

AN ORDINANCE CREATING ARTICLE 375 ENTITLED - PEDESTRIAN AND VEHICLE SAFETY PART THREE CHAPTER NINE OF THE TRAFFIC CODE IN THE CODIFIED ORDINANCES OF THE CITY OF WHEELING

I. AUTHORITY

- A. West Virginia Code 8-12-5 grants municipalities plenary power and the authority to regulate or eliminate hazards to public health and safety by enacting ordinances or resolutions.
- B. West Virginia Code 17C-10-1(b) grants local authorities the power to enact ordinances prohibiting pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

II. JURISDICTION

- A. This Ordinance is effective throughout the City of Wheeling, West Virginia.
- B. The Municipal Court of the City of Wheeling, WV shall have jurisdiction with respect to enforcement of this Ordinance.

III. DEFINITIONS

- A. Intersection. In accordance with W. Va. Code 17C-1-42 "intersection" shall be defined to mean the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
- B. Pedestrian. In accordance with W. Va. Code 17C-1-30 "pedestrian" shall be defined to mean any person afoot or any person using a wheelchair.
- C. Areas of Concern. "Area of Concern" shall be any area in which the prohibitions, limitations or restrictions set forth in Article V of this Ordinance shall be in effect from time to time based upon the findings of the Governing Body of the City of Wheeling, WV under Article IV of this Ordinance.

- D. Road, public road, or highway. In accordance with W. Va. Code S 17-1-3, "road", "public road", or "highway" shall be deemed to include, but shall not be limited to, the right-of- way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway shall be taken to include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law. For purposes of this Ordinance, "sidewalk" shall not be included in the definition of "road," "public road," or "highway."
- E. Roadway. In accordance with W. Va. Code 17C-1-37 "roadway" shall be defined to mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. It also encompasses the first 300 feet of legal roadway intersecting with the "roadway" as defined herein and any areas within the right-of-way not intended for pedestrian use.
- F. Sidewalk. "Sidewalk" shall be defined in accordance with W. Va. Code 17C-1- 38 to mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.
- G. State and public roads. "State road" shall be defined in accordance with W. Va. Code 17-1-28 to mean and include all roads classified and prescribed as either "expressway," "trunkline," "feeder," or "state local service" roads. "Public roads" shall mean all other roads and bridges under the control of the county court or the governing body of a municipality.
- H. Stop or stopping. "Stop" or "stopping" shall be defined in accordance with W. Va. Code §17C-1-53 to mean, when prohibited, any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.
- I. Traffic. "Traffic" shall be defined in accordance with W. Va. Code 17C-1-50 to mean pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.
- J. Vehicle. "Vehicle" shall be defined in accordance with W. Va. Code 17C-1-2 to mean every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchair.

IV. FINDINGS AND AREAS OF PUBLIC SAFETY CONCERNS

- A. The Governing Body of the City of Wheeling, WV, finds that public safety is a compelling and significant governmental interest.
- B. The Governing Body of the City of Wheeling, WV finds a significant safety risk to both pedestrians and occupants of vehicles in areas possessing, without limitation, any, some or all of the following characteristics:

- i. Intersections where at least one roadway has an annual average daily traffic volume of 4,000 or more vehicles per through lane.
 - ii. Roads, Roadways, or highways with speed limits of at least 25 miles an hour;
 - iii. Medians of roads or highways that are less than 10 feet wide;
 - iv. Roads or highways with poor or no lighting at night;
 - v. Roads or highways during inclement weather conditions that limit the visibility of both pedestrians and occupants of vehicles;
 - vi. Intersections of roadways used to dispatch emergency vehicles; or
 - vii. Roads or highways under construction or repair.
- C. The Governing Body of the City of Wheeling, WV finds that the interaction or exchanging of items between pedestrians and occupants of vehicles hinders the flow of traffic of roadways and increases the risk of single-vehicle, vehicle-on-vehicle, or vehicle-on-pedestrian accidents, which the City finds to be a hazard to public safety.
- D. The Governing Body of the City of Wheeling, WV finds that the interaction or exchanging of items between occupants of vehicles and occupants of other vehicles hinders the flow of traffic of roadways and increases the risk of single-vehicle, vehicle-on-vehicle, or vehicle-on-pedestrian accidents, which the City finds to be a hazard to public safety.
- E. Consequently, the Governing Body of the City of Wheeling, WV finds that the issues of pedestrian and vehicle safety are significant and compelling as to justify the enactment of this Ordinance under the statutory authorities in Section I of this Ordinance, the laws of West Virginia, and the laws of the United States.

V. PROHIBITIONS

Within any Area of Concern, it shall be unlawful:

- A. For any person to make any use of the public right-of-way in a manner that interferes with the safe and efficient movement of people and property from place to place on a public road or right-of-way.
- B. For any person to stop, stand, or otherwise occupy or remain in a median on any designated roadway when that person is not in the process of lawfully crossing the road in accordance with applicable traffic safety laws. Median means any area separating traffic lanes on a roadway. A

median includes, but is not limited to, any paved or unpaved, marked or unmarked, landscaped or non-landscaped, portions of a roadway which exist between lanes of traffic.

