

**ORDINANCE NO.: 2005-22**

**AN ORDINANCE AMENDING THE HERNANDO COUNTY CODE OF ORDINANCES RELATING TO RIGHT-OF-WAY PERMITTING AND REGULATION OF SIGNS IN THE RIGHT-OF-WAY; AMENDING SECTION 24-3, HERNANDO COUNTY CODE OF ORDINANCES, TO CLARIFY THE BASIS AND EFFECT OF ISSUING PERMITS PURSUANT THERETO FOR WORK OR PLACEMENT OF IMPROVEMENTS IN THE RIGHT-OF-WAY; ADDING NEW SECTION 24-4, RELATING TO SIGNAGE, BY RELOCATING CURRENT SUBSECTION 2, E.5., APPENDIX A, ARTICLE II, FROM THE CODIFIED ZONING ORDINANCE, MAKING CERTAIN AMENDMENTS, AND PLACING IT WITHIN A MORE APPROPRIATE CHAPTER OF THE CODE; DELETING CURRENT SUBSECTION 2, E.5., APPENDIX A, ARTICLE II; PROVIDING FOR SEVERABILITY AND INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:**

**SECTION 1. AMENDING SECTION 24-3, HERNANDO COUNTY CODE OF ORDINANCES, TO CLARIFY THE BASIS AND EFFECT OF ISSUING PERMITS PURSUANT THERETO FOR WORK OR PLACEMENT OF IMPROVEMENTS IN THE RIGHT-OF-WAY, BY ADDING UNDERLINED MATERIAL AND DELETING STRUCK-THROUGH MATERIAL, AS FOLLOWS:**

**Section 24-3. Right-of-way utilization regulations.**

(a) Purpose. The purpose of this section is to adopt regulations relating to the use of county-owned rights-of-way for placement of above- and below-ground utilities and for the construction or placement of improvements or fixtures to land in the unincorporated areas of Hernando County, Florida, and within incorporated areas as provided for by law. As used herein, the phrases "right-of-way" or "rights-of-way" shall mean land which, by deed, conveyance, agreement,

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easement, dedication, usage or process of law, is owned by, dedicated to or otherwise vested in the control of Hernando County for use by the general public for street, highway, alley, pedestrian walkway, sidewalk, storm drainage, bicycle path, traffic engineering safety, setback or other purposes or is otherwise part of the County Road System. As used herein "County Road System" shall have that definition set forth in s. 334.03, Fla. Stat., as such statute may be amended or renumbered.

(b) Utilization manual. The board of county commissioners shall adopt, by resolution, a right-of-way utilization manual for Hernando County. ~~All~~ To the extent applicable, all use of ~~county-owned~~ rights-of-way shall be in accordance with the provisions of said manual or as otherwise provided in later-adopted ordinances and Code provisions.

(c) Permit required. No person, partnership, firm, governmental agency, corporation, association, department, authority or other entity shall dig, excavate, obstruct, place any obstructions or other materials, or perform any work which disturbs the existing structure and compaction of the soil in any right-of-way provided for public use ~~in the unincorporated areas of Hernando County, Florida,~~ including but not limited to construction of any access or other connection from private property to any part of the County Road System, without first obtaining a permit for such work or such placement of obstructions or other materials. Performance of unpermitted work or placement of obstructions or other materials which disturbs the existing structure and compaction of the soil in any right-of-way shall be a violation of this ordinance and shall subject the violator to the penalties otherwise provided for a violation of the Hernando County Code of Ordinances.

(d) Fees. Hernando County is hereby authorized to levy and collect fees for obtaining permits and utilizing any ~~county-owned~~ right-of-way. The fees shall be in an amount to be approved by resolution of the board of county commissioners.

(e) Application for permit; required information. Any person or entity

identified above shall make application to Hernando County for said permit on forms provided by the county, and such application shall include, but not be limited to, the following information.

- (1) Location of the proposed construction;
- (2) Type of facility to be constructed;
- (3) Method of construction to be used;
- (4) Expected time to complete construction;
- (5) Proposed means of restoring the right-of-way; and
- (6) Sketches and drawings showing completely the nature of the proposed construction.

(f) Performance of work at no expense. All work performed under the permit shall be done with no expense to Hernando County.

(g) Penalty. If any permittee or any authorized agent, officer or employee of a permittee shall knowingly refuse to comply with or willfully violate any provision of this section, such permittee shall incur a penalty for each offense of not more than twenty-five (25) percent of the estimated project cost to be fixed, imposed and collected by the board of county commissioners, proceeds of which shall be deposited in the transportation trust fund. Additionally, any permittee who has previously failed to restore the right-of-way as required by this section shall not be issued further permits until such right-of-way is restored, or the entire cost of restoration incurred by the county to make such restoration has been paid by the applicant. In addition, violations of any provisions herein may be prosecuted as described in Chapter 2, Article III as amended from time to time.

