

B. The following definitions apply in this section:

1. "Aggressively panhandles" means to, in a public place, solicit anything of value and intentionally engage in conduct that would likely intimidate a reasonable person, including but not limited to touching, following, persistently soliciting anything of value after being refused, using violent or threatening language or gestures, or taking similar actions for the purpose of inducing another person into giving anything of value.

2. ~~"Pedestrian Walking Lane" means that portion of any sidewalk, street or alley located within the downtown area delineated in "Downtown Commercial Zone" means the area depicted in Figure 1, attached hereto and incorporated herein, and: (a) within six (6) feet of the edge of any building or structure located immediately adjacent to the sidewalk or alley, or the edge of the right of way, if no building or structure exists; or (b) the six-foot zone established pursuant to a permit issued under OMC 12.24.060 showing the areas within the City of Olympia in which conduct is prohibited under subsections B.3.b and B.3.c of this section.~~

Figure 1



DRAWING NAME		CITY OF OLYMPIA
DECEMBER 2006		
PROJECT NO.	PEDESTRIAN INTERFERENCE RESTRICTIONS	
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3. "Obstruct pedestrian or vehicular traffic" means to:

a. In a public place, intentionally walk, stand, sit, lie, grasp a person, or place an object in such a manner as to ~~block~~ obstruct or impede, or tending to obstruct or impede, the free passage of any ~~by another~~ person or a vehicle, or to require another person or a driver of a vehicle to take action to avoid physical contact. ~~Acts other than those regulated in~~

~~subsection B.3.b below and authorized as an exercise of one's constitutional right to picket or legally protest shall not constitute obstruction of pedestrian or vehicular traffic; and or~~

b. ~~(i) at any time, vend or solicit on that portion of any sidewalk, street or alley in a Pedestrian Walking Lane within the Downtown Commercial Zone as depicted in Figure 1 of this section; or~~

~~(ii) c. between the hours of 7 a.m. and 10 p.m. 12 a.m., sit or lie on that portion of any sidewalk, street or alley in a Pedestrian Walking Lane within the Downtown Commercial Zone as depicted in Figure 1 of this section. A culpable mental state is not required, and need not be proven, for an offense as defined under this subsection B.3.b. No person shall be cited under this subsection unless the person engages in conduct prohibited by this subsection after having been notified by a law enforcement officer that the conduct violates this subsection.~~

4. Acts committed as a valid exercise of one's constitutional rights, which incidentally interfere with pedestrian or vehicular traffic in order to exercise that right, do not constitute obstruction of pedestrian or vehicular traffic. This provision does not create an element of any offense described in this section.

e-5. Affirmative Defenses. It is an affirmative defense under subsections B.3.b and B.3.c, that the defendant must prove by a preponderance of the evidence, that the defendant was:

~~(i) Notified by a law enforcement officer within twenty four (24) hours of arrest that the defendant's conduct violated the Olympia Municipal Code and the defendant so notified promptly ceased to engage in the prohibited conduct following such notification;~~

~~(ii)(i) Sitting or lying down on a publicly-owned sidewalk or alley due to a medical emergency;~~

~~(iii)(ii) Utilizing, as the result of a disability, a wheelchair, walker, or similar device to move about on the publicly-owned sidewalk or alley;~~

~~(iv)(iii) Operating or patronizing a commercial establishment conducted in the Pedestrian Walking Lane on any sidewalk, street or alley pursuant to a street use permit;~~

~~(v)(iv) Soliciting or vending, sitting or lying down on any sidewalk, street or alley within any portion of the Pedestrian Walking Lane Downtown Commercial Zone where such conduct is approved by the City as part of participation in or attendance at a parade, festival, rally, or demonstration; provided, however, that this defense shall not be available to a defendant refusing to obey a reasonable request or order by a police officer to move to prevent obstruction of a public street, alley, sidewalk or building or entrance or doorway into or out of a building open to the public, or to maintain public safety by dispersing those gathered in dangerous proximity to a fire or hazard;~~

~~(vi)(v) Sitting on a chair or bench supplied by a public agency or by the abutting private property owner or lessee for that purpose, pursuant to a temporary street use or other applicable permit or authorization if required;~~

~~(vii)(vi) Sitting or standing on a publicly-owned sidewalk within a bus stop zone while waiting for public or private transportation;~~

(viii)(vii) Waiting in a line to purchase tickets to or attend a performance or public event, or to gain entry to a business adjacent to the publicly-owned sidewalk or alley;

~~(ix) — Busking pursuant to and in a location authorized by a license for the same issued under OMC Chapter 5.88.~~

Provided, however, that nothing in any of these affirmative defenses shall be construed to permit any conduct which is prohibited by OMC 9.16.180.B.3.a.

