

ORDINANCE NO. O-16-59

**ENACTING NEW CHAPTER 714 SOLICITATION AND DISTRIBUTION AND
REPEALING CHAPTER 713 TRANSIENT VENDORS OF THE CODIFIED
ORDINANCES OF THE CITY OF WILMINGTON**

WHEREAS, aggressive distribution obstructs pedestrian and vehicular traffic, intimidates pedestrians and motorists, infringes upon the rights of unwilling participants, and results in the loss of access to and enjoyment of public places; and

WHEREAS, the City of Wilmington has an interest in protecting the public safety and welfare against fraudulent distribution activities; and

WHEREAS, distribution in the right-of-way leads to interference with the flow of vehicular traffic and raises traffic safety and congestion concerns, thereby denying the free flow of pedestrian and vehicular traffic on streets and sidewalks, hindering tourism and business and otherwise detrimentally impacting the quality of life; and

WHEREAS, the City of Wilmington has an interest in ensuring the public's privacy, safety and welfare while using an automated teller machine; and

WHEREAS, public safety requires the imposition of reasonable manner and place restrictions on distribution, while respecting the constitutional right of free speech for all citizens; and

WHEREAS, recent decisions by the United States Supreme Court have rendered Chapter 713 of the Codified Ordinances of the City of Wilmington a violation of certain individual rights and therefore invalid.

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

Section 1. That CHAPTER 713: TRANSIENT VENDORS of the City of Wilmington Codified Ordinances and all sections contained therein (713.01 through 713.99) shall be and hereby are repealed in their entirety. Further, any other Chapter of the Codified Ordinances or Section\Sections therein that reference said Chapter 713 shall no longer be enforceable as and to the particular Chapter or Section\Sections therein referencing said Chapter 713.

Section 2. That CHAPTER 714: SOLICITATION AND DISTRIBUTION of the Codified Ordinances of the City of Wilmington be, and hereby is, enacted and is to read as follows:

714.01 PLACE OF SOLICITING

- (a) For the purpose of this section, the term "solicit" means "the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or any other item of value."
- (b) No person shall solicit another person on private property after an owner, lessee, resident, or agent thereof has given notice to the solicitor that he or she is not permitted to solicit on that property.
- (c) Whoever violates this section is guilty of soliciting in a prohibited place, a misdemeanor of the fourth degree.

714.02 HOURS OF SOLICITATION

Door to door solicitation shall be made only between the hours of 9:00 a.m. and 7:00 p.m. during the months of April through October, and 9:00 a.m. to 4:00 p.m. during the months of November through March.

714.02 FALSE OR MISLEADING DISTRIBUTION

- (a) 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." All other words and phrases used in this section shall have the same meanings as defined in Chapter 2913 of the Ohio Revised Code.
- (b) No person who is engaging in or attempting to engage in distribution shall knowingly make a false or misleading statement or representation with purpose to defraud or knowing that the person is facilitating a fraud.
- (c) Whoever violates this section is guilty of false or misleading distribution, a misdemeanor of the fourth degree.

714.03 DISTRIBUTION IN THE RIGHT-OF-WAY

- (a) 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." 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.
- (b) No person shall engage in distribution with the 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 Ohio Revised Code.
- (c) No person who is within a right-of-way shall engage in distribution with the occupant of a vehicle stopped in the 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 he or she remains on the surrounding sidewalks or unpaved shoulders and not in or on the right-of-way itself, including any medians or traffic islands within the right-of-way.
- (d) Whoever violates this section is guilty of distribution in a right-of-way, a misdemeanor of the fourth degree.

714.04 AGGRESSIVE DISTRIBUTION

- (a) 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."
- (b) No person shall engage or attempt to engage in distribution in the following manners:
 - 1) By knowingly touching or grabbing another person 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 he or she is unwilling or unable to engage in distribution.
 - 3) By knowingly approaching within three (3) feet of another person and continuing to engage or attempt to engage in distribution with that person after he or she has made an affirmative communication that he or she is unwilling or unable to engage in distribution.
- (c) Whoever violates this section is guilty of aggressive distribution, a misdemeanor of the fourth degree.

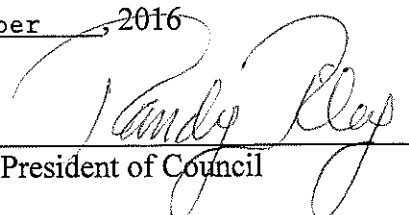
714.05 ATM PRIVACY

- a) No person shall knowingly approach within three (3) feet of any person who is actively using an automated teller machine without that person's consent.
- b) Whoever violates this section is guilty of ATM privacy, a misdemeanor of the fourth degree.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

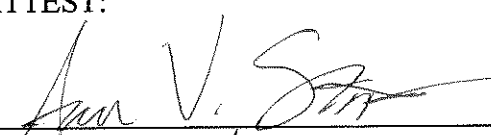
Section 4. That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Passed this 1st day of September, 2016



President of Council

ATTEST:



Clerk of Council, Acting

Approved by me this 1st day of September, 2016.



Mayor