h. Acceptance of a permit constitutes permittee's agreement to indemnify and hold harmless County from any and all damages, loss, costs or expenses, including, but not limited to, attorney's fees, arising from or connected in any manner to permittee's use or construction in or upon the County right-of-way herein permitted. Permittees may also be required to demonstrate insurance coverage in amounts reasonably required by the county's Risk Management

director. Right-of-way use permits shall specifically provide that:

- 1) Permittee understands and agrees that such permit is a revocable license which may be terminated at any time that County or any other governmental or quasi-public agency determines that the right-of-way occupied by the article or articles is needed for municipal or other public purposes incompatible with placement of the article or articles, and
  - 2) Permittee's authority to construct improvements or install or maintain utilities in County rights-of-way is limited to construction or installation or maintenance in conformance with the provisions of the application for permit. Failure to construct, install or maintain permitted improvements or facilities in accordance with the specifications of the application shall be grounds for immediate revocation of the permit and removal of any such improvements or facilities from or termination of use of the right of way.
- i. Below-ground irrigation systems and sod within rights-of-way shall be exempt from the permitting and prohibition requirements of this section. In consideration of exemption from the permitting requirement, the Board of County Commissioners finds and determines that the owners of such systems or sod have assumed any risk of damage or loss to such by reason of any work or other maintenance in the County right-of-way for any authorized purpose, including but not limited to paving, resurfacing or widening of any existing traveled way; or construction or maintenance of any public or private utility, drainage or other facility in the County right-of-way. The County shall not be held liable for damage or loss to such systems or sod with respect to such work or maintenance, and no court shall award damages against the County therefor.
- j. Landscaping, or improvement to existing landscaping, shall comply with

any applicable ordinances and with the Hernando County Guidelines for Landscaping Roadways, as published by and available from the County Engineer's Office, which guidelines have been or are hereby adopted by the Board of County Commissioners, and with any incorporated, additional or supplemental requirements of the Hernando County Facilities Design Guidelines; and shall require a valid right-of-way utilization permit. Normally trees will not be authorized to be installed in medians, unless clear recovery zone and clear sight distance requirements will allow installation without violation of Guidelines for Landscaping Roadways.

**SECTION 2. ADDING NEW SECTION 24-4, RELATING TO SIGNAGE, BY RELOCATING CURRENT SUBSECTION 2, E.5., APPENDIX A, ARTICLE II, FROM THE CODIFIED ZONING ORDINANCE, MAKING CERTAIN AMENDMENTS, AND PLACING IT WITHIN A MORE APPROPRIATE CHAPTER OF THE CODE; BY ADDING UNDERLINED MATERIAL AND DELETING STRUCK-THROUGH MATERIAL AS FOLLOWS:**

**Section 24-4. Right-of-way signage.**

The Hernando County Board of County Commissioners hereby finds that regulation of signage within public rights-of-way is not a land development regulation appropriate for inclusion within the Hernando County Zoning Ordinance, and that such regulations should be placed under the Department of Public Works for administrative purposes, provided that nothing herein shall affect the responsibility for enforcement of codes.

- a. Except for official signs regulating or directly related to authorized uses of a public right-of-way, it shall be unlawful to erect or post any sign on any public street right-of-way, drainage right-of-way, utility right-of-way or utility pole or tree, and no right-of-way use permit for any sign other than such official signs shall be issued.

- b. Unlawful signs placed on such right-of-way shall be removed by any county official employed in the enforcement of this ordinance, the maintenance of such right-of-way, or the protection of such public health, safety and welfare. Such signs are considered to be abandoned property and may be disposed of at the convenience and discretion of Hernando County without notice or compensation to the person, firm, or entity promoted on the face of such sign.
- c. It shall be prima facie evidence of a violation of this section if signs of any kind are placed in a manner other than outlined in this section and such sign can be established as having originated with a particular person, firm, partnership, corporation or business.
- d. Subdivision or non-commercial community entrance signs may be placed upon county right-of-way, with the permission of the Board of County Commissioners, if they conform to the following requirements:
1. The applicant for such sign must show that the sign will serve a public purpose;
  2. The applicant enters into a lease agreement with the county providing for fire and casualty insurance; liability insurance on the property, described in the lease, in an amount to be determined by the county; indemnification of the county against any claims arising from activities of the lessee on the property;
  3. Lessee will pay all applicable charges and utility costs incurred in construction on the property;
  4. Lessee will provide the county with engineering drawings signed and sealed by a state licensed professional engineer meeting all applicable sign standards as well as all other applicable county standards;
  5. The lessee shall maintain the sign and adjacent right-of-way in good

condition. If the applicant/lessee transfers any or all responsibility for care and maintenance of the sign and adjacent right-of-way to a homeowners' association or other entity, the new lessee shall conform to all requirements as stated above. If the lessee allows any liability coverage to lapse, ~~it shall be in the right of the county~~ shall have the right to remove any such sign and other facility permitted hereunder. No transfer of responsibility for care and maintenance of a sign shall occur without the consent or concurrence of the County.

