

**CITY OF VERO BEACH, FLORIDA
SPECIAL CALL CITY COUNCIL MINUTES
MONDAY, OCTOBER 25, 2021 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Robbie Brackett, Mayor; Rey Neville, Vice Mayor; Honey Minuse, Councilmember; Bob McCabe, Councilmember and Richard Winger, Councilmember **Also Present:** Monte Falls, City Manager; Jenny Flanigan, Assistant City Attorney and Tammy Bursick, City Clerk

1. CALL TO ORDER

A) Pledge of Allegiance

Mayor Brackett led the Council and the audience in the Pledge of Allegiance to the Flag.

B) Roll Call

The City Clerk performed the roll call.

2. DISCUSSION ITEMS

A) Introduction of Panhandling Ordinance – Michael Kahn

Mr. Michael Kahn, Attorney, stated that this was the second public hearing being held on the panhandling Ordinance. He said that today they would be hearing from two (2) witnesses who will be testifying. He thanked Dr. Callahan for being at the meeting today, testifying and helping the City of Vero Beach.

1) Testimony from Charles Callahan, M.D., Infectious Disease Specialist

Dr. Charles Callahan was sworn in. He said that he is an Infectious Disease Physician and has been for the last 25 years. He practiced in Vero Beach for the last 23 years and now he is in Cape Coral. He originally had his own private practice then he worked for Indian River County Hospital and Cleveland Clinic for the last 13 years.

Mr. Kahn asked Dr. Callahan if he had reviewed the diseases that could be caused by open urination and defecation and what adverse effect can it have on the citizens and tourist of Vero Beach. Mr. Kahn gave the court reporter a flash drive that consisted of referenced studies and made it exhibit 1 or flash drive #4.

Dr. Callahan said that he would divide them into risk categories. He went over some the illnesses that this could cause, such as salmonella, norovirus, which is usually found on cruise ships, typhoid fever, and hepatitis. He said this is just a small list of diseases that can be transmitted.

Mr. Kahn asked Dr. Callahan if he had a chance to read the transcript from the first hearing that took place on the proposed panhandling Ordinance and did he read the proposed Ordinance. Dr. Callahan said that he did. Mr. Kahn asked Dr. Callahan to give some examples of how these diseases can be transmitted and what kind of diseases can be transmitted in regards to the transcript that he read from the last meeting when this was discussed. Dr. Callahan recalled that the maintenance person at South Beach said that a

panhandler had openly defecated in a sandy area at the Park and there was a child going over to play in the sand. That child could contact hepatitis A or E.coli. There was incredibly bad hygiene instances documented in the transcript multiple times. The example of such behavior was throughout the City of Vero Beach. He said that it was not limited to just one (1) location. He said that interaction with panhandlers taking place in this behavior represents a lot of risks to the citizens of the community. The idea that a panhandler would reach out and touch someones hand that is giving them money is a risk. There are infections that could occur if the panhandler was coughing or sneezing and a lot depends on how vulnerable a person is to whether or not they could catch some sort of disease. He said there are individuals more susceptible to some of the behaviors that were noted at the first hearing. Anyone who has an autoimmune problem could be compromised, as well as young children and the elderly. They are still in a pandemic with COVID-19 and most recently the pandemic had the delta variance, which was an upsurge. He said that it was more profound and significant in regards to volume then when COVID-19 first appeared. He said that no one can predict if there will be another upsurge, but the likelihood that COVID is over is low. He said as long as there is a large population that is not vaccinated they can expect more mutation. In looking at the early testimony heard at the first public hearing and considering the hygienic habits prescribed open defecation, urination, touching, could be a COVID spreader. He said practicing poor hygiene and droplets contribute to the spread or super spread of the virus. Dr. Callahan realized from reading the proposed Ordinance that it is a distance based Ordinance and regulates panhandlers by putting distance parameters around different locations in Vero Beach. He said in his opinion it would help significantly mitigate the dangers he has just expressed. He knows from studies that distancing is imperative in disease prevention. Mr. Kahn asked Council if they had any questions for Dr. Callahan.

Mrs. Minuse thanked Dr. Callahan for his presentation.

2) Testimony from Jim Kirkpatrick, GIS Specialist

Mr. Jim Kirkpatrick, GIS Manager, was sworn in. He said that he is the GIS Manager and manages one (1) employee who is Miss Savannah Stephens. He said that he understands the pending Ordinance and how it regulates panhandling. Mr. Kahn asked Mr. Kirkpatrick what he was asked to do. Mr. Kirkpatrick said produce maps that would delineate areas where panhandling is prohibited. Mr. Kahn said that a better word to use would be regulate. A map was shown depicting the areas where panhandling was prohibited. There is a small space near the Heritage Center where panhandling will be prohibited. The map shows the areas where panhandling will be allowed and not allowed. The grids represent the dicing up of the City in two (2) sections and each map printed represents one (1) area. Mr. Kirkpatrick said that Miss Stephens helped produce the maps. The maps are not exhibits included in the Ordinance itself. The maps are illustrations showing the distance impact. Mr. Kahn asked Mr. Kirkpatrick how he accomplished these maps. Mr. Kirkpatrick said with the GIS tools/software that the City has. Mr. Kahn asked Mr. Kirkpatrick how many acres are there in the City. Mr. Kirkpatrick said approximately 8,500 acres excluding the Lagoon and the Airport drops it down to approximately 6,500 acres. Mr. Kahn asked how many acres in the City of Vero Beach do not allow panhandlers in them. Mr. Kirkpatrick said approximately 450 acres. Which means there are 6,150 acres available for panhandlers, which amounts to 93% of the City is available for panhandlers and 6.82% is prohibited.

