

Summary of Ordinance

The purpose of this Ordinance is to create Section 2-5, Lake County Code, entitled *Control of Access to County-Owned, Controlled, and Leased Property*, to establish a process by which County-owned, controlled, and leased property may be designated as public forums, limited public forums, and non-public forums to allow the efficient and proper conduct of public business. The Ordinance also establishes Facility Rules to govern conduct within such facilities.

Changes are shown as follows: ~~Strikethrough~~ for deletions and Underline for additions to existing Code sections. The notation “* * *” shall mean that all preceding or subsequent text remains unchanged (excluding any renumbering or relettering that might be needed).

ORDINANCE 2023-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA; CREATING SECTION 2-5, LAKE COUNTY CODE, ENTITLED *CONTROL OF ACCESS TO COUNTY-OWNED, CONTROLLED, AND LEASED PROPERTY*; ESTABLISHING A PROCESS TO DESIGNATE FACILITIES AS PUBLIC FORUMS, LIMITED PUBLIC FORUMS OR NON-PUBLIC FORUMS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, County-owned, controlled, and leased properties serve many different purposes in provision of services to the residents of Lake County, Florida, by its various governmental agencies, including the Board of County Commissioners, the Property Appraiser, the Tax Collector, the Clerk of the Circuit Court and Comptroller, the Supervisor of Elections, and the Sheriff’s Office; and

WHEREAS, to perform efficiently the various types of governmental services, it is necessary to designate County-owned, controlled, and leased properties as public forums, limited public forums and nonpublic forums; and

WHEREAS, federal courts have held that the “First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” See *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). However, “like all First Amendment protections, this right is subject to reasonable time, manner and place restrictions.” *Sheets v. City of Punta Gorda, Florida*, 415 F.Supp.3d 1115,1121 (M.D. Fla. 2019)(citing *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000); and

WHEREAS, however, the United States Court of Appeals for the 11th Circuit has opined that “[i]t is now clear that the First Amendment does not guarantee access to property just because it is owned by the government.” *Bloedorn v. Grube*, 631 F.3d. 1218, 1230 (11th Cir. 2011); and

WHEREAS, the established law evaluates First Amendment claims based upon the type of forum the activity takes place in, or that activity is restricted from. In other words, the type of forum determines the level of scrutiny applied. *Keister v. Bell*, 879 F.3d 1282 (11th Cir. 2018); and

WHEREAS, one type of forum is a limited public forum. “Ordinances regulating speech in limited public forums are not subject to strict scrutiny. This forum exists where a government has reserved it for certain groups or for the discussion of certain topics.” *Sheets v. City of Punta Gorda, Florida*, 415 F.Supp.3d 1115,1122 (M.D. Fla. 2019)(citing *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1224 (11th Cir. 2017 and *Utah v. Summum*, 555 U.S. 460, 469-70, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009); and

1 **WHEREAS**, courts have also held that the “Government, like any private landowner, may preserve
2 the property under its control for the use to which it is lawfully dedicated. Likewise, a government
3 workplace, like any other place of employment exists to accomplish the business of the employer. It follows
4 that the Government has the right to exercise control over access to the government workplace in order to
5 avoid interruptions to the performance of the duties of its employees.” *Sheets v. City of Punta Gorda,*
6 *Florida*, 415 F.Supp.3d 1115 (citing to *Sentinel Commc’ns Co. v. Watts*, 936 F.2d 1189, 1201 (11th Cir.
7 1991) and *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 809, 105 S.Ct. 3439, 87
8 Led.2d 567 (1985); *U.S. v. Kokinda*, 497 U.S. 720 (1990))(Government may restrict or prohibit solicitation
9 on government-owned property designed to conduct business and not traditionally considered an open
10 public forum); and

11
12 **WHEREAS**, there are certain areas of County-owned, controlled, and leased properties where it is
13 necessary to restrict public access or limit certain types of behavior to ensure that public business may be
14 conducted uninterrupted; and

