

ORDINANCE NO. 2014-20

AN ORDINANCE OF SARASOTA COUNTY, FLORIDA, AMENDING ORDINANCE NOS. 83-046 AND 82-093, AS AMENDED, AND AS CODIFIED IN ARTICLE I OF CHAPTER 98 OF THE CODE OF ORDINANCES OF SARASOTA COUNTY, FLORIDA, RELATING TO ROADS AND BRIDGES; AMENDING SECTION 98-11 SOLICITATION ON RIGHT OF WAY; AMENDING SECTION 98-12 COMMERCIAL ACTIVITIES IN RIGHT OF WAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in August 2012, the National Highway Traffic Safety Administration (“NHTSA”) published data relating to pedestrians killed in the United States detailing that there were 4,280 pedestrians killed and an estimated 70,000 pedestrians injured in traffic accidents in 2010 across the United States; and

WHEREAS, in December 2012, the NHTSA published data reflecting that that 4,432 pedestrians were killed in the United States and an estimated 69,000 injured in traffic accidents in 2011 across the United States;

WHEREAS, in the 2010 data pedestrians represent approximately 13 percent of all traffic fatalities; and

WHEREAS, in the 2010 data nearly one-half of all pedestrian fatalities occurred on Friday, Saturday, and Sunday (16%, 17%, and 15%, respectively), thereby demonstrating no statistically significant distinction for regulating based on day of the week; and

WHEREAS, in the 2010 data Florida ranks second nationally behind California in the number of pedestrian fatalities at approximately 20 percent of the total nationwide; and

WHEREAS, in 2010 and 2011, approximately half of all people killed in traffic accidents involved a roadway departure where a vehicle crosses an edge line, a centerline, or leaves the traveled area way; and

WHEREAS, Sarasota County has a significant government interest in pedestrian safety; and

WHEREAS, this ordinance regulates conduct for the purpose of promoting pedestrian safety; and

WHEREAS, the Board of County Commissioners finds that pedestrians entering public roadways and interacting with vehicle occupants through the exchange of objects which are moving or temporarily stopped at traffic control devices endangers the health, safety, and general welfare of public and causes unsafe pedestrian actions within the roadway, distracts motorists, and causes the slowdown of traffic, thereby potentially causing traffic accidents that could result in injuries or fatalities; and

WHEREAS, the Board of County Commissioners finds that the act of an exchange creates a greater risk of an accident with a pedestrian than other forms of expressive communication; and

WHEREAS, the Board of County Commissioners finds a greater risk to pedestrians in their use of thinner medians, islands, and traffic separators where there is no opportunity for a safe retreat in the event of a roadway departure accident; and

WHEREAS, the Board of County Commissioners recognizes the need to keep pedestrians from using thinner medians, islands, and traffic separators that were never designed for the purpose of pedestrian use and thereby placing themselves in harm's way; and

WHEREAS, the Board of County Commissioners recognizes that solicitation for donations, contributions, employment, business, and sales or exchanges or constitutionally protected free speech; and

WHEREAS, the Board of County Commissioners recognizes that the distribution of pamphlets, fliers, and handbills represents the exercise of constitutionally protected free speech; and

WHEREAS, the Board of County Commissioners finds it necessary based on its significant government interest to regulate constitutionally protected free speech through a narrowly tailored remedy to protect pedestrians; and

WHEREAS, the Board of County Commissioners desires to regulate constitutionally protected speech in a content-neutral manner through reasonable time, place, and manner restrictions; and

WHEREAS, the Board of County Commissioners wants to allow for alternative locations for communicative expression on its sidewalks and parks; and

WHEREAS, the Board of County Commissioners recognizes that a license or permit as a prerequisite to engaging in constitutionally protected speech is a prior restraint on such speech; and

WHEREAS, the Board of County Commissioners recognizes that any ordinance that creates a licensing scheme for the dissemination of ideas is inherently suspect of being a pretext to choosing viewpoints based on speaker; and

WHEREAS, the Board of County Commissioners recognizes that any ordinance which creates exemptions to its prohibitions based on identify of speaker, days of the week, or specific holidays during the calendar year runs contrary to its significant government interest in pedestrian safety being advanced and is inherently suspect of being a pretext to choosing viewpoints based on speaker; and

WHEREAS, through Emergency Ordinance No. 2013-10 the Board of County Commissioners declared an emergency requiring the immediate amendments to Sections 98-11 and 98-12 of the County Code of Ordinances; and

WHEREAS, the Board of County Commissioners seeks a permanent solution to threats to pedestrians associated with the unreasonable risk of accidents due to distraction of motorists and interference with the vision of motorists, and ratify its prior actions in Emergency Ordinance No. 2013-10 through its regular adoption procedures.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY:

SECTION 1. In this Ordinance, all ~~striketrough~~ language shall constitute language removed from the code, and all underlined language shall constitute language added to the code.

