

1 **VILLAGE OF ESTERO, FLORIDA**

2
3 **ORDINANCE NO. 2021-08**

4
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF**
6 **THE VILLAGE OF ESTERO, FLORIDA,**
7 **AMENDING THE VILLAGE CODE, CHAPTER 28 –**
8 **ROADS AND BRIDGES, ARTICLE VI –**
9 **COMMERCIAL USE OF RIGHTS-OF-WAY,**
10 **RELATING TO DANGEROUS USE OF RIGHTS-**
11 **OF-WAY; PROVIDING FOR THE PROHIBITION**
12 **OF STOPPING OR STANDING IN A MEDIAN**
13 **THAT IS NOT A SUFFICIENT PEDESTRIAN**
14 **REFUGE; PROVIDING FOR THE PROHIBITION**
15 **OF PHYSICAL INTERACTION BETWEEN A**
16 **PEDESTRIAN AND AN OCCUPANT OF A MOTOR**
17 **VEHICLE THAT IS NOT LEGALLY PARKED;**
18 **PROVIDING FOR CONFLICT; PROVIDING FOR**
19 **SEVERABILITY; PROVIDING FOR**
20 **CODIFICATION; PROVIDING AN EFFECTIVE**
21 **DATE.**

22
23 **WHEREAS,** the Village Council is the governing body of Village of Estero, Florida;
24 and

25
26 **WHEREAS,** Sections 316.006(2) and 316.008, Florida Statutes, authorizes the Village
27 Council to regulate the use of streets and highways under their jurisdiction; and,

28
29 **WHEREAS,** the primary purpose of public roads and rights-of-way is to enable
30 pedestrians and lawfully permitted vehicles to safely and efficiently move from place to place,
31 facilitate the delivery of goods and services, and provide the general public with convenient
32 access to goods and services; and

33
34 **WHEREAS,** the purpose of this Ordinance is to prohibit activities that interfere with
35 the primary purpose of public roads and rights-of-way by causing distractions to motorists,
36 unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic,
37 rapidly changing, dangerous traffic movements, increased vehicular accidents and pedestrian
38 and motorist injuries and fatalities; and

39
40 **WHEREAS,** since at least 2016, Lee County has ranked high on the list of
41 metropolitan areas with the most pedestrian fatalities, and the recent 2021 Dangerous By
42 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, pursuant to the Article VIII of the Florida Constitution, the Village Charter and Section 166.021, Florida Statutes, the Village Council is authorized to adopt ordinances necessary for the exercise of its powers in for health, safety, and general welfare; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village of Estero and its residents to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Estero, Florida, as follows:

Section 1. Recitals Adopted.

Each and all of the foregoing recitals are hereby incorporated into this Ordinance as if specifically set forth herein.

Section 2. Amending Village Code.

Sec. 28-122. Short title, purpose and territorial scope.

(a) This article will be known and cited as the Village of Estero Use of Rights-of-Way Ordinance.

(b) It is the purpose of this article that for the protection of public safety, the Village will regulate the use of the rights-of-way on all roads, streets, and highways within the ~~county~~ road system of the Village. For purposes of this article "road system" shall be defined any portion of the "city street system" or "county road system" pursuant to F.S. § 334.03, as may be amended from time to time, which is within the territorial jurisdiction of the Village.

Sec. 28-124. Exceptions.

The commercial use of the right-of-way of any road, street or highway within the 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:

(1) Village permitted or sponsored special events.

- 82 a. Any portion of a road, street, or highway, including the rights-of-way,
83 within the ~~county~~ road system may be used for an art festival, parade,
84 fair, or other similar special event which is either properly permitted by
85 the Village, or under control of the Village as a Village sponsored
86 function.
- 87 b. The special events exception is not intended to apply to events for which
88 the primary purpose is: solicitation of funds; or, solicitation for sale of
89 goods, property, or services for educational, religious or political
90 purposes. However, such activities may be permitted if they are clearly
91 adjuncts of a properly permitted special event.
- 92 (2) Newspaper vending racks or machines. Small, standard size newspaper vending
93 racks or machines (as determined by industry standards) may be placed in
94 public rights-of-way only in compliance with the following requirements and
95 conditions:
- 96 a. Such racks and machines may not be placed in public rights-of-way
97 unless there is a sufficient cleared area between them and the paved or
98 traveled portion of any street or bike path for an automobile to safely
99 park as determined by the Director of Public Works, using all applicable
100 Village regulations and standards.
- 101 b. Such racks and machines may not pose any threat to traffic visibility or
102 safety or impede vehicular movements.
- 103 c. Such racks and machines may not contain any graphics other than an
104 identification of the newspaper being circulated thereby.
- 105 d. Placement of such racks or machines in the rights-of-way of any road,
106 street or highway within the county road system shall be made only
107 when such placement is made pursuant to, and in compliance with all
108 applicable Village regulations and standards, and is verified as being in
109 such compliance by the Director of ~~the~~ Public Works, or their designee,
110 who shall approve same by the issuance of an appropriate permit or
111 other written acknowledgment.
- 112 (3) Bus benches with signs. Bus benches approved by a governmental agency.
- 113 (4) Utilities. Placement of utilities in the rights-of-way of any road, street or
114 highway within the road system shall be made only when such placement is
115 made pursuant to, and in compliance with, all applicable Village regulations,
116 and is verified as being in such compliance by the Director of Public Works, or
117 his designee, and the Director of Public Works, or their designee, who shall

118 approve same by the issuance of an appropriate permit or other written
119 acknowledgment.

