

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 21 - 04

AN ORDINANCE OF THE CITY OF BONITA SPRINGS FLORIDA, AMENDING THE BONITA SPRINGS CITY CODE, CHAPTER 34 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, ARTICLE II – USES OF RIGHTS-OF-WAY, 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, SCRIVENER’S ERRORS, AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs, Florida is the governing body of Bonita Springs; and

WHEREAS, Sections 316.006(2) and 316.008, Florida Statutes, authorizes the City Council 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, pursuant to the Article VIII of the Florida Constitution, the City of Bonita Charter and Section 166.021, Florida Statutes, the City Council is authorized to adopt ordinances necessary for the exercise of its powers in for health, safety, and general welfare; and

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

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

Section 1. Recitals Adopted.

That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby incorporated as a part of this Ordinance.

Section 2. Amending City Code

The Bonita Springs City Code is hereby amending Chapter 34 – Streets, Sidewalks and Other Public Places. Article II – Uses of Rights-of-Way, Division 1 – Generally, and Division 2 – Commercial Uses of the City’s Code, with deletions depicted with ~~strikethroughs~~ and underlined language as additions below:

Sec. 34-19. Dangerous use public rights-of-way.

- (1) Except as provided herein, or as otherwise permitted by law, it is unlawful to make any use of any 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:
 - a. Stopping, standing or otherwise occupying a median that is not a sufficient pedestrian refuge on an arterial or collector road 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 the back of curb to back of curb.
 - b. 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 moto vehicle is located on the travelled portion of an arterial or collector road and is not legally parked.
 - c. For the purpose of this Division, the phrase “public rights-of-way” shall be defined as set forth in Section 334.03(22), Florida Statute, as amended.

(2) Nothing in this section shall prohibit the following:

- a. Law enforcement, fire and rescue, or other government employees or contractors acting within the scope of their lawful authority.
- b. A person conducting inspection, construction, maintenance, repair, survey, or legally authorized services.
- c. A person responding to lend aid during an emergency situation.
- d. Entering or exiting a bus or other public transit system.
- e. Use of public roads and rights-of-way that have been closed to vehicular traffic for a special event permitting by the appropriate governmental entity.
- f. Activities expressly authorized pursuant to a utility franchise agreement.

Sec. 34-20. Enforcement.

- (a) Any person who violates any provision of this Division shall, upon conviction, be punished as provided in Section 1-15 and may be enforced by the Lee County Sherriff.
- (b) The City Council may institute in any court, or before any administrative board or special master of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Division or of any order or regulation made in connection with its administration or enforcement, and the court, administrative board or special master shall adjudge to the city such relief by way of injunction or any other remedy allowed by law or otherwise, to include mandatory injunction, as may be proper under all of the facts and circumstances of the case in order to fully effectuate the regulations adopted in orders and rulings made pursuant thereto. Each separate occurrence of a violation of this Division shall constitute a separate offense, and shall be punishable as such hereunder.

Sec. 34-42. 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 city. Prohibited commercial use shall include, but is not limited to:

- (1) The sale, or display for sale, of any merchandise, including vehicles;

- (2) The servicing or repair of any vehicle except for the rendering of emergency service;
- (3) The storage of vehicles being serviced or repaired on abutting property or elsewhere;
- (4) The solicitation for the sale of goods, property, or services for charitable, educational, religious or political purposes;
- ~~(5) The solicitation of funds or donations for charitable, educational, religious or political purposes, except when performed by sworn law enforcement employed by the county sheriff's office or firefighters employed by the fire control and rescue district within their jurisdiction, limited to no more than two weekends per year for each organization, and following the procedures set forth in the F.S. § 316.2045; and~~
- (56) The display of any advertising other than that advertising in compliance with the chapter 6 of the Land Development Code, as may be amended.

Section 3. **Severability**

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

Section 4. **Conflicts of Law**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs ordinance or Florida Statutes, the more restrictive shall apply.

Section 5. **Codifications and Scrivener's Error**


It is the intention of the City Council that the provisions of this Ordinance shall become and be made part of the Bonita Springs Code; that sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and that any typographical errors which do not affect the intent may be authorized by the City Manager without need of public hearing, by filing a corrected copy with the City Clerk. It is further the intent of the City Council that the provisions of this Ordinance may be modified as a result of consideration that may arise during public hearing(s) and that such modifications shall be incorporated into the final version.

Section 6. **Effective Date**


This Ordinance shall be effective immediately upon its adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 19th day of May, 2021.


AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM: 

City Attorney

Vote:

Carr	Aye	Gibson	Aye
Purdon	Aye	Quaremba	Aye
Forbes	Aye	Steinmeyer	Aye
Corrie	Aye		

Date filed with City Clerk: 5/19/2021