

ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 312.02 (PURPOSE), SECTION 312.04 (DEFINITIONS) AND SECTION 312.06 (PROHIBITED ACTIVITY) OF CHAPTER 312 (RIGHTS-OF-WAY) OF THE CODE OF INDIAN RIVER COUNTY, FLORIDA IN ORDER TO PROHIBIT DISTRIBUTION OF ITEMS IN PORTIONS OF THE RIGHTS-OF-WAY WITH DRIVERS AND PASSENGERS OF VEHICLES; AND PROVIDING FOR CODIFICATION, SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, AND AN EFFECTIVE DATE.

**WHEREAS**, a fundamental purpose of county government is to promote, protect and improve the health, safety and general welfare of the citizens of the county; and

**WHEREAS**, conduct and activities in the public rights-of-way can lead to significant driver distractions, leading to vehicle crashes; and

**WHEREAS**, data from the Indian River County Sheriff's Office demonstrate that an increase in crashes has occurred at several intersections in Indian River County; and

**WHEREAS**, distractions, such as exchanges between drivers and pedestrians at intersections, can interfere with or impede the safe flow of traffic at intersections leading to crashes; and

**WHEREAS**, crashes at intersections can threaten the lives of drivers, passengers and pedestrians within the right-of-way; and

**WHEREAS**, the Indian River County Board of County Commissioners finds that it is necessary to amend the Indian River County Code of Ordinances in order to ensure the protection of the public from activities that interfere with the safe and efficient movement of traffic; and

**WHEREAS**, the Indian County Board of County Commissioners desires to adopt this ordinance in order to protect drivers, passengers and pedestrians alike and promote the safe and efficient use of the rights-of-ways within Indian River County;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:**

**Section 1. Enactment Authority.**

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law,

for the purpose of protecting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

**Section 2. Legislative Findings.**

The Board finds that the “Whereas” clauses above are true and correct, and hereby incorporates such clauses as the legislative findings of the Board.

**Section 3. Amendment of Section 312.02 (Purpose), Section 312.04 (Definitions) and Section 312.06 (Prohibited Activities) of Chapter 312 (Rights-Of-Way).**

New language indicated by underline, and deleted language indicated by ~~strikethrough~~.

Section 312.02 (Purpose), Section 312.04 (Definitions) and Section 312.06 (Prohibited Activity) of Chapter 312 (Rights-Of-Way) of the Code of Indian River County, Florida is hereby amended to read as follows:

**CHAPTER 312. ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION**

\* \* \*

**Section 312.02 Purpose**

The purpose of this chapter is to:

- (1) Establish a mandatory permitting procedure for any work within county right-of-way, land, or easements;
- (2) Establish guidelines for the placement and location of:
  - (a) Driveways;
  - (b) Utilities;
  - (c) Excavation, fill and other structures within county rights-of-way;
- (3) Establish standards for traffic control devices within county rights-of-way;
- (4) Establish construction specifications for work in county rights-of-way, easements, or county land;
- (5) Provide for proper use and non-obstruction of county rights-of-way and easements;
- (6) Establish guidelines and permitting for the movement of overweight and over dimensional vehicles or structures within county rights-of-way;

- (7) Prohibit the use of certain streets by trucks exceeding five thousand (5,000) pounds;
- (8) Establish parking regulations within county rights-of-way;
- (9) Establish weight regulations on roadways and structures within county rights-of-way;
- (10) Establish guidelines and permitting to regulate processions, assemblies, parades and hauling routes.
- (11) Establish regulations for the use of the rights-of-way in order to protect drivers, passengers, and pedestrians alike and promote the safe and efficient use of the rights-of-way.

\* \* \*

**Section 312.04 Definitions**

- (1) Bikeway: Any road, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.
- (2) Distributing: Exchanging of item(s) between any person(s) within a right-of-way and a driver or passenger of a vehicle at such location that requires an acceptance or rejection of the item(s) being offered for exchange.
- (3) Driveway: That portion of the right-of-way used for ingress and egress to the abutting private property from the street.
- (34) Easement: The legal right granted to a party to cross or use part of the land for public purposes. This may be for utilities, line-of-sight, pole lines, or scenic purposes.
- (45) Encroachment: Any object of use occupying any portion of a public right-of-way which is not allowed by this chapter or is not allowed by reason of a permit having been granted by the county.
- (56) Public works director: The county public works director or his authorized representative.
- (67) Right-of-Way: The land owned or controlled by the county over which the public has a right of passage, including the streets, sidewalks, bikeways, and driveways constructed thereon.
- (78) Sidewalk: A walkway intended primarily for pedestrians on one (1) or both sides of a public street.

