

ORDINANCE 2022-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA RELATING TO THE SAFE USE OF PUBLIC STREETS; AMENDING SECTION 106-1 DEFINITIONS TO INCORPORATE ADDITIONAL DEFINITIONS; CREATING A NEW ARTICLE IN CHAPTER 106 OF THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA ENTITLED “ARTICLE V. – PEDESTRIAN SAFETY ORDINANCE”; PROVIDING FOR RESTRICTIONS ON INDIVIDUALS STANDING, SITTING, OR REMAINING WITHIN CERTAIN AREAS LOCATED ALONG THE ON-RAMPS AND OFF-RAMPS OF INTERSTATE 95 ON ARTERIAL ROADS, COLLECTOR ROADS, AS SUCH ROADS ARE DEFINED BY THE FLORIDA STATUTES; PROVIDING FOR PENALTIES; PROVIDING FOR AREA EMBRACED AND ENFORCEMENT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the Board of County Commissioners of Brevard County, Florida, (“Board”) hereby finds that the primary purpose of public streets and rights-of-way is to enable pedestrians and lawfully permitted vehicles to safely and efficiently move from place to place, to facilitate the delivery of goods and services, and to provide the general public with access to goods and services; and

WHEREAS, the National Highway Traffic Safety Administration of the U.S. Department of Transportation reports that in 2019, a pedestrian was killed every 85 minutes in traffic crashes and the number of pedestrians injured increased 1.3 percent from 2018; and

WHEREAS, the American Association of State Highway and Transportation Officials (AASHTO) Green Book and the Florida Intersection Design Guide provide studies of perception-reaction times required by the driver to make a decision, and also establishes standards for right-of-way design that anticipate a motorist who frequently uses a corridor to make a decision in as little as one second or less and noting that an unfamiliar driver may require three or more seconds; and

WHEREAS, the AASHTO Green Book and the Florida Intersection Design Guide provide standards for roads in consideration of a one second decision providing for decision distances in an urban area of 50 feet at the rate of 35 mph, 75 feet at the rate of 45 mph and 100 feet at the rate of 55 mph; and

WHEREAS, according to the *Pedestrian Traffic Fatalities by State – Preliminary Data Report* (2020) prepared for the Governors Highway Safety Association (“Governors 2020

Report”), “[d]uring the 10-year period 2010-2019, the number of U.S. pedestrian fatalities increased by 46%, from 4,302 in 2010 to an estimated 6,301 deaths in 2019 ... This translates to approximately 2,000 additional pedestrian deaths in 2019 compared to 2010. This increase in pedestrian deaths is even more concerning considering that all other traffic deaths increased by just 5% during this same period”;¹ and

WHEREAS, according to the Governors 2020 Report, Florida ranked third (3rd) in the United States in terms of number of pedestrian fatalities during the first six (6) months of 2020, with 332 deaths;² and

WHEREAS, the Signal Four Analytics database compiles data from the Florida Department of Highway Safety and Motor Vehicles regarding crashes, injuries, and fatalities on Florida roadways; and

WHEREAS, Signal Four has reported that as of April 21, 2022 there have been 25 fatalities resulting from crashes on roadways in Brevard County in 2022, 11 of which were pedestrian fatalities;³ and

WHEREAS, in the last five years, pedestrians were involved in 1.8 percent of all crashes in Brevard County but constituted 36 percent of all crash fatalities for that period;⁴ and

WHEREAS, the Space Coast Transportation Planning Organization evaluated the Brevard County (“County”) transportation system and analyzed and collected information relating to traffic and crashes; and

WHEREAS, from 2016 to 2020, over 51,000 crashes occurred on Brevard County roadways, with 29.35% or 14,972 of those crashes occurring at intersections;⁵ and

WHEREAS, in 2020 alone, 2,599 crashes occurred at Brevard County intersections;⁶

WHEREAS, from 2016 to 2020, 332 fatal crashes, 16,811 crashes involving injury, and 34,328 crashes involving property damage occurred in the County; with 45 fatal crashes occurring within the influence area of an intersection;⁷ and

¹Pedestrian Traffic Fatalities by State – Preliminary Data Report (2020) prepared for the Governors Highway Safety Association (“Governors 2020 Report”), p. 5. Available at: <https://www.ghsa.org/sites/default/files/2021-03/Ped%20Spotlight%202021%20FINAL%203.23.21.pdf> (last accessed August 27, 2021).

²Governors 2020 Report, p. 9.

³Signal Four Analytics, Florida Traffic Safety Dashboard, *available at*: <https://signal4analytics.com/> (last accessed April 22, 2022).

⁴*Id.*

⁵Space Coast Transportation and Planning Organization, *State of the System Report*, *available at* <https://www.spacecoasttpo.com/home/showpublisheddocument/1120/637799256299770000> (last accessed March 23, 2022).

⁶*Id.* at 33.

⁷*Id.* at 37.