- C. For any person to engage in any physical interaction between a pedestrian and an occupant of a motor vehicle, including but not limited to the transfer of any product or material, while the motor vehicle is not legally parked and is located on the traveled portion of a designated roadway. The traveled portion of a designated roadway (including travel lanes, turn lanes, bike lanes and shoulders) that is normally used by moving motor vehicle traffic that is not an area designated for or routinely used as a parking area for the general public.
- D. For any person within a road or highway to reach out to interact with or exchange items with any occupant of a vehicle entering on, or departing a roadway;
- E. For any occupant of a vehicle entering on, or departing a roadway to reach out of or attempt to reach out of his vehicle to interact with or exchange items with another occupant of a vehicle or any person within a road or highway;
- F. For any person to stand, sit, or otherwise physically remain within the roadway for any reason apart from the lawful crossing of a road or highway.
- G. For any person to stand, sit, or otherwise remain in the median of a road or highway where the median is not wider than 10 feet for any reason apart from the lawful crossing of a road or highway.
- H. For any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the road or highway where the intersection has one roadway with an annual average daily traffic volume of 4,000 or more vehicles per through lane.
- I. For any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the road or highway where the road highway has a speed limit exceeding 25 miles an hour for any reason apart from the lawful crossing of the road or highway.
- J. It shall be unlawful for any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the highway at night, meaning after sunset, and/or where the roadway has poor or no lighting for any reason apart from the lawful crossing of a highway.
- K. It shall be unlawful for any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the highway during inclement weather conditions that limit the visibility of pedestrians and occupants of vehicles on the highway for any reason apart from the lawful crossing of a highway.
- L. It shall be unlawful for any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the highway where the intersection is regularly used to dispatch emergency vehicles for any reason apart from the lawful crossing of a highway.

- M. It shall be unlawful for any person to stand, sit, or otherwise remain in the median, neutral ground, shoulder, or other part of the highway where the highway is under construction or repair for any reason apart from the lawful crossing of a highway.

VI. ENFORCEMENT

- A. This Ordinance may be enforced by the City of Wheeling, WV Police Department as the municipal law enforcement agency. As the authorized agency it may enforce this Ordinance by issuing citations, making arrests if necessary, or issuing charges if necessary.
- B. The Governing Body of the City of Wheeling, WV in its discretion, may provide public signs as notice of the prohibitions of Article V of this Ordinance.

VII. PENALTIES

- I. Any violation of the prohibitions of Article V of this Ordinance shall be subject to the following:
 - i. If the offender is a Pedestrian: for the first offense, the offender will be required to leave the highway and be given an oral warning. The offender will provide their name and address to the officer, and the offender may be given an information sheet for information regarding the Ordinance; If the offender is a driver or occupant of a vehicle the officer may use the vehicle/driver's information to issue a warning and may provide the information regarding the Ordinance; and
 - ii. If the offender is a Pedestrian: for the second offense, the offender will be required to leave the highway and be given a written warning. The offender will provide their name and address to the officer, and the offender may be given an information sheet for information regarding the Ordinance; If the offender is a driver or occupant of a vehicle the officer may use the vehicle/driver's information to issue a warning and may provide the information regarding the Ordinance and
 - iii. For each subsequent offense(s), the penalty shall be a citation and be subject to a fine up to and not more than One Hundred Dollars (\$100.00) or community service to substituted in lieu thereof per offense.
 - iv. Nothing in this section prohibits an officer from issuing applicable citations should other sections of the Codified Ordinances of the City of wheeling or the laws of the State of West Virginia are believed to have been violated.

VIII. INTERPRETATION

- A. Nothing in this ordinance shall be construed to prevent, hinder, or otherwise impair a person's rights under the Constitution and laws of the United States and the State of West Virginia.
- B. The use of the pronoun "he", "his", "their" shall be construed to include any person.
- C. Any Federal, State, County, Municipal or Local Public Safety and Emergency Response personnel affiliated with a governmental authority or a duly licensed agency, and serving in the performance of official duties, shall not be in violation of this ordinance.

IX. DUTIES OF THE CITY COUNCIL

The Governing Body of the City of Wheeling, WV from time to time may publish a list of the Areas of Concern under this Ordinance to the Governing Body of the City of Wheeling, WV web site and generally through other means. The City may update this list annually to remain in accordance with its findings under Article III of this Ordinance.

X. SEVERABILITY

If any clause, paragraph, section, or subsection of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby but shall remain in full force and effect.

EFFECTIVE DATE

This ordinance shall become effective on and after passage and upon adoption by the Governing body of the City of Wheeling, WV.

FIRST READING the _____ day of _____.

A SECOND READING and PUBLIC HEARING held the _____ day of _____, after notice of the public hearing on said ordinance being published as a Class II legal advertisement. West Virginia.