

ORDINANCE NO. 17

SERIES OF 2016

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO
AMENDING THE TOWN'S LOITERING ORDINANCE

WHEREAS, pursuant to Section 3.6(c) of the Home Rule Charter of the Town of Carbondale ("Town"), the Board of Trustees is authorized to amend the provisions of the Municipal Code; and

WHEREAS, Section 10-5-40 of the Municipal Code (Loitering) presently includes a sub-section –(b)(1) that prohibits begging; and

WHEREAS, although for some time the Town has not been enforcing this ordinance provision, and there are no pending prosecutions under this ordinance provision, federal and state case law is clear that doing so would likely interfere with defendants' First Amendment rights (see e.g. *Browne v. City of Grand Junction*, 2015 U.S. Dist. Lexis 73834, **12-13 (D. Colo. June 8, 2015); and

WHEREAS, the Board of Trustees desires to amend the Town's loitering ordinance to align with this First Amendment case law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, THAT:

1. Section 10-5-40 of the Municipal Code is hereby amended as follows (additions are **bold underlined**, deletions are in **~~bold strike-through~~**):

Sec. 10-5-40. - Loitering.

(a) The word *loiter* means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide or tarry in a public place **for one or more of the improper purposes described below in sub-section (b).**

(b) A person commits an offense if he or she:

~~(1)——Loiters for the purpose of begging;~~

~~(12) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;~~

~~(23) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;~~

~~(34) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren,!Loiters~~

in a school building or on school grounds or within 100 feet of school grounds when persons under the age of 18 are present in the building or on the grounds with intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, not having any reason or relationship involving custody of, or responsibility for, a pupil, or any other specific legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or


(45) Loiters with one or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in Section 10-7-110 of this Chapter.

~~(c) — It is an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly as part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.~~

2. If any other ordinance or parts of ordinances are in conflict with the standards set forth in this Ordinance, they are hereby repealed to the extent of such conflict only.
3. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED this 13th day of September, 2016.

THE TOWN OF CARBONDALE



Dan Richardson, Mayor Pro Tem

ATTEST:



Cathy Derby, Town Clerk

Posted: 9-14-16
Published: _____

Effective: _____
