

PROPOSED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, CREATING A NEW SECTION 17-35, GENERAL LOITERING, UNDER CHAPTER 17, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA.

SECTION 1. DEFINITIONS

For purposes of this ordinance, the following terms shall have the meanings set forth below:

- (a) **"Business premises"** means any commercial establishment, including but not limited to retail stores, restaurants, bars, entertainment venues, shopping centers, and professional offices.
- (b) **"City owned or operated parking facility"** means any parking garage or lot owned by, leased to, and/or operated by or for the city for the purpose of providing public parking.
- (c) **"Loiter/Loitering"** means remaining in a public place or on private property without permission for purposes that are unlawful or which unreasonably interfere with the use of such places by other persons having a right to be there.
- (d) **"Operator"** means every person who drives or is in actual, physical control of a vehicle.
- (e) **"Parking"** means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in, loading or unloading.
- (f) **"Private property"** means any privately owned real property, including but not limited to residential property, commercial establishments, and industrial facilities.
- (g) **"Public place"** means any street, sidewalk, bridge, alley, plaza, park, driveway, parking lot or transportation facility, or the doorways and entrances to any building which fronts on any of the places mentioned in this subsection (g), or any other place open to the public.

SECTION 2. PROHIBITED CONDUCT

A. General Loitering Prohibited

It shall be unlawful for any person to loiter in any public place or on private property in such a manner as to:

1. Create or cause to be created a danger of a breach of the peace;
2. Create or cause to be created any disturbance or annoyance to the comfort and repose of any person;
3. Obstruct the free passage of pedestrians or vehicles;
4. Obstruct, molest, or interfere with any person lawfully in any public place; or
5. Interfere with, impede, or hinder the normal use of the entrances, exits, or parking areas of any business premises.

B. Loitering in City Owned or Operated Parking Facilities

1. It shall be unlawful for any person to assemble with one or more other persons on a city owned or operated parking facility, except for the purpose of lawfully parking or removing a vehicle in the facility. It shall not be a violation of this section to lawfully park a vehicle in a city owned or operated parking facility and leave the facility without delay or go upon a city owned or operated parking garage or lot and without delay proceed to a lawfully parked vehicle to exit the parking facility.
2. It shall be unlawful for any person to enter upon or remain in a city owned or operated parking facility unless
 - (a) Such person is the owner, operator or passenger of a motor vehicle entering, leaving or parked in such parking facility;
 - (b) Such person is an employee of the city regularly charged with the operation, maintenance or supervision of such parking facility;
 - (c) Such person has been previously authorized by an agent or employee of the city to enter upon such parking facility; or,
 - (d) Such person is conducting legitimate business with the city and has appropriate authorization.
3. It shall be unlawful for a person to willfully fail or refuse to comply with a lawful order or direction of a police officer to leave the premises of a city owned or operated parking facility.

C. Loitering for Drug-Related Activity

It shall be unlawful for any person to loiter in any public place or on private property in a manner and under circumstances manifesting the purpose of engaging in drug-related activity. Among the circumstances which may be considered in determining whether such purpose is manifested are:

1. Repeatedly beckoning to, stopping, or attempting to engage passersby in conversation;
2. Repeatedly stopping or attempting to stop motor vehicles;
3. Repeatedly interfering with the free passage of other persons;
4. Being a known unlawful drug user, possessor, or seller who repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, objects or packages that could reasonably be determined to be unlawful drugs;
5. Being present in an area known for unlawful drug activity and repeatedly engaging in conduct consistent with drug-related activity;
6. Behaving in such a manner as would raise a reasonable suspicion that the person is engaged in, or is about to engage in unlawful drug-related activity.

D. Loitering on School Grounds

It shall be unlawful for any person who is not a student, employee, or person having legitimate business at any public or private elementary, middle, or high school to loiter on school property during regular school hours or during any school-sponsored activity, unless the person has written permission from school administration.

E. Loitering in Transportation Facilities

It shall be unlawful for any person to loiter in any bus stop, transportation facility, or public transit vehicle in such a manner as to interfere with the normal operations of public transportation or the comfort and convenience of other passengers.

SECTION 3. EXCEPTIONS

This ordinance shall not apply to:

- (a) Persons waiting for public transportation at designated stops or stations;
- (b) Persons exercising their constitutional right to picket, protest, or demonstrate in a lawful manner;
- (c) Persons conducting legitimate business activities;
- (d) Persons waiting for or seeking lawful transportation;
- (e) Persons engaged in activities protected by the First Amendment to the United States Constitution or Article I of the North Carolina Constitution;
- (f) Emergency responders acting in their official capacity;
- (g) An assembly of persons pursuant to any lawfully issued permit for a parade, demonstration or other event or congregation protected under the Constitution of the United States or of this state.

SECTION 4. ENFORCEMENT PROCEDURES

A. Warning Required

Before any arrest or citation is issued under this ordinance, a law enforcement officer shall first order the person or persons to disperse and remove themselves from the area. No person shall be charged with violating this ordinance unless the person fails or refuses to obey such order.

B. Probable Cause Required

No person shall be charged with violating this ordinance unless the law enforcement officer has probable cause to believe that the person's conduct falls within one of the prohibited categories set forth in Section 2 above and that such conduct is not protected by the exceptions in Section 3 above.

C. Documentation Required

Any citation or arrest under this ordinance shall be supported by written documentation describing the specific conduct observed and the circumstances that justify the enforcement action.

SECTION 5. PENALTIES

A. Classification

Violation of this ordinance shall constitute a Class 3 misdemeanor under N.C.G.S. § 14-4.

B. Penalties

Any person found guilty of violating this ordinance shall be subject to:

- For violations under Section 2(A), 2(C), 2(D), and 2(E): a fine not exceeding fifty dollars (\$50.00) and costs, or imprisonment not exceeding twenty (20) days, or both, as authorized by N.C.G.S. § 14-4.
- For violations under Section 2(B) (City Parking Facilities): a maximum fine not to exceed five hundred dollars (\$500.00) pursuant to N.C.G.S. § 160A-175 and N.C.G.S. § 14-4.

C. Alternative Sanctions

The court may, in its discretion, impose community service in lieu of or in addition to other penalties authorized herein.