

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 4 C.

Council Meeting Date: October 24, 2017

ITEM TITLE: **ORDINANCE (1st Reading)**

INTRODUCED BY: **Mayor Andrew "FoFo" Gilich**

CONTACT PERSON: **E. Michael Leonard, CAO** *eml*

**Peter Abide, City Attorney** *pa*

**SUMMARY EXPLANATION:**

Ordinance to amend Code of Ordinance, City of Biloxi, Mississippi, of 1992, Section 13-1-14, to amend and address constitutionality issues.

Resolution \_\_\_\_\_ Ordinance  Public Hearing \_\_\_\_\_ Routine Agenda \_\_\_\_\_

Exhibits for Review

Contract \_\_\_\_\_ Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

Other (Specify):

Submittal Authorization: Council President \_\_\_\_\_ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: \_\_\_\_\_ Second By: \_\_\_\_\_

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CODE OF ORDINANCES, CITY OF BILOXI, MISSISSIPPI, of 1992, SECTION 13-1-14, REGARDING LOITERING, TO ADDRESS CONSTITUTIONALITY ISSUES; AND FOR RELATED PURPOSES

WHEREAS, the City of Biloxi currently has a Loitering Ordinance in the Biloxi Code of Ordinances Section 13-1-14; and,

WHEREAS, the current Loitering ordinance is constitutionally overbroad and vague; and,

WHEREAS, to be constitutionally valid, the Loitering ordinance must have established minimal guidelines to govern law enforcement; and

WHEREAS, the current Loitering ordinance fails to establish for the police sufficient standards for loitering enforcement; and,

WHEREAS, the current Loitering ordinance fails to provide notice to the public of the type of conduct prohibited and the type of conduct permitted; and,

WHEREAS, the freedom to loiter for innocent purposes is part of the liberty protected by the Due Process Clause of the Fourteenth Amendment; and,

WHEREAS, the current Loitering ordinance lends the possibility of arbitrary enforcement by bestowing unfettered discretion upon law enforcement officers; and,

WHEREAS, the amended Loitering ordinance addresses certain constitutionality issues arising from the current Loitering ordinance; and,

WHEREAS, the amended Loitering ordinance more specifically addresses the type of conduct prohibited and the type of conduct permitted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

SECTION 1. The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified and incorporated herein.

SECTION 2. Section 13-1-14 of the Code of Ordinances, City of Biloxi, Mississippi, is hereby amended to read as follows:

**Section 13-1-14 Loitering**

(a) It shall be unlawful for any person to loiter or prowl in a public place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a police officer, refuses to identify himself or manifestly endeavors to conceal himself or any object. Unless flight by the actor or circumstances make it impracticable, a police officer, and prior to any arrest for an offense under this subsection, shall afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of violating this subsection if the police officer did not comply with the preceding sentence or if it appears at trial that the explanation given was true and would have dispelled the alarm and disclosed the person's lawful purpose.

The provisions of the two preceding sentences are applicable to this paragraph (a) and each of the subsequent paragraphs (b) through (h) herein.

- (b) DWELLING AREAS. No person shall hide, wait or otherwise loiter in the vicinity of any private dwelling house, apartment building or any other place of residence with the unlawful intent to watch, gaze or look upon the occupants therein in a clandestine manner.
- (c) PUBLIC RESTROOMS. No person shall loiter in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.
- (d) SCHOOLS AND PUBLIC GROUNDS. No person shall loiter in or about any school or public place at or near which children or students attend or normally congregate. As used in this subsection, "loiter" means to delay, to linger or to idle in or about any said school or public place without a lawful purpose for being present.
- (e) BUILDINGS. No person shall loiter or lodge in any building, structure or place, whether public or private, without the permission of the owner or person entitled to possession or in control thereof.

- (f) RESTAURANTS, TAVERNS. No person shall loiter in or about a restaurant, tavern or other buildings open to the public. As used in this subsection, "loiter" means to, without just cause, remain in a restaurant, tavern or public building or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof.
- (g) PARKING LOTS, BRIDGES, PIERS. No person shall loiter in or upon any public parking surface lot or public parking structure, public bridge or the portions underneath, or public piers and docks, without the permission of the owner or person entitled to possession or in control thereof.
- (h) PRIVATE OR PUBLIC RESIDENTIAL PROPERTY. No person shall loiter in or on private or public residential property in residential neighborhoods. As used in this subsection, "loiter" means to, without just cause, linger, remain in or on private or public residential property, or to remain upon the property immediately adjacent thereto after being asked to leave by the owner or person entitled to possession or in control thereof, or where "No Loitering" signs are posted.
- (i) REQUIREMENTS OF IDENTIFICATION. A person being asked for identification pursuant to this section shall provide the police officer with his name and address either verbally or by providing the officer with written evidence of the person's name and address, including but not limited to a driver's license or picture identification.
- (j) When any person causes or commits any of the conditions enumerated in subsections (a) through (i) of this section, a police officer or any law enforcement officer shall request identification and if not provided such identification, order that person to stop causing or committing such conditions and to move or to disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.
- (k) PENALTY; CONTINUING VIOLATIONS. Any person who violates any of the provisions of this section, upon conviction by the court, shall be guilty of a misdemeanor punishable by a fine not exceeding \$100.00 or imprisonment in the jail for city prisoners not exceeding 30 days, or both, or any other appropriate sentence in the discretion of the municipal judge. Any such violation shall constitute a separate offense on each successive day continued.
- (l) COURT ORDER ON JURISDICTIONAL LIMITS. In addition to the penalty that may be imposed pursuant to subsection (k) above, any person who is arrested for and/or convicted of violating any provision of this section may be subject to an

order of the court which shall impose a jurisdictional limit on said person prohibiting his or her presence in a specific geographic area of the City of Biloxi. Failure to comply with the court order shall constitute a violation of the court order, and the court may impose the following: (1) in the case of a bond where jurisdictional limits have been imposed, the bond may be revoked and the court may incarcerate the person until trial; and/or (2) in the case of a sentence where jurisdictional limits have been imposed, the suspended sentence may be revoked and the court may incarcerate the person until he or she has served the original sentence imposed by the court without any portion thereof suspended; and/or any other appropriate sentence in the discretion of the municipal judge.

(m)The section, subsections, paragraphs, sentences, clauses and phrases of this section are severable, and if any phrase, clause, sentence, paragraph, section or subsection herein shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the section and any of the remaining phrases, clauses, sentences, paragraphs, and subsections herein, since the same would have been enacted by council without the incorporation of any such unconstitutional or invalid phrase, clause, sentence, paragraph, section or subsection.

SECTION 3. Upon unanimous vote of the members of the City Council, this ordinance shall be in full force and effect from and after passage, because it serves the public peace, health and safety of the citizens of Biloxi. This ordinance shall be published according to law and spread on the minutes of the Biloxi City Council published according to law and spread on the minutes of the Biloxi City Council.