

**Village of Royal Palm Beach
Village Council
Agenda Item Summary**

Agenda Item:

PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 1048, AMENDING CHAPTER 21.7 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES. ARTICLE I. IN GENERAL. TO ADD ENTIRELY NEW SECTIONS 21.7-1. DEFINITIONS., 21.7-2. PROHIBITED USE OF PUBLIC ROAD RIGHTS-OF-WAY AND 21.7-3. ENFORCEMENT AND PENALTIES. TO REGULATE AND PROHIBIT CERTAIN ACTIVITIES IN VILLAGE RIGHTS-OF-WAYS.

Issue:

A recent (2022) study identified the State of Florida as the second-highest-ranked state in the country in pedestrian deaths, in both the total and as an average per person. Traffic crash data shows that Palm Beach County has experienced a number of vehicle/pedestrian crashes, including crashes causing death. The risk of such incidents is increased by the unexpected presence of pedestrians near a motor vehicle or within the travel lanes, including within medians or when engaged in person-to-vehicle or vehicle-to-person interactions. The inherent danger of such situations is heightened for certain higher traffic volume and/or speed roadways, such as interstate/intrastate highways and arterials and collector roads, and their approaches. The State of Florida and National Highway Traffic Safety Administration have both identified enhanced legislation, regulation, and enforcement as elements of a successful strategy for enhancing pedestrian safety.

The proposed ordinance would prohibit the dangerous use of certain designated public rights-of-way in a way that interferes with the safe and efficient movement of people and property. Prohibited uses include, specifically, physical interactions while a vehicle is in the travel lanes and stopping or remaining in a median longer than needed to safely cross, subject to certain exceptions.

The ordinance would be enforced using the Village's Code Enforcement Chapter 2, with violations resulting in a civil citation and fine set by resolution of the Village Council.

Recommended Action:

Staff recommends Approval of Ordinance No. 1048 on second reading.

Initiator:	Village Manager	Agenda Date	Village Council
Comm. Dev. Director	Approval	7/11/2024	Action

ORDINANCE NO. 1048

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, AMENDING CHAPTER 21.7 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES. ARTICLE I. IN GENERAL. TO ADD ENTIRELY NEW SECTIONS 21.7-1. DEFINITIONS., 21.7-2. PROHIBITED USE OF PUBLIC ROAD RIGHTS-OF-WAY AND 21.7-3. ENFORCEMENT AND PENALTIES. TO REGULATE AND PROHIBIT CERTAIN ACTIVITIES IN VILLAGE RIGHTS-OF-WAYS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Village of Royal Palm Beach, Florida (“Village”), as provided in Article VIII, Section 2(b), the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, enjoys all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions and render municipal services and may exercise any power for municipal purposes; excepted as expressly prohibited by law; and

WHEREAS, the Village, as provided in Section 166.021(3), Florida Statutes, may enact legislation concerning any matter upon which the state legislature may act; except when expressly prohibited by law; and

WHEREAS, the Village, pursuant to such grants of authority and further pursuant to other provisions of Florida law, may regulate the use of roads, streets and highways and rights-of-ways under their jurisdiction; and

WHEREAS, the Village Council recognizes that 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 2022 Dangerous By Design study which utilizes raw National Highway Traffic Safety Administration data identified Florida as the second-highest ranked state in the country from 2016-2020 in both total number of pedestrian deaths and average pedestrian deaths per 100,000 people per year; and

WHEREAS, according to the University of Florida Signal Four Analytics database of traffic safety data from the Florida Department of Highway Safety and Motor Vehicles, Palm Beach County experienced 133 vehicle/pedestrian crashes from which there were 57 fatalities in

2021; 133 vehicle/pedestrian crashes from which there were 71 fatalities, in 2022; and 143 vehicle/pedestrian crashes from which there were 58 fatalities in 2023; and

WHEREAS, in its most recent Florida Pedestrian and Bicycle Strategic Safety Plan, dated September 2021, the Florida Department of Transportation evaluated Florida pedestrian and bicycle safety strategies to combat the comparatively high percentage and recommended enhanced "legislation, regulations, policies and programs to support the overall goal of eliminating fatal and serious crashes involving people walking and biking"; and