SECTION 2. Section 98-11 of the Sarasota County Code of Ordinances is hereby amended as follows:

Sec. 98-11. Obstruction of Traffic, Distribution of Items to, Receipt of Items from, and Exchange of Items with Occupants of Motorized Vehicles on Right-of-Way.

(a) *Findings.*

(1) It is hereby found and determined that Obstruction of Traffic, distribution of an item to, receipt of an item from, or exchange of any item with the occupant of any motorized vehicle upon a Road presents a threat to the safety and well-being of the citizens of Sarasota County and the traveling public by creating an unreasonable risk of accidents due to distraction of motorists and pedestrians and interference with the vision of motorists and pedestrians.

(2) The prohibitions of Obstruction of Traffic, distribution of any item to, receipt of any item from, or exchange of any item with the occupant of any motorized vehicle upon a Road in the unincorporated area of Sarasota County promotes the health, safety, and welfare of the citizens of Sarasota County and the traveling public.

(3) This section is intended to apply evenhandedly to all persons who engage in the activities prescribed herein, regardless of their message.

(4) This section is intended to be narrowly-tailored to serve the significant government interest of public safety, and to leave open ample alternative channels for distribution, receipt, and exchange upon the public sidewalks or other areas of the Public Right-of-Way not outlined below.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) “Median” shall mean an area that separates traffic, also known as a central reservation, median strip, island, or other separator.

~~(1)~~ (2) “Obstruction of Traffic” means the intentional act of walking, standing, sitting, lying, or placing or use of an object in any manner that results in the interference, slowing or interruption of the passage of the normal flow of vehicles on the Road.

~~(2)~~ (3) “Public Right-of-Way” shall mean land in which the state, the Florida Department of Transportation, a county, or other public entity owns the fee or has an easement associated with any road, including the public sidewalks.

~~(3)~~ (4) “Road” shall mean the ~~roadbed surface, islands,~~ medians, travel lanes, turn lanes and all ways open to travel by operators of motorized vehicles within unincorporated Sarasota County. The definition excludes private roads and roads that are not open to motor vehicle travel, and sidewalks open for pedestrian travel.

(4) “Road Surface” shall mean the flat paved or concrete area of the road intended for vehicular use, including any bicycle or breakdown lanes, gutters, and any curb to the top of the curb abutting the paved or concrete area.

(5) “Sidewalk” shall mean that portion of the Right-of-Way between the Road Surface and the adjacent property lines intended for use by pedestrians. A sidewalk may be paved or unpaved.

(c) *Prohibitions on Roads.* It shall be unlawful to violate any of the prohibitions set forth below in the unincorporated areas of Sarasota County, Florida:

(1) It shall be unlawful for any person to act in any manner on a Road which results in the Obstruction of Traffic.

(2) No person shall be upon or go upon any Road to distribute any item to, receive any item from, or exchange any item with the occupant of any motorized vehicle upon the Road.

(3) No person shall be on the Sidewalk, including any off ramp within four feet of the edge of the Road Surface for the purpose of distributing and distribute any item to, ~~receiving~~ receive any item from, or ~~exchanging~~ exchange any item with the occupant of any motorized vehicle upon the Road.

(4) No person shall throw or toss any item to, or receive any thrown or tossed item from, the occupant of a motorized vehicle on the Road.

(5) Other than County or State employees engaged in roadway maintenance activities, all persons shall maintain a six-foot separation between themselves and the Road Surface when using a Median for any time period longer than it takes to safely and lawfully cross the Road Surface. If a person cannot maintain a six-foot separation from the Road Surface, then it shall be unlawful to occupy the Median.

(d) *Penalties.* In accordance with F.S. § 125.69, violations of this section, or any authorization issued thereunder, shall be punishable by a fine not to exceed \$500.00 or by imprisonment in the County jail not to exceed 60 days or by both such fine and imprisonment. Each incident of violation of any subsection or part of a subsection contained in this section shall be deemed a separate offense.