15
16 **WHEREAS**, within those areas, people often disclose confidential information to government
17 officials and workers. People have a right to conduct business with the government free of intrusion and to
18 prevent others from recording their interactions with the government where confidential information is
19 disclosed; and

20
21 **WHEREAS**, the United States Supreme Court has opined that “the Government need not wait until
22 havoc is wreaked [on its workplace] to restrict access to a nonpublic forum.” *Sheets v. City of Punta Gorda,*
23 *Florida*, 415 F.Supp.3d 1115 (citing to *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S.
24 788, 809, 105 S.Ct. 3439, 87 Led.2d 567 (1985); and

25
26 **WHEREAS**, the Lake County Board of County Commissioners determines that the adoption of
27 this Ordinance serves the public interest and is a reasonable and viewpoint neutral regulation.

28
29 **NOW THEREFORE**, be it ordained by the Board of County Commissioners of Lake County,
30 Florida, as follows:

31
32 **Section 1. Legislative Findings of Fact.** The foregoing recitals are hereby adopted as
33 legislative findings of the Board of County Commissioners and are ratified and confirmed as being true and
34 correct and are hereby made a specific part of this Ordinance upon adoption hereof.

35
36 **Section 2. Amendment.** Creating Section 2-5, Lake County Code, entitled *Control of*
37 *Access to County-Owned, Controlled, and Leased Property*, is hereby created to read as follows:

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39 **Sec. 2-5. Control of Access to County-Owned, Controlled, and Leased Property.**

- 40
41 (a) Consistent with decisions of the U.S. Supreme Court, public access to areas within enclosed
42 facilities owned, controlled, and leased by the Lake County Board of County Commissioners
43 (Board), or any Constitutional Officer of Lake County (Constitutional Officer), may be
44 restricted depending upon whether such areas are classified as a “designated public forum”,
45 “limited designated public forum”, or “nonpublic forum”. How areas within enclosed facilities
46 owned, controlled, and leased by the Board or Constitutional Officer are classified is based
47 upon their intended use. For example, there are certain areas which are intended primarily for
48 the use of employees in the conduct of their business; there are certain areas which, while
49 primarily intended for the use of employees in the conduct of their business, may from time to
50 time be utilized for the convening of public meetings; there are certain limited areas which may
51 be open to the public while engaging in legitimate business with officers or employees; and
52 there may be certain areas which are primarily intended for the convening of public meetings.
53

