

LEE COUNTY ORDINANCE NO. 08-07

AN ORDINANCE AMENDING AND RESTATING "LEE COUNTY COMMERCIAL USE OF RIGHTS-OF-WAY ORDINANCE" NO. 88-11, AS AMENDED BY ORDINANCE NOS. 89-28, 90-42, 92-29, 96-24, AND 05-12; PROVIDING FOR REPEALER, SHORT TITLE, PURPOSE AND TERRITORIAL SCOPE; PROVIDING FOR THE PROHIBITION OF COMMERCIAL USE OF RIGHTS-OF-WAY WITHIN THE COUNTY ROAD SYSTEM; PROVIDING FOR EXCEPTIONS; PROVIDING FOR VISITOR CENTER DESIGNATION SIGNS; PROVIDING FOR AUTHORIZED BUSINESS ENTITIES; PROVIDING FOR PERMIT; PROVIDING FOR INTENT, PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN LEE COUNTY CODE; AND PROVIDING FOR SUNSET PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners desire to regulate the commercial use of the rights-of-way of all roads, streets and highways under its protection of public safety; and

WHEREAS, Section 334.03, Florida Statutes, defines "County road system" as "The County road system of each county consists of all collector roads in the unincorporated areas and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterial roads not in the State Highway System"; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, recognizes that certain commercial activities, because of their nature, are best suited, if properly regulated, to occur in the rights-of-way, while other activities must be prohibited; and,

WHEREAS, the Board of County Commissioners has previously adopted Lee County Ordinance No. 88-11, relating to the commercial use of rights-of-way; and

WHEREAS, Lee County Ordinance No. 88-11, the Lee County Commercial Use of Rights-of-Way Ordinance, was amended by Lee County Ordinances Nos. 89-28, 90-42, 92-29, 96-24, and 05-12; and

WHEREAS, the Board of County Commissioners now desires to amend once again, incorporating a section pursuant to Florida Statutes, Section 125.0104(9)(dd), business entities are prohibited, other than a county tourism promotion agency, from using names that represent themselves to the public as convention and visitors bureaus, or county tourism promotion agencies operating under any other name or names specifically designated by ordinance; and,

WHEREAS, the Board of County Commissioners desires to clarify and incorporate the prior ordinances, and all amendments into one comprehensive, restated ordinance.

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

SECTION ONE: REPEALER

All prior Lee County Ordinances related to the Lee County Commercial Use of Rights-of-Way are hereby repealed, specifically, Lee County Ordinances No. 88-11, 89-28, 90-42, 92-29, 96-24, and 05-12.

SECTION TWO: SHORT TITLE, PURPOSE AND TERRITORIAL SCOPE

- A. This Ordinance will be known and cited as the Lee County Commercial Use of 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 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.

SECTION THREE: COMMERCIAL USE OF RIGHTS-OF-WAY

It is unlawful to make any commercial use of the rights-of-way of any road, street, or highway within the county road system of Lee County. Prohibited commercial use shall include but is not limited to:

- A. The sale, or display for sale, of any merchandise, including vehicles; and,
- B. The servicing or repair of any vehicle except, for the rendering of emergency service; and,
- C. The storage of vehicles being serviced or repaired on abutting property or elsewhere; and,
- D. The solicitation for the sale of goods, property, or services for charitable, educational, religious or political purposes; and,
- E. The solicitation of funds or donations for educational, religious or political purposes; and

- F. The display of any advertising other than that advertising in compliance with Chapter 30 of the Lee County Land Development Code, as may be amended, renumbered, codified or replaced.

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. Annual Charitable Solicitation Drives

1. Such drives must be conducted by sworn and/or certified law enforcement officers or firefighters.
2. Organized charities may apply for a permit to solicit charitable contributions within the county rights-of-way provided such charitable solicitations are conducted by sworn and/or certified law enforcement officers or firefighters, and meet all of the permit requirements of

Administrative Code AC-8-1, and any other supplemental Administrative Code provisions hereinafter adopted.

H. 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.
2. Only business entities meeting the requirements of Section 5.H.1 (above) are permitted to have such designated signs. In order to have such designated signs installed by the Lee County Department of Transportation or the Florida Department of Transportation business entities will.
 - a. Submit an application through the Lee County Department of Public Resources for a permit to have the Lee County Department of Transportation and/or the Florida Department

of Transportation install Visitor Center Designation Signs.

- b. Reimburse the County for the total cost to fabricate and install the sign(s) immediately upon issuance of the permit.

SECTION FIVE: **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.

SECTION SIX: **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. Prosecution before the Lee County Code Enforcement Board; and
- C. Any other relief available pursuant to law.

SECTION SEVEN: **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: 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: CODIFICATION 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: EFFECTIVE DATE

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

Commissioner Hall made a motion to adopt the foregoing Ordinance, seconded by Commissioner Janes. The vote was as follows:

BOB JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 13th day of May, 2008.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BY: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Ray Judah
Ray Judah, Chair



APPROVED AS TO FORM:

BY: Audrea h. Fraser
Office of the County Attorney

S:\GSI\ORDINANCE\08-07 Amending & Restating all ROWs ordinances 88-11,89-28, 90-42,92-29,96-24.wpd ARF



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

May 20, 2008

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated May 15, 2008 and certified copies of Lee County Ordinance Nos. 08-07 and 08-08, which were filed in this office on May 16, 2008.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

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MINUTES OFFICE

2008 MAY 23 AM 8:20

DIRECTOR'S OFFICE

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