Mrs. Minuse did not see the zoning showing which areas will be affected by this Ordinance.

Mr. Kahn explained that the Ordinance will affect the whole City.

Ms. Jenny Flanigan, Assistant City Attorney, thanked the GIS Department for producing all of these maps. She knows that other cities who were not able to do this in-house that it cost them thousands of dollars to have someone else do the work.

Mr. Kahn entered flash drive #1 for the record. He already entered flash drive #2, which was the medical history. He said that flash drive #1 is his records from other jurisdictions that he has worked for on this same matter and that he elicited through testimony. Those cities include St. Augustine, Port Orange, and Daytona Beach. The next flash drive entered into the record was flash drive #4 that had been previously entered as an exhibit.

Mr. Kahn said that he would be happy to answer any questions that Council had concerning the Ordinance after he gives some brief history of the Ordinance. He thanked the Council for allowing him to serve the City of Vero Beach. He said this Ordinance protects everyone including the panhandlers. He said that they also have constitutional rights and that is why 93% of the City land is still available for panhandling. The most important testimony they heard was from Dr. Callahan. He said that Dr. Callahan was knowledgeable on different medical studies because of his background. Dr. Callahan read the testimony from the transcript he was sent from the first meeting that was held and he was able to attribute testimony of how panhandling can adversely affect the health, safety and wellbeing of citizens and tourists of the City of Vero Beach. He said that is the way they need to look at this Ordinance. This Ordinance does not mention homelessness anywhere in it. It just regulates panhandling.

3. PUBLIC HEARING

A) An Ordinance of the City of Vero Beach, Florida; Amending Chapter 62 of the Code of The City of Vero Beach; Creating Article VII; Providing for Findings and Intent; Providing for Definitions; Providing for Prohibited Conduct, Proximity and Location Restrictions for Panhandling, Solicitation, or Begging; Providing for Penalties; Providing for Codification; Providing for Repeal of Conflicting Ordinances; Providing for Severability; and Providing for an Effective Date. – Requested by the City Council

The City Clerk read the Ordinance by title only.

Mr. Neville asked that the map be put back up on the screen. He asked what the red areas reflect.

Mr. Kahn explained that panhandling is prohibited in those areas.

Mr. Neville asked why the playground to the north (Pocahontas Park) was not regulated.

Mr. Kahn said that it was. He said that panhandling is prohibited around the Heritage Center itself and also some of the little places like where the benches are located it is also prohibited. He said people may sit on the benches, but panhandling is prohibited. He said that there is no prohibition when the playground is not active.

Mr. McCabe was happy to see that most of the foundation around the Heritage Center prohibits panhandling.

Mr. Neville asked Mr. Kahn to describe panhandling behavior if someone is carrying a sign, but not interacting with people. Mr. Kahn said that it is panhandling when someone solicits money in any way.

Mrs. Minuse was going through the Ordinance where it mentions the downtown area, but doesn't include other areas.

Mr. Kahn expressed that there are other areas included. He reiterated that panhandlers also have constitutional rights.

Mr. Neville asked that they be provided with the maps so they can look at them. Ms. Flanigan said that she would provide the digital link to Council.

Mrs. Minuse continued by saying that downtown is the only specific place mentioned in the Ordinance and she wondered if that would be a problem.

Mr. Kahn said no because the downtown area is separate and he explained the rationale behind this. He singled out an area that was backed by case law that could be regulated.

Mrs. Minuse referred to page 8 of 14, where it states *"After Dark means from one half hour after sunset until one half hour before sunrise. The times of sunset and sunrise will be established by the times listed in any local publication of general distribution."* She wanted to make sure that this took into account that in the future there may not be any local publications.

Mr. Kahn explained that this could be emails. He said that it was clearly defined in the Ordinance what "Dark" means.

Mrs. Minuse asked if putting up a sign was allowed in the prohibited areas.

Mr. Kahn said that he doesn't think putting up signs does any good and he would recommend not putting up any signs anywhere.

Mr. Monte Falls, City Manager, said the signs that they have up now will come down once this Ordinance is enacted.

Mr. McCabe asked about the process of enforcing this Ordinance.

Mr. Kahn said that would be more of an issue for Ms. Flanigan and one that he stays away from because every jurisdiction has different issues on how they enforce it and their Codes are different. He does understand that it will be a second degree misdemeanor.

Mr. Falls said that he would meet with the City Attorney and Police Chief to outline how this will be handled and bring it back to City Council.

Mr. Kahn said that some cities will start enforcing the Ordinance as soon as it is passed, some first give warnings and some wait a period of time before enforcing anything. He suggested that the City handle this in the way they would handle any other Ordinance that is passed.

Ms. Flanigan referred to page 11, Section 62-179, where penalties are discussed. She said it spells out some alternative penalties that a Court would consider. This was taken from some other cities that have gone down this road. If something needs to be changed in the future it could be brought back to the Council and amended.

Mrs. Minuse made a motion to approve the Ordinance as presented. Mr. McCabe seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. McCabe yes, Mrs. Minuse yes, Vice Mayor Neville yes, and Mayor Brackett yes.

4. PUBLIC COMMENTS

There were no public comments.

5. ADJOURNMENT

Today's meeting adjourned at 2:19 p.m.

/tb