- (b) The County Manager is hereby authorized to manage public access to enclosed County-owned, controlled, and leased property. In the performance of such responsibilities, the County Manager shall have the authority to identify, through the issuance of a County Policy, which areas are to be considered a designated public forum, limited designated public forum, or nonpublic forum. For properties or spaces under the control of a Constitutional Officer, the Constitutional Officer shall have the authority to manage public access to those facilities and spaces, and shall have the authority to identify which areas are to be considered designated public forums, limited designated public forums, or nonpublic forums. Constitutional Officers shall have the same powers as set forth in this Section for the County Manager over facilities under their control, including, but not limited to, the authority to create and implement reasonable time, place and manner restrictions, regulations and policies for facilities and spaces under their control, based upon the classification of the forum as described above.
- (c) Upon the classification of areas within enclosed County-owned, controlled, and leased property, the County Manager, or Constitutional Officer as may be appropriate, is hereby authorized, subject to the availability of appropriated funds, to employ whatever means deemed necessary and appropriate to separate designated public forums from nonpublic forums, including, but not limited to, the use of physical barriers and signage. The County Manager, or Constitutional Officer as may be appropriate, shall also have the authority to develop and implement procedures to regulate and control public access within County-owned, controlled, and leased properties to provide for the security and privacy of public visitors; to provide for the security and privacy of employees and officers; and to minimize potential disruptions to the work of county government. The term "county government" shall hereinafter include Constitutional Officers. Any person who engages in conduct that causes disruptions to the work of county government shall be deemed to no longer be present within the County-owned, controlled, or lease property on legitimate public business.
- (d) The Board Chambers in the County Administration Building are hereby declared to be nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice. All employee work areas within the County Administration Building designated by appropriate signage (e.g., employees only) shall be considered as nonpublic forums. Members of the public are prohibited from entering employee work areas without being escorted by an employee. All other areas of the County Administration Building are hereby designated as limited public forums and only persons who are present to engage in legitimate public business with county officers or employees shall be authorized. It shall be a violation of this Section to be within a nonpublic forum or a limited public forum without authorization. Unauthorized persons found by the County Manager or designee to be within a nonpublic forum or a limited public forum and who refuse to leave the premises upon request, shall be considered a trespasser. Law Enforcement, at its option, at the request of the County may issue a trespass warning notice for this conduct as set forth in Section 2-4, Lake County Code.
- (e) Except within the Board Chambers, conference rooms, and other locations in which a public meeting is being conducted pursuant to a public notice, it shall be unlawful and a violation of this Section, to record video and/or sound within County-owned, controlled, and leased property, without the consent of all persons whose voice or image is being recorded. This prohibition shall not apply to any law enforcement activities. In addition to being a violation of this Section, if anyone who is observed to be recording video and/or sound within County-owned, controlled, or leased property, without the consent of all persons whose voice or image is being recorded, refuses to cease activity after being advised that such activity is prohibited under this Section, such refusal shall be considered to be a disruption to the work of county government. Therefore, such persons shall be deemed to no longer be present within the County-owned, controlled, or leased property on legitimate public business. The County Manager and the County Manager's designees are hereby authorized on behalf of Lake County,

Florida, to request any person who refuses to cease the unconsented video and/or sound recording to immediately leave the premises. Any person who refuses to cease the unconsented to video and/or sound recording and refuses to immediately leave the premises following the request of the County Manager or designee, shall be considered as a trespasser. Law Enforcement, at its option, at the request of the County may issue a trespass warning notice for this conduct as set forth in Section 2-4, Lake County Code.

(f) The County Manager or designee may have cause to remove any person they determine:

- (1) Acts in any manner which violates or is reasonably suspected to violate any federal, state or local law, ordinance, rule or regulation; or
- (2) Acts in any manner which violates any County rules or policy, including, but not limited to, the Facility Rules; or any directive on any sign or notice at the public property.

The County Manager or designees are hereby authorized on behalf of Lake County, Florida, to warn persons of this prohibited activity and request such activity to cease. Law Enforcement, at its option, at the request of the County may issue a trespass warning notice for these violations of conduct as set forth in Section 2-4, Lake County Code.

(g) The County Manager or designees are hereby authorized on behalf of Lake County, Florida, to warn persons who have entered into or remain in areas where they are not authorized to be, and to request such persons to depart. The County Manager or designees are hereby authorized to call upon Law Enforcement to treat as trespassers any persons who refuse to depart after such a request has been made. Law Enforcement, at its option, may charge any person refusing to depart by means of Section 810.08 and 810.09, Florida Statutes, or issue a trespass warning notice.

(h) The following conduct is prohibited within the interior spaces of all County-owned, controlled, and leased buildings, including facilities under the control of any Constitutional Officer. The Facility Rules are as follows:

- (1) Engaging in any conduct prohibited by federal, State of Florida, or local law.
- (2) Smoking, chewing tobacco, use of e-cigarettes or vaping device, or carrying any lighted or smoldering pipe, cigar, or cigarette.
- (3) Disruptive, harassing, or unsafe behavior, including conduct which interferes with employees or officials in the performance of their duties, or interferes with the proper use of the County facility by others.
- (4) Abusive or harassing behavior, including use or display of obscene language, gestures, or graphics.
- (5) Blocking entrances, exits, fire exits, access areas, or otherwise interfering with the provision of services or the use of County property.
- (6) Entering or remaining in nonpublic areas without authorization. Areas inside County buildings, including offices, hallways, stairways, and elevators are open to the public only to the extent necessary to attend to County business, or attending a County-authorized function, event, or activity to which the person is an invitee, or

1 attending a duly noticed public meeting. Otherwise, such areas are deemed
2 nonpublic areas.