(89) Street: The area of the public right-of-way which is intended for normal vehicular traffic, including paved or unpaved roadways but not including services entrances or driveways leading from the roadways onto adjoining property.

(910) Utilities director: The utilities director or his representative.

(1011) For words that are not defined in this section, the following sources shall govern in this order (a) Florida Statutes and (b) Indian River County Code.

\* \* \*

### **Section 312.06 Prohibited Activity**

1. Except as provided in section 312.05, it shall be unlawful and subject to penalties provided herein for any person, corporation, or utility company, public or private to:
  - (a) Construct, alter, arrange for, authorize, or participate in any construction or placement of fill, pavement, driveway, vegetation, signs, or structures, or any encroachment, in the county owned land, right-of-way, easement or drainage facility, without first obtaining a valid right-of-way permit and paying all necessary fees.
  - (b) Construct any roadway, or drainage improvements, or structures in a county right-of-way, or easement which do not conform to requirements set forth in the publications listed in Section 312.08, or not otherwise approved by the public works director.
  - (c) Obstruct or damage facilities in a county right-of-way; or impair use of the right-of-way, easement, or county land by the parking, placement, of vehicles, debris, fill or other structures in the county owned land, right-of-way, or easements.
  - (d) Use the county right-of-way for the movement of over-sized and/or overweight vehicles or structures without first obtaining a valid right-of-way use permit. Over-sized and overweight vehicles are defined in Chapter 316, Florida Statutes.
  - (e) Provide for the direct connection of any fluid discharge from a swimming pool, water softener, washing machine, or any mechanical device, into county rights-of-way, easement or public land.
  - (f) Install water, sewage, gas, power, telephone, cablevision, or other utilities along county rights-of-way, easements, or county land without

obtaining an authorized license as described in Chapter 125.42, Florida Statutes.

- (g) Install any unauthorized sign, utility, shrub, obstruction or structure within four (4) feet of the curb line or fourteen (14) feet from edge of uncurbed pavement or if those limitations cannot be met then the installation shall be as far from the edge of the pavement as possible but shall be within the right-of-way. See Figure 1, section 312.19.
- (h) Install fixed objects or vegetation which obstructs vision at the intersection of public roadways such that sight distance is less than prescribed by the Manual on Uniform Standards for Design, Construction and Maintenance for Streets and Highways, latest edition by the Florida Department of Transportation. The county has the right to enforce sight distance requirements where existing conditions are causing a hazardous condition.
- (i) Use certain roadways and structures for the through movement of vehicles exceeding five thousand (5,000) pounds if such roadways are signed "no trucks over 5,000 lb. empty weight."
- (j) Install any water well or septic system within the county right-of-way without license and pursuant to Resolution 90-75.
- (k) Perform work in any county right-of-way without proper traffic control.
- (l) Leave any trash, junk or debris within the right-of-way, other than that placed for regular garbage pick up.
- (m) Conduct any sales or business in the right-of-way.
- (n) Use any county roadway for processions, races, street dances, street parties, assemblies and parades without first obtaining approval of a traffic control plan by the public works director and obtaining a valid right-of-way permit and paying all necessary fees.
- (o) Stand in or enter upon ~~Beg, peddle, solicit, or canvass on~~ any right-of-way as defined in section 312.04(6) other than a sidewalk as defined in section 312.04(7) for the purpose of distributing item(s) with a driver or passenger(s) of a vehicle.

\* \* \*

**Section 4. Codification.** It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code,

and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

**Section 5. Severability.** If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

**Section 6. Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 7. Effective Date.** This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the \_\_\_\_ day of \_\_\_\_\_, 2016, for a public hearing to be held on the \_\_ day of November, 2016, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

Chairman Bob Solari	_____
Vice-Chairman Joseph E. Flescher	_____
Commissioner Wesley S. Davis	_____
Commissioner Tim Zorc	_____
Commissioner Peter D. O'Bryan	_____

The Chairman thereupon declared the ordinance duly passed and adopted this \_\_\_\_ day of November, 2016.

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**BY** \_\_\_\_\_  
**DYLAN REINGOLD  
COUNTY ATTORNEY**

**BOARD OF COUNTY COMMISSIONERS OF  
INDIAN RIVER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Bob Solari, Chairman

**ATTEST: Jeffrey R. Smith, Clerk  
and Comptroller**

By: \_\_\_\_\_  
Deputy Clerk

**EFFECTIVE DATE:** This Ordinance was filed with the Department of State on the \_\_\_\_ day of November, 2016.