6. By entering into any such lease, lessee agrees that the lease shall terminate upon determination of need and demand by the County for the use of the leased right of way for roadway expansion or other improvements to public facilities which require use of the leased premises.

e. Notwithstanding the provisions of this section, signs existing in or upon any public street right-of-way, drainage right-of-way, utility right-of-way or utility pole or tree, as of the date of enactment of this section, which were lawfully erected pursuant to a right-of-way use permit or pursuant to a lease approved by the Board of County Commissioners, may remain in place for the duration of such permit or lease.

f. For purposes of this section,

1. "sign" shall be defined to mean any structure, display, device, painting, drawing, message, placard poster, billboard or notice bearing a name, direction, advertisement or other message that is displayed or posted for public view, provided that authorized improvements or fixtures associated with permitted utility use of rights-of-way may bear such identifying marks as may be reasonably required for the purposes of such use, so long as such marks are not intended for view by the general public; and

2. "right of way" means land which, by deed, conveyance, agreement, easement, dedication, usage or process of law, is owned or dedicated or

otherwise vested in the control of Hernando County for use by the general public for street, highway, alley, pedestrian walkway, sidewalk, storm drainage, bicycle path, traffic engineering safety, setback or other purposes.

**SECTION 3. DELETING CURRENT SUBSECTION 2, E.5., APPENDIX A, ARTICLE II; ON THE BASIS OF INCLUSION OF AMENDED LANGUAGE COVERING THE SAME MATTER IN CHAPTER 24 OF THE HERNANDO COUNTY CODE OF ORDINANCES PURSUANT TO SECTION 2 HEREIN, AS MORE DIRECTLY APPERTAINING TO THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS AND NOT CONSTITUTING A LAND DEVELOPMENT REGULATION APPROPRIATE TO INCLUSION AS PART OF THE HERNANDO COUNTY ZONING ORDINANCE, AS INDICATED BY STRUCK-THROUGH LANGUAGE; AND PROVIDING FOR RENUMBERING OF OTHER AFFECTED SUBDIVISIONS.**

It is the intent of the Board of County Commissioners that the following language be deleted from the Hernando County Zoning Ordinance as codified in Appendix A, Hernando County Code of Ordinances, on the basis that right-of-way signage regulation is not a land development regulation and more directly appertains to the responsibilities of the Department of Public Works; and that any succeeding subsections of the same codified sections in Appendix A may be renumbered as necessary or other designation made to signify the deletion, at the discretion of the codifier and subject to review and revision after codification by the Board.

~~5. Signs prohibited on rights-of-way; removal and disposal:~~

~~a. Except for official signs regulating or directly related to authorized uses of a public right-of-way, it shall be unlawful to erect or post any sign on any public street, drainage right-of-way, utility right-of-way or utility pole or tree.~~

~~b. Unlawful signs placed on such right-of-way shall be removed by any county official employed in the enforcement of this ordinance, the maintenance of such right-of-way, or the protection of such health, safety and welfare. Such signs are considered to be abandoned property and may be disposed of at the convenience~~



~~and discretion of Hernando County without notice or compensation to the person, firm, or entity promoted on the face of such sign.~~

~~c. It shall be prima facie evidence of a violation of this section if signs of any kind are placed in a manner other than outlined in this section and such sign can be established as having originated with a particular person, firm, partnership, corporation or business.~~

~~d. Signs may be placed upon county right-of-way, with the permission of the Board of County Commissioners, if they conform to the following requirements:~~

~~1. The applicant for such sign must show that the sign will serve a public purpose;~~

~~2. The applicant enters into a lease agreement with the county providing for fire and casualty insurance, liability insurance on the property, described in the lease, in an amount to be determined by the county, indemnification of the county against any claims arising from activities of the lessee on the property;~~

~~3. Lessee will pay all applicable charges and utility costs incurred in construction on the property;~~

~~4. Lessee will provide the county with engineering drawings meeting all applicable sign standards as well as all other applicable county standards;~~

~~5. The lessee shall maintain the sign and adjacent right-of-way in good condition. If the applicant/lessee transfers any or all responsibility for care and maintenance of the sign and adjacent right-of-way to a homeowners' association or other entity, the new lessee shall conform to all requirements as stated above. If the lessee allows any liability coverage to lapse, it shall be in the right of the county to remove any such sign and other facility permitted hereunder. No transfer of responsibility for care and maintenance of a sign shall occur without the consent or concurrence of the county.~~

**SECTION 4. Severability.**

It is declared to be the intent of the board of county commissioners that if any section, subsection, clause, sentence, phrase, or provision of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this ordinance.

**SECTION 5. Inclusion in the Code.**

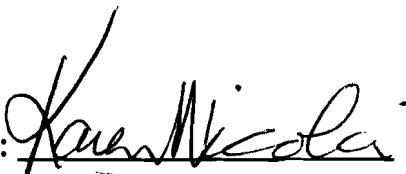
It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, any section or subsection of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section, "article", or other appropriate designation.


**SECTION 6. Effective date.**


This ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this ordinance has been filed with said office.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY** in Regular Session this 6<sup>th</sup> day of December, 2005.

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA**

Attest:   
KAREN NICOLAI  
Clerk

By:   
ROBERT C. SCHENCK  
Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY  12/6/05  
County Attorney's Office