3
4 (7) Any act which could result in substantial risk of harm to persons or property.

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6 (8) Disrupting County business, events, or other County sponsored or authorized
7 activities.

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9 (9) Leaving unattended packages, backpacks, luggage, or other personal items. Any
10 such items are subject to immediate confiscation.

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12 (10) Laying down or sleeping in chairs, benches, or other areas within County facilities.

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14 (11) Possessing illegal drugs.

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16 (12) Posting or affixing to County property without permission from the County
17 Manager or designee, any signs, leaflets, posters, flyers, pamphlets, brochures, and
18 written, pictorial or graphic material of any kind.

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20 (13) Tampering with or unauthorized use of building or facility systems or devices,
21 including electrical, plumbing, locks, doors or cameras.

22
23 (14) Audio and/or video recording anywhere inside of County buildings except during
24 duly noticed public meetings, or as otherwise approved by the County Manager or
25 designee. Except as otherwise approved by the County Manager or designee, audio
26 and/or video recording may only be conducted within the Board Chambers, and any
27 room, or office within which said activity has been authorized by law. Any person
28 found to be conducting audio and/or video recording except as authorized by herein,
29 must cease doing so immediately if any visitor, employee, or official expresses
30 his/her desire not to be recorded. This rule does not apply to audio and/or video
31 recording performed by authorized law enforcement personnel engaged in the
32 performance of their official duties. Audio and/or video recording of public
33 meetings must be undertaken in a quiet and orderly manner so as not to interfere
34 with the conduct of the meeting, block the view of any person attending the public
35 meeting, or block any aisle, row, ingress or egress.

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37 (15) Remaining in a County building after posted hours of operation or after the
38 conclusion of an authorized “after hours” public meeting or event.

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40 (16) Failing to cease conduct specifically prohibited in items 1 through 15 above
41 immediately after a request by an employee or official to do so.

42
43 (17) Soliciting in or near a County-owned building, on County-owned property, or in
44 facilities leased and/or controlled by Constitutional Officers, in a manner that is
45 inconsistent with County Policies and/or the Policies of the Constitutional Officer
46 who has the authority to control a County-owned facility(ies) or space(s).

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48 A copy of the foregoing Facility Rules shall be posted at all public entrances at all County-
49 owned, controlled, and leased buildings.

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51 (i) The Lake County Judicial Center shall also be governed under the provisions of Section 9-4,
52 Lake County Code.

Section 3. Inclusion in Code. It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lake County Code and that the sections of this Ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase to accomplish such intentions.

Section 4. Severability. If any section, sentence, clause, or phrase or word of this Ordinance is for any reason held or declared to be invalid, unconstitutional, inoperative or void by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Ordinance; and it shall be construed to have been the Commissioners’ intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein; and the remainder of this Ordinance, after the exclusion of such part or parts shall be deemed and held to be valid, as if such parts had not been included herein; or if this Ordinance or any provisions thereof shall be held inapplicable to any person, groups of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other person, property or circumstances.

Section 5. Filing with the Department of State. The Clerk shall be and is hereby directed forthwith to send an electronic copy of this Ordinance to the Secretary of State for the State of Florida in accordance with Section 125.66, Florida Statutes.

Section 6. Effective Date. This Ordinance shall become effective as provided for by law.

ENACTED this day of _____ day of _____, 2023.

FILED with the Secretary of State the ____ day of _____, 2023.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF LAKE COUNTY, FLORIDA

Gary J. Cooney, Clerk
Board of County Commissioners of
Lake County, Florida

Kirby Smith, Chairman

This ____ day of _____, 2023.

Approved as to form and legality:

Melanie Marsh, County Attorney