WHEREAS, the unexpected presence of pedestrians near motor vehicles within the traveled portion of a road, for the purpose of transacting business or otherwise, increases the risk of collisions, regardless of whether the motor vehicle is in motion or stopped at a traffic signal; and

WHEREAS, a median zone serves at least three purposes to provide: 1) a buffer between traffic moving in opposite directions, 2) refuge to pedestrians crossing a street, and 3) landscaping or pedestrian amenities within the public realm; and

WHEREAS, pedestrians remaining on or within median zones of highly traveled public roads for purposes other than crossing the road increases the risk of collision between motor vehicles and pedestrians; and

WHEREAS, person-to-vehicle interactions at intersections on highly traveled public roads are inherently dangerous and have the potential to distract motorists from their driving; and

WHEREAS, the time necessary to complete such interactions may cause the drivers to delay proceeding in accordance with traffic signals or cause a person within a right-of-way while traffic is stopped temporarily to remain in the roadway after traffic resumes movement; and

WHEREAS, the Council recognizes the need for, and the benefits of significant government interests in vehicular safety and the free flow of pedestrian and vehicular traffic; and

WHEREAS, the Council has a significant governmental interest in providing and promoting the health, safety, and general welfare of the public by reducing distractions to motorists and unsafe pedestrian movement within or near travel lanes; and

WHEREAS, protecting the health, safety, and welfare of pedestrians and motorists is a significant government interest. See *Cox v. State of New Hampshire*, 312 U.S. 569, 574 (1941) ("[t]he authority of a [governmental entity] to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent

with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend."); see *Bischoff v. Fla.*, 242 F. Supp. 2d 1226, 1237 (M.D. Fla. 2003) ("[t]he purpose behind [a legislative act] ... to ensure public safety on roads ... is a compelling government interest."); and

WHEREAS, the purpose of this ordinance is to regulate the use of the public rights-of way within the Village 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, this ordinance is not intended to limit any person from exercising his or her constitutional rights or engaging in any other constitutionally protected activity unless their conduct also violates the specific terms of this ordinance. See *McDonald v. City of Pompano Bch., Fla.*, 556 F. Supp. 3d 1334, 1349 (S.D. Fla. 2021) ("But the act of sitting or standing on medians generally ... isn't by itself communicative."); also *Crocker v. Betty*, 995 F.3d 1232, 1242 (11th Cir. 2021) ("Needless to say, I-95 's median isn't a public forum of any stripe."); and

WHEREAS, this ordinance is intended to apply evenhandedly to all persons who engage in the activities proscribed herein, regardless of whether a message is intended; and

WHEREAS, these regulations are narrowly tailored to apply only to designated roadways that present greater risks due to generally higher pedestrian or vehicular traffic volume and congestion and to leave open ample alternative channels of communication; and

WHEREAS, the Village has held all required public hearings and has provided public notice in accordance with applicable State statutes and Village ordinances; and

WHEREAS, the Village Council of the Village of Royal Palm Beach has determined that the proposed revisions to Chapter 21.7 of the Village Code of Ordinances are in the best interests of the general welfare of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, THAT:

Section 1: Chapter 21.7 Streets, Sidewalks and Other Public Places. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article I. In General. to add entirely new Sections 21.7-1. Definitions., 21.7-2. Prohibited Use of Public Road Rights-of-Way and 21.7-3. Enforcement and Penalties. to regulate and prohibit certain activities in Village rights-

of-ways; providing that Chapter 21.7, Article I shall hereafter read as follows:

ARTICLE I. – IN GENERAL

Sec. 21.7-1. - Definitions.

When used in this Ordinance, the following words, terms, and phrases shall have the meanings set forth below, except where the context clearly indicates a different meaning:

Designated Roadway means the interstate/intrastate system (including interstate/intrastate entrance and entrance ramps), and arterial and collector roadways and rights-of-way. For purposes of this definition, arterial and collector roadways and rights-of-way shall be those roadways as defined in Section 21.7-27 of the village code. It also encompasses the first 440 feet of local roadways intersecting with these designated roadways and any areas within the rights-of-way not designated or intended for pedestrian use. The portions of these designated roadways subject to this ordinance include the portions within the area open for vehicular traffic (including medians), plus four feet outside of the shoulders and/or curbs.

Median means the area dividing a public road that separates lanes of traffic traveling in opposite directions or to control and direct vehicular movement, such as turning movements, to include traffic islands. This area may be paved or unpaved, marked or unmarked, landscaped or non-landscaped, and curbed or uncurbed.

Motor vehicle means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

Legally parked means a vehicle that is standing, stopped, or parked in an area designated, or legally authorized, for parking.

Person means any natural person or nongovernmental entity or organization of any kind.

Public road means all roads which are open and available for use by the public and dedicated to the public use according to law or by prescription pursuant to Section 335.01(1), Florida Statutes.

Right-of-way means land in which the State, the Department of Transportation, a county, or municipality owns the fee or has an easement devoted to or required for use as a transportation facility pursuant to Section 334.03, Florida Statutes.

Sheriff means the Palm Beach County Sheriff.

Traveled portion of a designated roadway means any portion of a designated roadway (including travel lanes, turn lanes, bike lanes, and shoulders) that is normally used by moving motor vehicle traffic that is not an area designated for or routinely used as a parking area for the general public.

Sec. 21.7-2. - Prohibited Use of Public Road Rights-of-Way.

(a) Except as provided herein, or as otherwise permitted by law, it is unlawful to make any use of the 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, street, or highway. Such prohibited activity includes by way of example and not limitation:

- i. Engaging in any physical interaction between a pedestrian and an occupant of a motor vehicle, including the transfer of any product, material, or monies, while the motor vehicle is located on the traveled portion of designated roadway and is not legally parked.
- ii. Stopping, sitting, standing, or otherwise occupying or remaining in a median on a designated roadway by a person when that person is not in the process of lawfully crossing the road in accordance with applicable traffic and safety laws, regulations, and ordinances. Stopping, sitting, standing, or otherwise occupying or remaining in a median 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.

(b).Nothing in this section shall prohibit the following:

- i. Law enforcement, fire and rescue, or other government employees or contractors acting within the scope of their lawful authority;
- ii. A person conducting inspection, construction, maintenance, repair, survey, or other legally authorized services;
- iii. A person responding to lend aid during an emergency situation or who is within the roadway due to a mechanical or physical defect in his or her vehicle that occurred while driving in the roadway;
- iv. Entering or exiting a bus or other public transit system; or

v. Use of public road rights-of-way that have been closed to vehicular traffic for a special event permitted by the appropriate government entity.

Sec. 21.7-3. - Enforcement and Penalties.

- (a) This ordinance shall be enforced pursuant to Chapter 2, Article V., Division 2 of the code of ordinances of the village of royal palm beach.
- (b) Penalties for violation of this ordinance shall be set by resolution of the village council.
- (c) Each violation of this ordinance shall constitute a separate violation.
- (e) Due to the transient nature of these activities, each incident occurring more than every twenty (20) minutes after the violation has been corrected shall constitute a separate violation.
- (f) A person who aids or participates in a violation for which a civil penalty may be assessed under this ordinance shall be considered a principal in the violation and may be assessed a civil penalty of up to the maximum amount prescribed for that violation.

Section 2: Each and every other Section and Sub-section of Chapter 21.7. shall remain in full force and effect as previously enacted.

Section 3: All Ordinances or parts of Ordinances in conflict be and the same are hereby repealed.

Section 4: Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 5: Specific authority is hereby granted to codify this Ordinance.

Section 6: This Ordinance shall take effect immediately upon passage.

FIRST READING this 20th day of June, 2024.

SECOND AND FINAL READING this 11th day of July, 2024.

VILLAGE OF ROYAL PALM BEACH

MAYOR FRED PINTO

ATTEST:

(Seal)

DIANE DISANTO, VILLAGE CLERK