(e) *Enforcement.* The provisions of this section shall be enforced by the Sarasota County Sheriff.

(f) *Effect on other ordinances and general law.* The provisions of this section shall prevail in the event of conflict with the provisions of any existing County ordinance or regulation. The provisions of this section shall yield to the extent of conflict with the provisions of general law, but only to the extent of such conflict.

(g) *Severability.* If any provision of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

(h) *Sunset provision.* This section shall be automatically repealed on September 30, 2018, unless otherwise amended or ratified by the Board of County Commissioners of Sarasota County, Florida.

SECTION 3. Section 98-12 of the Sarasota County Code of Ordinances is hereby amended as follows:

Sec. 98-12. - [Commercial activities in right-of-way.]

(a) *Intent.*

(1) It is the intent of this section to protect and preserve the health, safety and welfare of the citizens of Sarasota County by prohibiting the Commercial Use of the public rights-of-way in Sarasota County unless a temporary use permit has been issued by Sarasota County.

(2) The Commercial Use of public rights-of-way and associated facilities without regulation presents a threat to the safety and convenience of the citizens of Sarasota County and the traveling public by creating an unreasonable risk of accidents due to distraction of motorists, vehicular and pedestrian activity, interference with visibility and creation of obstructions to the use of road shoulders and medians for emergency maneuvering.

(b) *Definitions.* For the purpose of this section, the following terms apply:

(1) "Commercial Use" means display of goods or property for sale, storage of goods or property, commercial servicing or repair of any vehicle except the rendering of emergency service or repair, or the storage of any vehicle in

connection with its commercial service or repair on abutting property or elsewhere.

(2) "Public rights-of-way" means land in which the state, the Florida Department of Transportation, a county, or other public entity owns the fee or has an easement associated with any road.

(c) *Prohibition on Commercial Use of public rights-of-way.* It shall be a violation of this section to make any Commercial Use of the public rights-of-way in the unincorporated area of Sarasota County, Florida, except as provided by a temporary use permit has been issued by Sarasota County pursuant to section 5.5.4.9 of the Sarasota County Zoning Regulations (Appendix A to this Code). In no event may any temporary use permit allow any conduct prohibited by Section 98-11 of this Code.

(d) *Enforcement and penalties.*

(1) This section shall be enforced by the Sarasota County Sheriff's Office. Violations of this section shall be prosecuted in the same manner misdemeanors are prosecuted pursuant to F.S. § 125.69, punishable by a fine not to exceed \$500.00 or by imprisonment in the County jail not to exceed 60 days or by both such fine and imprisonment. Each day of continued violation or noncompliance shall be considered as a separate offense.

(2) Nothing herein contained shall prevent or restrict Sarasota County from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance, including, but not limited to, an equitable action for injunctive relief or an action at law for damages.

(3) Further, nothing in this section shall be construed to prohibit Sarasota County from prosecuting any violation of this section pursuant to the procedures set forth in F.S. ch. 162 and Sarasota County Ordinance 93-006, as amended (Chapter 2, Article VIII, of this Code).

(4) All remedies and penalties provided for in this subsection shall be cumulative and independently available to the County and the County shall be authorized to pursue any and all remedies set forth in this subsection (d) to the full extent allowed by law.

(e) *Applicability.* All public rights-of-way within the legal boundaries of unincorporated Sarasota County shall be embraced by the provisions of this section.

(f) *Effect on other ordinances and general law.* The provisions of this section shall prevail in the event of conflict with the provisions of any existing County ordinance or regulation. The provisions of this section shall yield to the extent of conflict with the provisions of general law, but only to the extent of such conflict.

(g) *Conflict.* In the event any provisions of this section conflict with the Zoning Regulations, Sarasota County Ordinance No. 75-38, as amended (Appendix A to this Code), the Zoning Regulations shall prevail.

(h) *Severability.* It is declared to be the legislative intent that if any subsection, sentence, clause or provision of this section is held invalid by a court of competent jurisdiction, the remainder of this section shall not be affected.

SECTION 4. Effective date.

This Ordinance shall take effect immediately upon filing with the Office of the Florida Secretary of State.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this ____ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

By: _____
Chair

ATTEST:

KAREN E. RUSHING, Clerk of Circuit
Court and Ex-Officio Clerk of the Board of
County Commissioners of Sarasota County,
Florida

By: _____
Deputy Clerk