WHEREAS, in 2020, there were 353 serious injury and fatal crashes throughout the County, with 61 such crashes being fatal;⁸ and

WHEREAS, the Board therefore finds that a safety issue exists for pedestrians and motorists alike when public roads and thoroughfares are encroached upon by pedestrians for non-transitory purposes; and

WHEREAS, the Board understands that it has the authority to enforce reasonable time, place, and manner restrictions in a public forum as long as said restrictions are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample channels of communications; 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. Florida*, 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, in order to ensure the public health, safety, and welfare of the citizens of and visitors to the County, the Board hereby finds that no person shall be allowed to remain in designated areas along the on-ramps or off-ramps of Interstate 95; and

WHEREAS, furthermore, based on available data, certain intersections within the County have been determined to be high-crash intersections which create unsafe situations and pose increased threats of crashes for pedestrians and motorists alike; and

WHEREAS, pedestrians standing, sitting, or remaining within these high-crash intersections of the County pose a threat to the safety and well-being of both pedestrians and vehicular traffic; and

WHEREAS, it is determined by the Board that in order to ensure public safety and minimize the risk of vehicle and pedestrian crashes, no person shall willfully obstruct the free, convenient, and normal use of these high-crash intersections by impeding, hindering, stifling, or restraining vehicular traffic thereon, unless an emergency or crash exists which justifies the individual’s presence within such area(s).

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that Section 106-1 of the Code of Ordinances of Brevard County, Florida, is amended to read as follows, and a new article in

⁸*Id.*, at 36.

Chapter 106 of the Code of Ordinances entitled “Article V. – Designated Safety Areas” is hereby created to read as follows:

Section 1. Section 106-1, “Definitions,” is amended to read as follows:

The definitions applicable to F.S. Ch. 316 apply to this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

Board means the Board of County Commissioners of Brevard County, Florida.

County means Brevard County, Florida.

Arterial road has the same definition as found in F.S. Ch. 334, as amended from time to time, but means a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, every United States numbered highway is an arterial road.

Collector road has the same definition as found in F.S. Ch. 334, as amended from time to time, but means a route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

Crosswalk has the same definition as found in F.S. Ch. 334, as amended from time to time, but means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs from the edges of the traversable roadway. This includes any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. This definition is as may be amended from time to time.

Designated parking space means any parking space posted with a sign bearing the international symbol of accessibility or the caption “PARKING BY DISABLED PERMIT ONLY,” or bearing both such symbol and caption.

Disabled person means any person with severe physical disability and having temporary or permanent mobility problems that substantially impair their ability to ambulate and who has been issued either a parking permit under F.S. § 316.1958 or § 320.0848 or a license plate under F.S. § 320.084, § 320.0842, § 320.0843 or § 320.0845.

Median means paved or landscaped areas in the middle of roadways that separate motor vehicle traffic traveling in opposite directions.

Motor vehicle has the same definition as found in F.S. Ch. 316, as amended from time to time, but means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive device, personal delivery device, swamp buggy, or moped.

Obstruct traffic means to walk, stand, sit, lie, or place any object or oneself in such a manner as to block the normal passage of another person or a vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact.

Official signs means any sign which is placed or erected by the authority of a public body having jurisdiction for the purpose of regulating traffic or parking.

On-ramp of Interstate 95 means the pavement providing access to Interstate 95 and includes a one hundred fifty (150) foot setback buffer as measured from the edge of pavement.

Off-ramp of Interstate 95 means the pavement constituting any marked exit from Interstate 95 by which vehicles leave the interstate, and includes a one hundred fifty (150) foot setback buffer measured from the edge of pavement.

Pedestrian has the same definition as found in F.S. Ch. 316, as amended from time to time, but means any person afoot.

Person has the same definition as found in F.S. Ch. 316, as amended from time to time, but means any natural person, firm, co-partnership, association, corporation, or any other legal entity.

Public parking space means any parking space on private property which the owner, lessee, or person in control of such property provides for use by members of the public other than employees of such owner, lessee or person, including, but not limited to, parking spaces at shopping centers, stores, offices, motels, malls, restaurants and marinas.

Public street means all portions of any public roadway normally available for use by motor vehicles, including turn lanes, marked bicycle lanes, and emergency stopping lanes, as well as all crosswalks, medians or traffic islands within such roadways. Public street shall not include sidewalks or other areas adjacent to the roadway.

Sidewalk has the same definition as found in F.S. Ch. 316, as amended from time to time, but means the portion of a street between the curbline, or the lateral line, and the adjacent property lines, intended for use by pedestrians.

Street or highway has the same definition as found in F.S. Ch. 316, as amended from time to time, but means the entire width between the boundary lines of every way or

place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

Traveled portion includes travel lanes, turn lanes, and other portions of the public streets that are generally used for motor vehicle travel.

Vehicle has the same definition as found in F.S. Ch. 316, as amended from time to time, but means every device in, upon, or by which any person or property is, or may be, transported upon a public street, bicycle path or lane, or entrance or exit ramp of interstate highways, including, but not limited to, cars, trucks, semi-trucks, vans, buses, motorcycles, mopeds, bicycles, and scooters.

