

## **ORDINANCE NO. 10-2023**

**AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA AMENDING  
SUBPART B, CHAPTER 58 (DEVELOPMENT STANDARDS), ARTICLE  
II (TRANSPORTATION SYSTEM STANDARDS), SECTION 58-32  
(RIGHTS-OF-WAY) OF THE CITY OF SEMINOLE UNIFIED LAND  
DEVELOPMENT CODE, MAKING RELATED FINDINGS; AND  
PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN  
EFFECTIVE DATE.**

**WHEREAS**, the City of Seminole is a Florida municipality possessing pursuant to Art. VIII, § 2 (b), Fla. Const. and § 166.021 (1), Fla. Stat., all governmental, corporate, and propriety powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, which powers it may exercise for any municipal purpose except as otherwise provided by law; and

**WHEREAS**, pursuant to the foregoing, the City has the authority to protect and regulate the usage of its municipal rights-of-way and has done so in part by adoption of § 58-32 of its Unified Land Development Code ("LDC"), which explicitly and unequivocally prohibits any encroachments into City rights-of-way except when authorized by the City; and

**WHEREAS**, a City code enforcement officer on April 3, 2023 issued a Notice of Violation to a property owner for violating § 58-32, LDC, due to the existence of a portable basketball hoop located upon the City's right-of-way; and

**WHEREAS**, following a hearing before the Special Magistrate for code enforcement, the Special Magistrate in Case No. ZON-473-2023 issued an order finding that the property owner was not in violation of § 58-32, LDC. According to the Special Magistrate, the portable basketball hoop did not constitute an encroachment on the City's right-of-way because it was not attached to or permanently installed in the right-of-way, and did not interfere with the function of the right-of-way; and

**WHEREAS**, the City believes that the Special Magistrate's finding is contrary to the letter and intent of § 58-32, LDC, and violates § 46-7 (a) of the LDC, which requires that the LDC's terms be liberally construed to implement its intents and purposes; and

**WHEREAS**, despite the City's belief that the Special Magistrate's finding is unsupported by the facts and the law, it does not wish to put its taxpayers to the expense of prosecuting an appeal of the Special Magistrate's order and instead has opted to amend its LDC to further regulate its rights-of-way; and

**WHEREAS**, the City Council finds that any encroachment into the City's rights-of-way, including portable basketball hoops like the one at issue in Case No. ZON-473-2023 and other intrusions which might be considered portable or removable (inoperable vehicles, for example) should be prohibited in order to protect the health, safety, and welfare of City residents and visitors;

**WHEREAS**, this ordinance is intended to protect the health, safety and welfare of City residents and visitors by explicitly prohibiting any encroachment whatsoever into the City's right-of-way except when authorized by the City.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Seminole, Florida, that:

**Section 1.** Chapter 58, Article II, Section 58-32, City of Seminole Unified Land Development Code, is hereby amended to read as follows:

**Sec. 58-32. – Rights-of-way.**

(a) *Right-of-way widths.* Right-of-way requirements for public road construction shall conform to the functional classification of the city's comprehensive plan and the functional classification and right-of-way standards of the county's comprehensive plan transportation element.

(b) *Future right-of-way.* Future right-of-way requirements shall be identified in the transportation circulation element of the city's comprehensive plan.

(c) *Protection and use of rights-of-way.*

(1) No encroachment shall be permitted into existing rights-of-way, except when authorized by the city. For purposes of this subsection, "encroachment" shall mean intrusion or trespass of any kind, quality, or nature whatsoever into the City's right-of-way, whether such intrusion or trespass is permanently affixed/installed or portable/removable or intentional/unintentional. Any such encroachment as defined herein shall be presumed to interfere with the function and purpose of the City's right-of-way and its legal rights therein.

(2) Use of the right-of-way for public or private utilities, including but not limited to sanitary sewer, potable water, telephone wires, cable television wires, internet, gas lines or electricity transmission, shall be allowed, subject to applicable city regulations.

(3) Sidewalks and bicycle ways shall be placed within the right-of-way.

(d) *Vacation of rights-of-way.* Applications to vacate a right-of-way shall be approved upon a finding that all of the following requirements are met:

(1) The requested vacation is consistent with the transportation circulation element of the city's comprehensive plan.

(2) The right-of-way does not provide the sole access to any property. Remaining access shall not be by easement.

(3) The vacation would not jeopardize the current or future location of any utility.

(4) The proposed vacation is not detrimental to the public interest and provides a positive benefit to the city.

(e) *Private.* (See chapter 38 for standards, as may be applicable.)

**Section 2.** For purposes of codification of the Code of Ordinances, City of Seminole, Florida, words underlined represent new text or additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

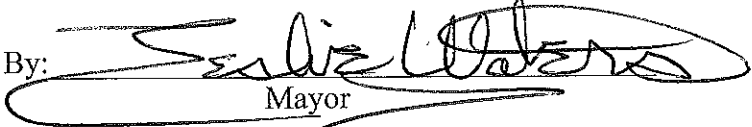
**Section 3.** If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand and survive any severed provision, as the City Council would have adopted the Ordinance even absent the invalid part.

**Section 4.** The Codifier shall codify the substantive amendments to Code of Ordinances, City of Seminole, Florida contained in Section 1 of this Ordinance as provided for therein and shall not codify the exordial clauses or any other sections not designated for codification.

**Section 5.** Pursuant to § 166.041 (4), Fla. Stat., this Ordinance shall take effect immediately upon adoption.

**DULY ADOPTED** with a quorum present and voting this 5 day of December, 2023.

**CITY OF SEMINOLE, FLORIDA**

By:   
Mayor

ATTEST: CITY CLERK

By: Ann Marie Mancuso

# Business Impact Estimate

Proposed ordinance's title/reference: **Ordinance No. 10-2023**

**AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA AMENDING SUBPART B, CHAPTER 58 (DEVELOPMENT STANDARDS), ARTICLE II (TRANSPORTATION SYSTEM STANDARDS), SECTION 58-32 (RIGHTS-OF-WAY) OF THE CITY OF SEMINOLE UNIFIED LAND DEVELOPMENT CODE, MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the City is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- The proposed ordinance is required for compliance with Federal or State law or regulation;
- The proposed ordinance relates to the issuance or refinancing of debt;
- The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- The proposed ordinance is an emergency ordinance;
- The ordinance relates to procurement; or
- The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
  - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
  - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
  - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the City hereby publishes the following information:

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<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare): **The proposed ordinance, advanced as the result of an order issued by the Special Magistrate for code enforcement which the City believes to be in error, provides for a definition of “encroachment” under § 58-32 (c) (1) of the City’s Unified Land Development Code.**

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:  
(a) An estimate of direct compliance costs that businesses may reasonably incur;  
(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and  
(c) An estimate of the City’s regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

**None.**

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

**None.**

4. Additional information the governing body deems useful (if any):

**The proposed ordinance is an ordinance of general applicability that applies to the protection and use of all City rights-of-way.**