

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", BY CREATING ARTICLE XV, "DANGEROUS USE OF PUBLIC RIGHTS-OF-WAY", SECTION 12-130, PERTAINING TO THE DANGEROUS USE OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF CAPE CORAL; 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 AND PENALTIES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, Constitution of the State of Florida, and Chapter 166, Florida Statutes, the Cape Coral City Council is authorized to adopt ordinances, except as otherwise provided by law; and

WHEREAS, Section 316.008, Florida Statutes, authorizes the City 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, Florida, 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, in 2020 alone, 22 pedestrians were tragically killed in crashes with motor vehicles within Lee County; and

WHEREAS, the Florida Department of Transportation Median Handbook identifies a median as being an adequate pedestrian refuge only when it is at least 6 feet (and preferably 8.5 feet) wide; and

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article XV, Section 12-130, is hereby created to read as follows:

CHAPTER 12: - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE XV: - DANGEROUS USE OF PUBLIC RIGHTS-OF-WAY

§ 12-130 Dangerous use of public 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 or right-of-way. Such prohibited activity includes by way of example and not limitation the following:

- (1) Stopping, standing or otherwise occupying a median that is not a sufficient pedestrian refuge on an arterial or collector road within the City of Cape Coral by a pedestrian

when that pedestrian is not in the process of lawfully crossing the road in accordance with applicable traffic and safety laws.

A. 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 section.

B. For purposes of this section, a “sufficient pedestrian refuge” shall be defined as a paved or unpaved median separating lanes of traffic, which is at least six (6) feet wide when measured from back of curb to back of curb.

(2) 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 motor vehicle is located in or on the travelled portion of an arterial or collector road within the City and is not legally parked.

(3) For purposes of this section, the phrase “public rights-of-way” shall be defined as set forth in Section 334.03(22), Florida Statutes, as may be amended.

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

(1) Law enforcement, fire and rescue, or other government employees or contractors while acting within the scope of their lawful authority.

(2) A person conducting inspection, construction, maintenance, repair, survey, or other legally authorized services.

(3) A person responding to lend aid during an emergency situation.

(4) Entering or exiting a bus or other public transit system.

(5) Use of public roads and rights-of-way that have been closed to vehicular traffic for any event, when a permit has been obtained from the City prior to such event, and the use of public roads and rights-of-way are in compliance with any conditions imposed by that permit.

(c) Enforcement and penalties.

(1) The authority to enforce the provisions of this section shall be vested in the Cape Coral Police Department.

(2) Any person who violates any of the provisions of this section shall be subject to a fine in an amount not to exceed \$500 or by imprisonment in the county jail for a term not exceeding sixty (60) days, or by both the fine and imprisonment.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 16th DAY OF June, 2021.


JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER aye
TATE aye
SHEPPARD aye
HAYDEN aye

NELSON aye
WELSH aye
WILLIAMS excused
COSDEN aye

ATTESTED TO AND FILED IN MY OFFICE THIS 21st DAY OF June, 2021.

Kimberly Bruns
KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:

Dolores D. Menendez
DOLORES D. MENENDEZ
CITY ATTORNEY
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