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

124 Sec. 28-125. Dangerous Use of Public Rights-Of-Way.

125 (a) Except as provided herein, or as otherwise permitted by law, it is unlawful to
126 make any use of any public rights-of-way in a manner that interferes with the
127 safe and efficient movement of people and property from place to place on a
128 public road or right-of-way. Such prohibited activity includes by way of
129 example and not limitation:

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

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

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

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

146 3. For the purpose of this article, the phrase “public rights-of-way” shall
147 be defined as set forth in Section 334.03(22), Florida Statute, as
148 amended.

149 (b) Nothing in this section shall prohibit the following:

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

- 152 2. A person conducting inspection, construction, maintenance, repair,
153 survey, or legally authorized services.
- 154 3. A person responding to lend aid during an emergency situation.
- 155 4. Entering or exiting a bus or other public transit system.
- 156 5. Use of public roads and rights-of-way that have been closed to vehicular
157 traffic for a special event permitting by the appropriate governmental
158 entity.
- 159 6. Activities expressly authorized pursuant to a utility franchise
160 agreement.

161 Sec. 28-126. Penalty.

162 Any person who violates this article shall be prosecuted in the same manner as
163 misdemeanors are prosecuted. Upon conviction, a violator shall be punished by a fine not to
164 exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days, or by
165 both such fine and imprisonment. This enforcement procedure and penalty for violations of
166 this article is adopted under the express authority of Chapter 162 and §166.0415, Florida
167 Statutes. This article may be enforced by the Lee County Sherriff.

168 Sec. 28-126~~7~~. Civil enforcement.

169 In addition to any criminal penalties which may be imposed pursuant to section 28-
170 125~~6~~: Penalty, the Village shall have recourse to such remedies in law and equity as may be
171 necessary to insure compliance with the provisions of this article, including:

- 172 (1) Injunctive relief to enjoin and restrain any person from violating this article;
173 and
- 174 (2) Prosecution before the Village Special Magistrate; and
- 175 (3) Any other relief available pursuant to law.

176 Sec. 28-127~~8~~. Conflicts of law.

177 Whenever the requirements or provisions of this article are in conflict with the
178 requirements or provisions of any other lawfully adopted ordinance or statute, the most
179 restrictive requirements shall apply.

180 **Section 21. Conflict.**

181

182 All ordinances, resolutions, official determinations or parts thereof previously adopted
183 or entered by the Village or any of its officials and in conflict with this Ordinance are hereby
184 repealed to the extent inconsistent herewith.

185
186 **Section 22. Severability.**
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188 In the event that any portion of this ordinance is for any reason held invalid or
189 unconstitutional by any court of competent jurisdiction, such portion shall be deemed a
190 separate, distinct and independent provision, and such holding shall not affect the validity of
191 the remaining portions of this ordinance.

192
193 **Section 23. Codification.**
194

195 The Village Council intends that this Ordinance be made part of the Code of the Laws
196 and Ordinances, of the Village of Estero, Florida; and that the sections of this Ordinance can
197 be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and
198 regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-
199 lettered and typographical errors and clarification of ambiguous wording that do not affect the
200 intent can be corrected with the authorization of the Village Manager without the need for a
201 public hearing.

202
203 **Section 24. Effective Date.**
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205 This Ordinance shall take effect immediately upon adoption.
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208 [SIGNATURE PAGES FOLLOWS]
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PASSED on first reading this 2nd day of June, 2021.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero,
Florida this 16th day of June, 2021.

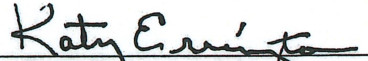
Attest:

By:


Carol Sacco, Village Clerk

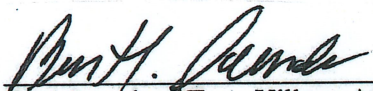
VILLAGE OF ESTERO, FLORIDA

By:


Katy Errington, Mayor

Reviewed for legal sufficiency:

By:


Burt Saunders, Esq., Village Attorney

Vote:

AYE

NAY

Mayor Errington

X

Vice Mayor McLain

X

Councilmember Boesch

X

Councilmember Fiesel

X

Councilmember Ribble

X

Councilmember Ward

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Councilmember Wilson

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