

LEE COUNTY ORDINANCE NO. 21-__

AN ORDINANCE OF LEE COUNTY, FLORIDA PROVIDING FOR COMMERCIAL SIDEWALK USE WITHIN THE BOCA GRANDE HISTORIC DISTRICT; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County (BOCC), is the governing body in and for Lee County, Florida; and,

WHEREAS, the Legislature of the State of Florida has, pursuant to Chapter 125, Florida Statutes, delegated the responsibility to local governmental units and authorization to adopt regulations designed to promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the BOCC created the Historic District program (Ordinance No. 88-62) to protect certain historic and prehistoric archaeological sites and historic areas, structures, buildings, improvements and appurtenances, both public and private, both individual properties and districts, which are reminders of past eras, events and persons important in local, state and national history; or that provide significant examples of past architectural styles that are unique and irreplaceable assets to the county; and

WHEREAS, the Boca Grande Historic District was designated by HD90-05-01 recorded in the Official Record Books of Lee County, Florida in OR Book 2164 Pages 1166 through 1203; and

WHEREAS, the BOCC finds that allowing limited commercial uses on sidewalks within the Boca Grande Historic District promotes the economic and general welfare of the public; and

WHEREAS, the BOCC finds it is in the best interests of the health, safety, and welfare of the people of Lee County to establish reasonable regulations for allowing limited commercial uses on sidewalks within the commercial areas in the Boca Grande Historic District.

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

SECTION ONE: AUTHORITY

The provisions of this Ordinance are enacted pursuant to the statutory and home rule powers of the County to establish and enforce regulations necessary for the protection of the public.

SECTION TWO: TITLE

This Ordinance is titled and may be cited as the “Boca Grande Historic District Commercial Sidewalk Use Ordinance.”

SECTION THREE: APPLICABILITY

1. This Ordinance will be applicable to properties in the Boca Grande Historic District described in OR Book 2164 Pages 1166 through 1203 that have a commercial use permit and right-of-way frontage on:
 - Park Avenue between 3rd Street West and 5th Street West ,or
 - East Railroad Avenue between 3rd Street West and 5th Street West, or
 - 4th Street West between Gilchrist Avenue and Palm Avenue.
2. Use of a sidewalk in conjunction with a permitted commercial use on adjacent property is subject to the provisions of this Ordinance. For purposes of this Ordinance, “permitted commercial use on adjacent property” means occupancy of a building or structure for a commercial use pursuant to a Use Permit and/or Certificate of Occupancy issued by Lee County.
3. For purposes of this Ordinance, “sidewalk” means the concrete surface within a public right-of-way designed and constructed for preferential use by pedestrians. Examples of sidewalk uses include, but are not limited to, outdoor seating in conjunction with a café, outdoor display of items for sale in conjunction with a retail establishment, and items used to define areas for people to gather in conjunction with any permitted commercial uses.

SECTION FOUR: REQUIREMENTS

1. The following objects may be located on sidewalks: tables, chairs, benches, portable outdoor heaters, planters, temporary signage, sales racks, and other objects not anticipated in this Ordinance, if similar in nature and not contrary to the purpose and intent of this Ordinance.
2. Placement of objects must be maintained in a manner that meets the following standards:
 - a. A clear path for pedestrian travel with a minimum width of three and one half (3 ½) feet and a clearance of height of seven (7) feet is provided and pedestrian access to public sidewalks, access ramps or doorways is not obstructed.

- b. Outdoor display must be located against the building wall and may not be more than two (2) feet deep. The display area may not exceed fifty (50) percent of the length of the storefront.
 - c. Objects may not be located so as to block or impede:
 - i. Use of parking spaces, bike racks, streets, or other areas intended for vehicle use;
 - ii. Ingress or egress into buildings, parking areas, or other public spaces;
 - iii. Access required by local, state or federal building or safety codes;
 - iv. Sight triangles/spaces at street intersections; and
 - v. Drainage infrastructure (gutters, swales, etc.).
3. Any seating, tables, umbrellas and outdoor displays must be removed and stored when the business is closed. All items must be removed from the sidewalk in the event of hurricane, or other safety hazard event when an authorized agent of Lee County makes such a request.
 4. The street right-of-way adjacent to any approved use shall be properly maintained for safety and cleanliness. Litter, dirt, grime, grease, and food shall not be permitted to accumulate at any time.
 5. Items allowed on the sidewalks must not be permanently attached to the sidewalk or cause damage to the sidewalk or any other surface.

SECTION FIVE: WAIVER OF LIABILITY

Commercial use of the sidewalk is at the sole risk of the business owner. Lee County assumes no liability with respect to any such business or use, and makes no assurances regarding the suitability of the sidewalk for such business or use.

SECTION SIX: SUSPENSION AND/OR TERMINATION

1. The County Manager, or designee, retains the right to amend or terminate the Boca Grande Historic District Commercial Sidewalk Use program at any time. Business owners using a sidewalk for commercial use will have 30 days to remove or modify objects located on the sidewalk as required by any changes to the program.
2. The County Manager, or designee, may also temporarily order the discontinuation of the commercial use of a sidewalk at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. These situations include, but are not limited to, planned events, repairs to the street or sidewalk, or any emergencies occurring in the area. To the extent possible, Lee County shall provide prior written notice of the time period during which commercial use of a

sidewalk will not be permitted, but failure to give notice shall not affect the right and power of Lee County to prohibit commercial use of a sidewalk at any particular time.

3. Upon termination or temporary discontinuation of the program, the sidewalk must be surrendered to Lee County in the same condition as prior to commercial use, allowing for reasonable use and wear, and damage by acts of God. All property located on the sidewalk before redelivery to Lee County must be removed, and the sidewalk must be restored to the condition in which it existed before their placement. Any signs and markings created or used in connection with the commercial use must be temporary and removable; painting the sidewalk or any other fixed object is strictly prohibited.

SECTION SEVEN: INVESTIGATING AND ENFORCING AUTHORITY

The Director of Lee County Parks and Recreation and the Director of Lee County Department of Community Development, or their designee(s), are empowered to investigate and enforce the provisions of this ordinance.

SECTION EIGHT: PENALTIES

1. Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provisions of this ordinance, will, upon conviction, be subject to the following penalties:
 - a. Criminal penalties.
 - a. A fine not to exceed two hundred fifty dollars (\$250.00) per day;
 - b. Imprisonment in the county jail for a term not exceeding sixty (60) days; or
 - c. By both a fine and imprisonment.
 - b. Civil penalties.
 - a. The county shall be entitled to injunctive relief to enjoin and restrain any person from violating the provisions of the article; and
 - b. Prosecution before the county hearing examiner.
 - c. Any other relief available pursuant to law.
2. Continuing violations. Each day that a nuisance accumulation continues to exist after the expiration of the period given for abatement by the hearing examiner shall constitute a separate offense, punishable as provided above.

SECTION NINE: MODIFICATION

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 TEN: 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 will apply.

SECTION ELEVEN: SEVERABILITY

It is the Board of County Commissioners' intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION TWELVE: CODIFICATION AND SCRIVENER'S ERRORS

The 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 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 THIRTEEN: EFFECTIVE DATE

This ordinance will take effect immediately upon receipt of the official acknowledgement of the Office of Secretary of State of Florida that this Ordinance has been filed with said office.

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

Kevin Ruane	_____
Cecil Pendergrass	_____
Ray Sandelli	_____
Brian Hamman	_____
Frank Mann	_____

DULY PASSED AND ADOPTED this ____ day of _____, 2021.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Kevin Ruane, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney