

LEE COUNTY ORDINANCE NO. 21-04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING "LEE COUNTY COMMERCIAL USE OF RIGHTS-OF-WAY ORDINANCE" NO. 12-06 RELATING TO DANGEROUS USE OF RIGHTS-OF-WAY; PROVIDING FOR THE PROHIBITION OF STOPPING OR STANDING IN A MEDIAN THAT IS NOT A SUFFICIENT PEDESTRIAN REFUGE; PROVIDING FOR THE PROHIBITION OF PHYSICAL INTERACTION BETWEEN A PEDESTRIAN AND AN OCCUPANT OF A MOTOR VEHICLE THAT IS NOT LEGALLY PARKED; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

WHEREAS, Section 125.01, Florida Statutes provides for the broad exercise of Home Rule Authority by Lee County for the protection of the health, safety and welfare of our residents and visitors and,

WHEREAS, Section 316.008, Florida Statutes authorizes the Board of County Commissioners of Lee County to regulate the use of streets and highways under their jurisdiction and,

WHEREAS, the primary purpose of public roads and rights-of-way is to enable pedestrians and lawfully permitted vehicles to safely and efficiently move from place to place, facilitate the delivery of goods and services, and provide the general public with convenient access to goods and services and,

WHEREAS, the purpose of this Ordinance is to prohibit activities that interfere with the primary purpose of public roads and rights-of-way by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapidly changing, dangerous traffic movements, increased vehicular accidents and pedestrian and motorist injuries and fatalities and,

WHEREAS, since at least 2016, Lee County has ranked high on the list of metropolitan areas with the most pedestrian fatalities, and the recent 2021 Dangerous By Design study, which utilizes raw data from the National Highway Traffic Safety Administration, identifies Lee County as the 11th most dangerous place for pedestrians in the nation and,

WHEREAS, in 2020 alone, 22 pedestrians were tragically killed in crashes with motor vehicles within Lee County and,

WHEREAS, the Florida Department of Transportation Median Handbook identifies a median as being an adequate pedestrian refuge only when it is at least 6 feet (and preferably 8.5 feet) wide and,

WHEREAS, the Board of County Commissioners of Lee County finds and determines that the provisions of this Ordinance are in the best interest and the furtherance of the health safety and welfare of the county, its citizens, and taxpayers.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT:

The above recitals are hereby incorporated by reference into the body of this Ordinance.

SECTION ONE: AMENDMENT TO ORDINANCE

Lee County Commercial Use of Rights-of-Way Ordinance, No. 12-06, is amended as follows with strike through identifying deleted text and underline identifying new text.

SECTION TWO: Section Two of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION TWO: SHORT TITLE, PURPOSE, AND TERRITORIAL SCOPE

- A. This Ordinance will be known and cited as the Lee County ~~Commercial-Use of Public~~ Rights-of-Way Ordinance.
- B. It is the purpose of this Ordinance that for the protection of public safety, Lee County will regulate the ~~commercial-use~~ of the public rights-of-way on all roads, streets, and highways within the County road system of Lee County. For purposes of this Ordinance "County road system" shall be defined pursuant to Section 334.03, Florida Statutes, as may be amended from time to time.
- C. County-owned roads lying within the municipal boundaries of the City of Sanibel shall not be subject to the provisions of this Ordinance but shall be regulated by that municipality.
- D. The provisions in Section 4 of this Ordinance shall apply only within unincorporated Lee County.

SECTION THREE: Section Four of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION FOUR: EXCEPTIONS

The commercial use of the right-of-way of any road, street or highway within the county road system is expressly prohibited, except that the commercial uses listed below may occur in the public rights-of-way, but only in compliance with the requirements and conditions set forth herein:

- A. County Permitted Or Sponsored Special Events.
 - 1. Any portion of a road, street, or highway, including the rights-of-way, within the county road system may be used for an art festival, parade, fair, or other similar special event which is either properly permitted by the County pursuant to Administrative Code AC-8-1, as may be amended, or under control of the County as a County sponsored function.
 - 2. The special events exception is not intended to apply to events for which the primary purpose is: solicitation of funds; or, solicitation for sale of

goods, property, or services for educational, religious or political purposes. However, such activities may be permitted if they are clearly adjuncts of a properly permitted special event.

B. Newspaper Vending Racks or Machines.

Small, standard size newspaper vending racks or machines (as determined by industry standards) may be placed in public rights-of-way only in compliance with the following requirements and conditions:

1. Such racks and machines may not be placed in public rights-of-way unless there is a sufficient cleared area between them and the paved or traveled portion of any street or bike path for an automobile to safely park as determined by the Director of Lee County Department of Transportation, using all applicable Lee County regulations and standards.
2. Such racks and machines may not pose any threat to traffic visibility or safety or impede vehicular movements.
3. Such racks and machines may not contain any graphics other than an identification of the newspaper being circulated thereby.
4. Placement of such racks or machines in the rights-of-way of any road, street or highway within the county road system shall be made only when such placement is made pursuant to, and in compliance with all applicable Lee County regulations and standards, and is verified as being in such compliance by the Director of the Lee County Department of Transportation, or his designee, who shall approve same by the issuance of an appropriate permit or other written acknowledgment.

C. Bus Benches With Signs.

Bus benches shall only be provided by the County.

D. Utilities.

Placement of utilities in the rights-of-way of any road, street or highway within the county road system shall be made only when such placement is made pursuant to, and in compliance with, all applicable Lee County regulations, and is verified as being in such compliance by the Director of the Lee County Department of Transportation, or his designee, and the Director of the Lee County Department of Community Development, or his designee, who shall approve same by the issuance of an appropriate permit or other written acknowledgment.

E. Commercial Loading or Unloading.

Temporary parking or stopping for the purpose of loading or unloading of merchandise, wares or passengers being received from or delivered to adjacent property is permissible only in the event a loading zone off the right-of-way is not available.

F. Mobile Food Vendors.

Any mobile food vendor who has a valid Lee County Occupational License shall be permitted to make sales from his/her vehicle while stopped on the right-of-way to occupants of abutting property only, subject to the following conditions:

1. Hours of operation shall be sunrise till sunset.
2. No vehicle shall stop on any arterial or collector street, road or highway.
3. No vehicle shall back-up along any street, road or highway except for emergency conditions.
4. When pulling over, all vehicles shall stop as close as safely possible to the edge or curb of the street on the right side of the street, road or highway.
5. All vehicles may temporarily stop in the same location. A temporary stop shall not exceed the time necessary to sell to immediate purchasers and in no event shall a stop exceed fifteen (15) minutes.

For purposes of this subsection, a mobile food vendor is a person who sells food to the public from a vehicle which is self-propelled or otherwise readily moveable from place to place and which operates from an approved base commissary.

~~G. Charitable Solicitation Drives.~~

~~Charitable solicitation drives may be conducted on or along the right-of-way of any road, street or highway within the county road system under the following conditions:~~

- ~~1. Such drives are conducted by sworn and/or certified law enforcement officers or firefighters; or~~
- ~~2. Such drives are conducted by an organization that is qualified under Section 501(c)(3) of the Internal Revenue Code and registered under Chapter 496, Florida Statutes, or a person or organization acting on behalf of that organization under the following conditions:~~
 - ~~a. The organization, or the person or organization acting on behalf of the organization, must provide all of the following:~~
 - ~~i. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.~~
 - ~~ii. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~
 - ~~iii. Specific details of the location or locations of the proposed~~

~~solicitation and the hours during which the solicitation activities will occur.~~