Section 2. Chapter 106, “Article V. – Designated Safety Areas” is hereby created to read as follows:

Sec. 106-200. Creation, Findings, and Intent. Chapter 106, Article V – Pedestrian Safety Ordinance, of the Code of Ordinances of Brevard County, Florida is hereby created. The Board determines and declares that ensuring public health and safety is an essential government function. Individuals that stand, sit, or remain, or otherwise obstruct traffic within areas located within and along arterial roads and collector roads in the County create dangerous situations for both pedestrians and motorists alike. Due to this threat, the Board finds it reasonable and necessary to prohibit all individuals from standing, sitting, or remaining in the areas located along the on-ramps and off-ramps of Interstate 95, and prohibit any non-exempt individuals from standing, sitting, or remaining in the areas surrounding arterial roads and collector roads.

Sec. 106-201. Construction. This Ordinance shall be broadly construed to affect its purpose of protecting public health, safety, and welfare of pedestrians and motorists alike along the on-ramps and off-ramps of Interstate 95, and surrounding the arterial roads and collector roads within Brevard County. It is the intent of this article to assure the free, orderly, undisrupted movement of vehicles on public streets within the County; and to provide for safety in the interest of pedestrians and occupants of vehicles located on certain public streets within the County. This article is intended to apply evenhandedly to all persons who engage in the activities proscribed herein, regardless of whether a message is intended. This article is intended to be narrowly-tailored to serve the compelling government interest of public safety, and to leave open ample alternative channels of displaying advertising, distributing goods and materials, and soliciting personal, business, and charitable donations.

Sec. 106-202. Authority. Pursuant to F.S. Ch. 125, the Board is authorized to adopt laws in order to ensure the public health, safety, and welfare. This responsibility includes the authority to develop and enforce plans for the control of traffic that are not inconsistent with law, which acts are in the common interest of the people of the County.

Sec. 106-203. Prohibited Acts.

(a) Prohibited Acts. It shall be unlawful for a person to occupy a sidewalk, arterial or collector street, traffic median, crosswalk, bicycle lane, or on-ramps and off-ramps of Interstate 95 and either (1) interfere with or impact the safe and efficient movement of vehicular traffic within any lane of traffic, stopped at a traffic control device, or at an intersection, for any reason except as provided in subsection (b) below; or (2) exchange any physical item (including documents, money, pamphlets, narcotics, etc.) with an operator or other occupant of any vehicle that is within any lane of traffic, stopped at a traffic control device, or at an intersection, for any reason except as provided in subsection (b) below.

(b) Exceptions. This article does not apply to the following:

1. individuals rendering emergency assistance to occupants of motor vehicles or engaging in public services, including but not limited to, firefighting and rescue personnel, law enforcement personnel, emergency medical services personnel, military personnel, public works personnel, and public transportation personnel.
2. vehicles removed from a traveled portion of a street or highway.
3. activities between pedestrians on sidewalks.
4. vehicles involved in a crash or otherwise temporarily inoperable.
5. individuals lawfully exchanging information pursuant to F.S. § 316.062.
6. individuals rendering assistance to at-large animals occupying sidewalks, public streets, traffic medians, crosswalks, bicycle lanes, or on-ramps and off-ramps of Interstate 95.
7. individuals participating in permitted special events as described in Chapter 10, Brevard County Code of Ordinances.
8. activities occurring on streets and highways in areas zoned exclusively as residential districts under Chapter 62, Brevard County Code of Ordinances.
9. entering or exiting any bus or public transit system.
10. individuals conducting inspections, construction, maintenance, repairs, surveys or other legally authorized services.

Section 106-204. Penalties.

A first-time violation of this ordinance is a civil infraction punishable by a fine not to exceed \$500.00.

A second or subsequent violation is a misdemeanor of the second degree punishable by a fine not to exceed \$500.00 or up to sixty (60) days imprisonment in the County jail, or both such fine and imprisonment, as authorized by F.S. § 125.69.

Section 106-205. Area Embraced and Enforcement. The area embraced by this Ordinance shall be County-wide unless a conflicting ordinance is passed by a municipality, in which event this Ordinance shall no longer be effective within the boundaries of that municipality. The Brevard County Sheriff's Office and all municipal law enforcement departments may enforce the provisions of this article within their respective jurisdictions.

Section 3. Conflict. Unless preempted by State or Federal law or in conflict with local law, to the extent that the provisions of this Ordinance are more stringent, this Ordinance shall apply.

Section 4. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 6. Effective Date. This Ordinance shall become effective upon filing with the Office of Secretary of State of Florida.

DONE, ORDERED, AND ADOPTED in Regular Session, this ___ day of _____, 2022.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: Rachel M. Sadoff, Clerk of Court

By: Kristine Zonka, Chair
(as approved by the Board on _____)