4-6. "Public place" means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks, and streets open to the general public including places that serve food or drink or provide entertainment, in the doorways and entrances to buildings or dwellings and the grounds enclosing them.

57. "Sit or Lie" means to sit or lie directly upon a sidewalk, street, or alley, or to sit or lie down upon any blanket, sleeping bag, bedroll, tarpaulin, cardboard chair, stool, or any other similar object placed upon the sidewalk, street or alley.

~~6. "Solicit" means to ask, beg, solicit, or plead, whether orally or through the use of written or printed media, for the purpose of immediately receiving contributions, alms, charity, or gifts of items of value for oneself or another person.~~

78. "Vend" means to offer for sale, whether orally or through the use of written or printed media, any item of value to another person.

~~8. "Busk" means to act, sing, play a musical instrument, pantomime, mime, perform magic tricks, or dance for the purpose of or while immediately receiving contributions, alms, charity, or gifts of items of value for oneself or another person.~~

9. "Panhandling" is any solicitation made in person, requesting an immediate donation of money or other thing of value. 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, is a donation for the purpose of this chapter. Offers to work for food or other compensation, under circumstances where a reasonable person would understand that the compensation given is, in substance, a donation, is also a donation for the purposes of this chapter.

10. "Automated Teller Machine (ATM)" means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan documents.

11. "Parking pay station" is a city-owned pay kiosk for multiple parking spaces that issues a printed receipt. See OMC 10.16.095.

**Section 3. Amendment of OMC 18.42.180.** Section 18.42.180 of the Olympia Municipal Code is hereby amended to read as follows:

### **18.42.180 General Standards for Sandwich Board Sidewalk Signs**

A. These standards do not apply to real estate signs. (See Section 18.42.320, Real Estate Sign Standards).

B. Permitted districts - Downtown Business, Neighborhood Retail, Community Retail, Neighborhood Village, Urban Village, Neighborhood Center, Community Oriented Shopping Center, PO/RM, General Commercial, Urban Waterfront, Urban Waterfront - Housing, Commercial Services-High Density, High Density Corridor-1, High Density Corridor-2, High Density Corridor -3, and High Density Corridor-4 districts.

C. Height - 4 foot maximum.

D. Width - 24 inch maximum.

E. Number of signs - 1 per use.

F. Placement, except real estate signs (See Section 18.42.320, Real Estate Sign Standards):

1. Signs must be located directly in front of the sponsoring business and on the walkway which is directly in front of the business entrance. ~~Signs shall not be located in the 6-foot Pedestrian Walking Lane specified in OMC 9.16.180.B.2.~~ In no case shall signs be more than 20 (twenty) feet from the front wall of the business.

2. Signs are to be displayed during business hours only.

3. Signs shall not create a traffic safety hazard by interfering with the vision of drivers entering or leaving the premises.

4. Signs shall be located next to the curb edge of a sidewalk in such a manner so as not to interfere with the opening of car doors, use of bicycle parking facilities, bus stops, loading zones, or pedestrian traffic.

5. Signs shall be located such that an unobstructed passageway of forty-eight (48) inches shall be maintained for wheelchair travel on all public and private rights-of-ways.

G. Lighting attached to sign is not permitted.

H. Liability - owners of such signs shall assume liability for damage resulting from their use and shall provide the City with a notarized signed agreement (as provided by the City) holding the City harmless from such resulting loss.

**Section 4. Repeal of OMC 5.88.** Olympia Municipal Code Chapter 5.88, Busking, is hereby repealed.

## **Chapter 5.88 BUSKING**

~~5.88.000 Chapter Contents~~

Sections:

~~5.88.010 Definitions.~~

~~5.88.020 License Required.~~

~~5.88.030 License Fees.~~

~~5.88.040 License Application Requirements.~~

~~5.88.050 Issuance of License.~~

~~5.88.060 License to be Carried.~~

~~5.88.070 Designated Busking Areas.~~

~~5.88.080 Revocation of License.~~

~~5.88.090 Violations—Misdemeanor—Gross Misdemeanor—Civil Infraction.~~

~~5.88.100 Appeal.~~

### **5.88.010 Definitions**

"Busk" means to act, sing, play a musical instrument, recite poetry, pantomime, mime, perform magic tricks, or dance for the purpose of or while immediately receiving contributions, alms, charity, or of gifts of items of value for oneself or another person.

### **5.88.020 License Required**

It is unlawful for any person to busk within the Pedestrian Walking Lane described OMC Section 9.16.180.B.2 unless busking is confined to either (a) a busking area designated under OMC Section 5.88.070; or (b) a busking area adjacent to a business that has obtained a busking area license, with the consent of the business owner.

### **5.88.030 License Fees**

The license fee for a business desiring to establish a busking zone under Section 5.88.050 shall be included in the fee paid for the applicant's business license issued under Chapter 5.05 of the Olympia Municipal Code.

### **5.88.040 License Application Requirements**

A. Any person, firm or business desiring to establish a busking zone adjacent to his or her business shall apply therefor in writing over his or her signature to the Director of the Olympia Parks, Arts and Recreation Department or his or her designee on forms provided by the City, and such application shall state as to the applicant:

1. The name and address of the applicant;
2. The name and address of the business adjacent to which the busking area is proposed;
3. A drawing or sketch of the location and dimensions of the proposed busking area, which drawing must demonstrate that preservation of a walking lane at least six (6) feet wide and clear of vertical obstruction may remain between the proposed busking area and the curb, provided that said six foot walking lane may include up to two (2) feet of a grate adjacent to a street tree or other planting;
4. The proposed duration of the busking area;
5. Identification of proposed individual buskers, if then known;
6. If the applicant proposes to employ or secure the services of individual buskers, an acknowledgment that said buskers' performances will not: be obscene; violate adopted laws or ordinances applicable to vehicle or pedestrian traffic; or violate adopted laws or ordinances applicable to outdoor noise levels; and
7. A copy of the applicant's business license issued under Chapter 5.05 of the Olympia Municipal Code.

B. Such application shall be accompanied by such credentials or other evidence of the identity of each busker as may be reasonably required by the Director of the Olympia Parks, Arts and Recreation Department or his or her designee.

### **5.88.050 Issuance of License**

Busking zone license. The Director of the Olympia Parks, Arts and Recreation Department or his or her designee shall review the application on the day submitted and, if he or she determines after review that the application is complete and complies with the requirements of OMC Section 5.88.040.B, that the facts set forth in the application are true, and that the applicant possesses a valid Olympia business license for which the applicable fee has been paid, he or she shall then issue the license applied for. Such license shall expire at the conclusion of the period proposed in the application, but no more than the term of the applicant's then existing Olympia business license.

### **5.88.060 License to be Carried**

Such license shall be carried at all times by each business for whom issued and shall be exhibited by any such business whenever requested to do so by any police officer, or city official, or any other person.

### **5.88.070 Designated Busking Areas**

The City Manager shall designate areas for busking that are located within the downtown area defined in OMC 9.16.180.B.2, Figure 1, but are not located within any Pedestrian Walking Lane as defined in OMC Section 9.16.180.B.2. Such areas shall be depicted on a map that shall be available at the office of the Director of the Olympia Parks, Arts, and Recreation Department.

### **5.88.080 Revocation of License**

Any such license may be revoked by the Director of the Olympia Parks, Arts, and Recreation Department for any violation of any statements contained in the license application or any of the requirements of this Code or other ordinances of the city, or of any state or federal law.

### **5.88.090 Violations — Misdemeanor — Gross Misdemeanor — Civil Infraction**

A. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty five (365) days or both such time and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

### **5.88.100 Appeal**

Any applicant aggrieved by denial or revocation of a license hereunder may appeal the denial or



~~revocation to the City Manager, who shall hold an appeal hearing after reasonable notice to the appellant, and issue a decision on the appeal within twenty four (24) hours of hearing the appeal. The City Manager's decision shall be final.~~

**Section 5. Severability.** The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances, shall be unaffected.

**Section 6. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 7. Effective Date.** This Ordinance shall take effect on January 18, 2013.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**