- ~~iv. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than \$1 million per occurrence for the general aggregate. The certificate of insurance shall name Lee County as an additional insured and shall be filed with Lee County Public Resources Division no later than 72 hours before the date of the solicitation.~~
- ~~v. Proof of registration with the Department of Agriculture and Consumer Services pursuant to Section 496.405, Florida Statutes or proof that the soliciting organization is exempt from the registration requirement.~~
- ~~b. Organizations or persons meeting the requirements of subparagraphs a(i-v) may solicit for a period not to exceed 10 cumulative days within 1 calendar year.~~
- ~~c. All solicitation shall occur during daylight hours only and shall follow standard permit conditions.~~
- ~~d. Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public. No person may be in the lanes of traffic upon change from red traffic signal to green traffic signal for those lanes of traffic.~~
- ~~e. No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice amplifying apparatus or device.~~
- ~~f. All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.~~
- ~~g. Approved signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation. Other safety devices may be required by Lee County Department of Transportation.~~
- ~~h. Law enforcement, Lee County Department of Transportation or other designee, may stop solicitation activities if any conditions or requirements of this section are not met.~~
- ~~i. Any Veterans organization requesting to solicit contributions on Lee County roadways and/or intersections must be a Nationally Registered Veterans Organization recognized and chartered by Congress.~~

HG. Visitor Center Designation Signs.

1. Business entities may only represent itself to the public by signage as representing tourism interests if the entity meets the following criteria:
 - a. The entity is a non-profit, 501C-6 organization whose mission is to promote tourism and economic development for the county; and,
 - b. The administrative offices are located at the address of the proposed visitor/information center or you have employed staff on site to deal with the business of assisting tourists/visitors; and,
 - c. An area of at least three hundred fifty (350) square feet should be designated for tourism/visitor information.
 - d. Those signs by business entities currently existing as of the date of adoption of this Ordinance on U.S. 41 at Corkscrew and Coconut Road are grand-fathered in and exempt from these requirements and criteria.

2. Only business entities meeting the requirements of Section 4.H.1 (above) are permitted to have such designated signs. In order to request approval to install such designated signs within the Lee County or the Florida Department of Transportation right-of-way, business entities will:
 - a. Submit an application through the ~~Lee County Department of Public Resources~~ County Manager's Office for review and authorization to apply for a permit to have the Lee County Department of Transportation and/or the Florida Department of Transportation review the proposed fabrication and installation of visitor center designation signs within the right-of-way.
 - b. Within 90 days following ~~Department of Public Resources~~ County Manager's Office approval, submit the required right-of-way permit application to Lee County Department of Transportation or the Florida Department of Transportation.
 - c. Within 90 days of approval of the required right-of-way permit, fabricate the visitor center designation signs in accordance with Florida Department of Transportation minimum standards and specifications, followed by installation of the visitor center designation signs in accordance with Florida Department of Transportation standards and specifications.
 - d. Provide perpetual maintenance and replacement of the visitor center designation signs in accordance with Florida Department of Transportation standards and specifications.
 - e. Remove any visitor center designation signs, support, post and foundation within the specified time as follows:

- i. Within 14 days of the date of written notification from Lee County or the Florida Department of Transportation requiring removal from the right-of-way, or
- ii. Within 14 days of closing or relocating the visitor center the visitor center designation signs and assembly shall be fully removed from the right-of-way, or
- iii. Within 14 days of the business entity or the visitor center found to no longer be in full compliance with the minimum requirements of Section 4.H.1, the visitor center designation sign and assembly shall be fully removed from the right-of-way, or
- iv. Within 1 business day of verbal or written notification that a visitor center designation sign represents an immediate hazard to the public, the visitor center designation sign and, if needed, the sign assembly shall be fully removed from the right-of-way.

4H. Pine Island Tourist Oriented Directional Signs.

Pine Island Tourist Oriented Directional Signs as set forth in accordance with the Lee County Administrative Code.

4J. Lee County Specific Services Signs.

Lee County Specific Services Signs as set forth in the Lee County Administrative Code.

SECTION FOUR: Section Five of Lee County Ordinance No. 12-06 is amended by adding a new section thereto to read as follows:

SECTION FIVE: DANGEROUS USE OF PUBLIC RIGHTS-OF-WAY

A. Except as provided herein, or as otherwise permitted by law, it is unlawful to make any use of the public rights-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. Such prohibited activity includes by way of example and not limitation:

1. Stopping, standing or otherwise occupying a median that is not a sufficient pedestrian refuge on an arterial or collector road within unincorporated Lee County by a pedestrian when that pedestrian is not in the process of lawfully crossing the road in accordance with applicable traffic and safety laws.

i. Stopping, standing or otherwise occupying a median that is not a sufficient pedestrian refuge through two (2) consecutive opportunities to cross in accordance with applicable traffic and safety laws is prima facie evidence of a violation of this subsection.

ii. A “sufficient pedestrian refuge” is defined as a paved or unpaved median separating lanes of traffic that is at least 6 feet wide, measured from back of curb to back of curb.

2. Engaging in any physical interaction between a pedestrian and an occupant of a motor vehicle, including the transfer of any product or material, while the motor vehicle is located on the travelled portion of an arterial or collector road within unincorporated Lee County and is not legally parked.

3. For the purpose of this Ordinance the phrase “public rights-of-way” shall be defined as set forth in Section 334.03 (22), Florida Statutes (2020) and as may be amended.

B. Nothing in this section shall prohibit the following:

1. Law enforcement, fire and rescue, or other government employees or contractors acting within the scope of their lawful authority;

2. A person conducting inspection, construction, maintenance, repair, survey, or other legally authorized services;

3. A person responding to lend aid during an emergency situation;

4. Entering or exiting a bus or other public transit system;

5. Use of public roads and rights-of-way that have been closed to vehicular traffic for a special event permitted by the appropriate governmental entity.

SECTION FIVE: Section Five of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION FIVESIX: PENALTY

Any person who violates this ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Upon conviction, a violator shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days, or by both such fine and imprisonment. This enforcement procedure and penalty for violations of this ordinance is adopted under the express authority of §125.69(1), Florida Statutes. This Ordinance may be enforced by the Lee County Sheriff.

SECTION SIX: Section Six of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION SIXSEVEN: CIVIL ENFORCEMENT

In addition to any criminal penalties which may be imposed pursuant to Section Five: Penalty, Lee County shall have recourse to such remedies in law and equity as may be necessary to insure compliance with the provisions of this Ordinance, including:

- A. Injunctive relief to enjoin and restrain any person from violating this Ordinance; and
- B. For violations of Sections 3 and 4 of Lee County Ordinance No. 12-06, Prosecution before the Lee County Code Enforcement Board; and/or
- C. Any other relief available pursuant to law.

SECTION SEVEN: Section Seven of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION SEVENEIGHT: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements shall apply.

SECTION EIGHT: Section Eight of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION EIGHTNINE: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any provision of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION NINE: Section Nine of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION NINETEN: CODIFICATION AND SCRIVENER'S ERRORS

The Lee County Board of County Commissioners intends that this Ordinance will be made part of the Lee County Code; and that sections of this Ordinance can be renumbered or relettered and the word "Ordinance" can be changed to "Section," "Article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or relettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for public hearing.

SECTION TEN: Lee County Ordinance No. 12-06 is hereby amended by adding a new section thereto to read as follows:

SECTION ELEVEN: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION ELEVEN: Section Ten of Lee County Ordinance No. 12-06 is hereby amended to read as follows:

SECTION TENTWELVE: EFFECTIVE DATE

This Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

SECTION TWELVE: SEVERABILITY

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board's intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION THIRTEEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION FOURTEEN: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION FIFTEEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Pendergrass made a motion to adopt the foregoing ordinance, seconded by Commissioner Hamman. The vote was as follows:

Kevin Ruane	Aye
Cecil Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 20th day of April 2021.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Missy Flint
Deputy Clerk

BY: [Signature]
Kevin Ruane, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

[Signature]
Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

April 21, 2021

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Missy Flint

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 21-04, which was filed in this office on April 21, 2021.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb