

LEE COUNTY ORDINANCE NO. 21-15

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

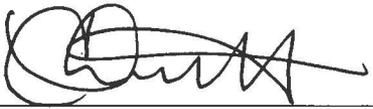
This ordinance will take effect immediately upon receipt of the official acknowledgement of the Office of Secretary of State of Florida that this Ordinance has been filed with said office.

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

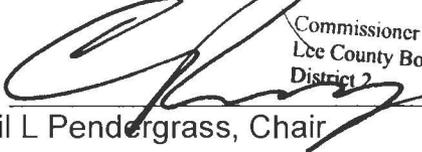
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Kevin Ruane	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 7th day of December, 2021.

ATTEST:
LINDA DOGGETT, CLERK

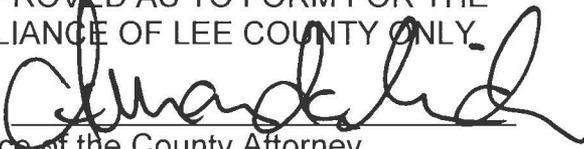
BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Cecil L Pendergrass, Chair
Commissioner Cecil L Pendergrass.
Lee County Board of County Comm
District 2



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY.

By: 
Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

December 9, 2021

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Mr. Christopher Jagodzinski

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 21-15, which was filed in this office on December 9, 2021.

Sincerely,

Anya Owens
Program Administrator

AO/lb

RECEIVED

By Chris Jagodzinski at 3:58 pm, Dec 09, 2021

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee COUNTY ORDINANCE #: 21-15
(e.g., 93-001)

PRIMARY KEYFIELD
DESCRIPTOR: Codes/Regulations

SECONDARY KEYFIELD
DESCRIPTOR: _____

OTHER KEYFIELD
DESCRIPTOR: _____

ORDINANCE DESCRIPTION: Boca Grande Sidewalk Use
(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: _____ AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____
REPEAL #2: _____ ; REPEAL #4: _____

(Others Repealed: List All That Apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: _____
KEYFIELD 1 CODE: _____ KEYFIELD 2 CODE: _____
KEYFIELD 3 CODE: _____

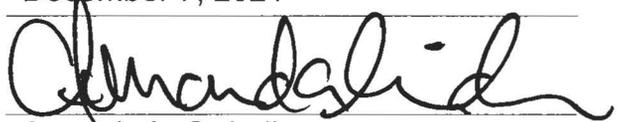
**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA HAND DELIVERY

DATE: December 7, 2021

TO: Commissioner Pendergrass
Chair, Board of County
Commissioners

FROM:


Amanda L. Swindle
Assistant County Attorney, Senior

RE: **Ordinance No. 21-15
Boca Grande Historic District Commercial Sidewalk Use Ordinance
Agenda Item Public Hearing #3 – December 7, 2021**

Attached, approved as to form, please find the original of the above-referenced ordinance adopted by the Board of County Commissioners on December 7, 2021.

The original ordinance is attached to the memorandum for execution. Kindly execute the ordinance at your earliest convenience and then forward to the Minutes Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Eileen Gabrick, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention via email.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than December 17, 2021.

Also attached please find the Data Retrieval form. Kindly include this ordinance in the Lee County Ordinance History.

Thank you for your prompt attention to this matter.

Attachments

VIA E-MAIL ONLY:

Laurel Chick, Manager, Internal Services
Joyce Conatser, Senior Fiscal Officer
Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Eileen Gabrick, Office Manager, Minutes Department
Andi Eggen, Legal Administrative Specialist (for ordinance history)

2021 DEC -8 AM 10:07

MINUTES DEPARTMENT

AGENDA ITEM REPORT

DATE: December 7, 2021
DEPARTMENT: County Attorney
REQUESTER: Amanda Swindle
TITLE: Public Hearing: Create Boca Grande Historic District Commercial Sidewalk Use Ordinance

I. MOTION REQUESTED

Conduct public hearing to adopt an ordinance to allow the commercial use of sidewalks within the Boca Grande Historic District.

II. ITEM SUMMARY

Allows certain commercial businesses within the Boca Grande Historic District to use the adjacent sidewalk for commercial purposes in conjunction with their permitted commercial use. This includes the placement of items such as tables, chairs, benches, portable outdoor heaters, planters, temporary signage, sales racks, and other similar objects. The commercial use of the sidewalk must not block or impede pedestrian traffic, and all items must be removed and stored when the business is closed.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

On November 2, 2021, the Lee County Board of County Commissioners directed staff to bring to public hearing an ordinance to allow commercial use of the sidewalks in the Boca Grande Historic District.

The Boca Grande Historic Preservation Board reviewed the proposed ordinance on August 11, 2021, and recommended approval.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	No funding required.
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	N/A
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	
F)	Fund: Program: Project: Account Strings:	
G)	Fund Type?	
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	11/9/2021	Ordinance
Map	11/9/2021	Backup Material
FAIS Form	11/9/2021	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
County Attorney	Wesch, Richard Wm.	Approved	11/9/2021 - 4:24 PM
Budget Services	Henkel, Anne	Approved	11/18/2021 - 8:04 AM
Budget Services	Winton, Peter	Approved	11/18/2021 - 11:41 AM
County Attorney	Swindle, Amanda	Approved	11/18/2021 - 2:22 PM
County Manager	Salyer, Glen	Approved	11/19/2021 - 9:07 AM