

**ORDINANCE #09-14**

**AN ORDINANCE OF THE OSCEOLA COUNTY BOARD OF COUNTY COMMISSIONERS PROVIDING FOR THE REGULATION OF TRANSIT BUS BENCHES WITHIN OSCEOLA COUNTY; PROVIDING FOR A GRANDFATHER CLAUSE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners is the governing body in and for Osceola County, a political subdivision of the State of Florida; and,

**WHEREAS**, the Board of County Commissioners of Osceola County finds that the public interest and safety will be served by the enactment of this Ordinance regulating the installation, operation, and maintenance of transit bus benches on public right-of-way in unincorporated Osceola County.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA, AS FOLLOWS:**

**SECTION 1. RECITALS.**

The foregoing recitals are true and correct and incorporated herein by reference.

**SECTION 2. REGULATIONS.**

**A. Persons Permitted to Place Transit Bus Benches within County Right-of-Way; Applicability of Ordinance.**

1. Any person duly incorporated under the laws of the State of Florida or duly authorized to transact business in the State of Florida who complies with the provisions of this Ordinance may be permitted to place and maintain, within the unincorporated limits of Osceola County, excluding the area commonly known as the West 192 Redevelopment District as more particularly described in Ordinance 95-8, transit bus benches for the use and convenience of the general public. Such benches may be located on public right-of-way only where, in the determination of the County, such benches do not present a hazard to pedestrians or motorists, and provided that said benches only are placed at transit bus stops.
2. The provisions of this Ordinance shall apply to all transit bus benches within unincorporated Osceola County that are located at a transit bus stop location on public right-of-way.

## **B. Definitions.**

1. "Public right-of-way" means any street in the unincorporated area of Osceola County and encompasses both State of Florida right-of-way and County right-of-way, including land in which the County owns the fee or has an easement devoted to, or required for, the use of a public road.
2. "Transit Bus" means any motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.
3. "Transit Bus Bench" means a bench designed for seating two (2) or more persons, with or without advertising, which is placed, constructed, and maintained at or near a recognized transit bus stop on public right-of-way.
4. "Transit Bus Bench Permit" means a right-of-way utilization permit, issued by the County, required for the installation, maintenance, and operation of a transit bus bench within the public right-of-way of any street in the unincorporated area of the County.
5. "Transit Bus Shelter" means a structure or facility located at a site designated by Osceola County and approved by the operating transit agency and the County to protect passengers from the elements. Transit bus shelters include both public transit bus shelters and school bus shelters.
6. "Transit Bus Stop" means a site designated by Osceola County and approved by the operating transit agency and the County for the purpose of loading and unloading passengers.

## **C. Competitive Public Bidding of Transit Bus Benches.**

1. For the placement of additional transit bus benches, Osceola County will engage a competitive bidding process among providers seeking to obtain transit bus bench contractual rights.
2. Included with the transit bus bench contract will be any associated advertising revenue, which shall be negotiated, with payment made to Osceola County for the privilege of advertising on transit bus benches within the public right-of-way.
3. Transit bus bench contracts which include advertising shall be entered into for a minimum of five (5) years in accordance with state and county guidelines for procurement.

4. Osceola County may enter into only a single contract, have multiple contracts, or elect not to have any contracts with transit bus bench providers at the sole discretion of the Board of County Commissioners.

**D. Transit Bus Bench Permitting.**

1. A successful transit bus bench provider, following an approved and recorded Board of County Commissioners' contract to provide transit bus benches within Osceola County, will be required to obtain a right-of-way utilization permit for each bench and shall comply with the applicable provisions contained in the Osceola County Land Development Code, specifically, Osceola County Land Development Regulations, Chapter 18-7, Permits, as amended.
2. The right-of-way utilization permit, referred to as a "transit bus bench permit," will be required prior to the installation, maintenance, and operation of a transit bus bench within the public right-of-way of any street in the unincorporated area of the County.
3. Transit bus bench permits will be issued by Osceola County in accordance with the contract with the bench provider pursuant to the following procedures:
  - a. Application. A successful transit bus bench provider desiring a transit bus bench permit under this Ordinance will be required to complete an application to Osceola County, giving the name and address of the applicant, the exact physical location and specifications for each bench, and such other information as may be required by the County.
  - b. Modification or Replacement. In the event that a transit bus bench is modified or replaced, it will be the responsibility of the transit bus bench owner to apply for and receive a new permit.
4. *Permit Renewal*. If the plans and specifications of the bench or advertising matter or location of the transit bus bench are not to be changed, an application for renewal will be sufficient if the applicant gives its name and address and the location and number of the transit bus bench for which a renewal permit is desired.
5. *Separate Permit Required for Each Transit Bus Bench*. A separate transit bus bench permit will be required for each transit bus bench at each location and will only be valid for the transit bus bench for which it was issued. For example, if two transit bus benches are located at a single bus stop, each bus bench will require a separate permit and each will require approval from Osceola County.
6. *Permit Fee*. The County will determine an appropriate permit fee structure. The fee may be collected by contractual agreement, approved by the Osceola County Board of County Commissioners, or as the County otherwise deems appropriate.

7. *Transfer of Title or Control.* Whenever a transit bus bench for which a permit has been issued is sold or the title or control is transferred or assigned, an adjustment to the County right-of-way utilization permit will be required. If said transfer of title or control is required within six (6) months of receiving a valid permit, the new transit bus bench owner shall only be charged fifty percent (50%) of the adopted fee; thereafter, said change shall only be billed at twenty-five percent (25%) of the adopted fee.
8. *Insurance.* Before a permit will be issued, the applicant will file with the County a certificate of public liability insurance, issued by an insurance company authorized to do business in the State of Florida, insuring such applicant against loss in the minimum sum of \$1,000,000.00 due to liability imposed by law on account of bodily injury or death of any one person and any one accident. "Osceola County Board of County Commissioners" must be named as an additional insured on the policy. The policy must be maintained in the original amount by the applicant, at its expense, at all times during the period for which the permit is in effect.
9. *Licensing.* Persons providing or engaged in providing advertising on transit bus benches shall be required to meet the qualifications and be properly licensed in accordance with applicable Florida Statutes. In addition, each transit bus bench provider shall maintain an Osceola County Business Tax Receipt (formerly known as an "Occupational License") while it provides properly permitted transit bus benches on public right-of-way.
10. *Inventory.* On or before December 1<sup>st</sup> of each year, each transit bus bench provider shall provide an inventory to the County of all existing benches, including current photographs of each bench, located within the public right-of-way.

**E. Placement.**

1. A transit bus stop may have no more than two (2) transit bus benches or one (1) transit bus bench and one (1) transit bus shelter.
2. A transit bus bench shall be located so as to leave at least thirty six inches (36") of clearance for pedestrians and persons in wheelchairs. Each bench should be kept clear of passenger loading and unloading areas and placed no closer than five feet (5') and no further than twelve feet (12') from the forward end of any bus stop.
3. If a transit bus shelter does not exist at a particular location at the time of execution of an agreement between a transit bus bench provider and the County, and a transit bus shelter is placed at a later date where two (2) transit bus benches exist, the last bench placed at the transit bus stop, which does not have an existing advertising contract, must be removed by the owner of said bench within thirty (30) days of the placement of the transit bus shelter. In the event the last transit bus bench placed has an existing advertising contract, the transit bus bench must be removed by the owner of said

bench within 180 days or by the expiration or termination of the existing advertising contract, whichever date occurs first.

4. If, for any reason, a transit bus bench needs to be re-located, the successful bench provider shall obtain permission from the County prior to its re-location.

#### **F. Design.**

Transit bus benches must meet the following design standards:

1. Transit bus benches placed on the public right-of-way shall be constructed of a dark green coated metal material, or any other material approved in advance by the County, and shall not exceed seventy four inches (74") in length, twenty eight inches (28") in depth, forty four inches (44") in height, and weigh no less than 300 pounds, or meet appropriate anchoring standards approved in advance by the County.
2. The transit bus bench location must meet the set back, sight triangle, and minimum clear recovery zone requirements as detailed in Chapter 3.C.7.f Roadside Clear Zone of the Manual of Uniform and Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, commonly known as the "Florida Greenbook", as amended.
3. Placement of any portion of a transit bus bench on a sidewalk is discouraged, except to the extent where physical constraints of a particular location may require such placement, with said placement authorized, in advance, at the sole discretion of the County. Any transit bus bench placed adjacent to a sidewalk shall be located on, and properly anchored to, a four inch (4") thick, leveled, concrete pad, flush to the ground, maintaining a six inch (6") perimeter around said bench. Samples of proper placement of transit bus benches will be attached to the County's right-of-way utilization permit application.
4. Any transit bus bench must comply with uniform design standards approved by the County through this Ordinance. The County may approve alternative designs, where appropriate, to be consistent with the architecture of adjacent public and/or private properties.
5. Illumination of any type, including, but not limited to, the use of reflectorized finishes or day glow paint, whether external or internal to the transit bus bench, is prohibited.
6. An informational logo or decal shall be placed in plain sight on the back side of each transit bus bench. Said logo or decal shall be not more than four inches (4") by four inches (4") in size and shall include, but is not limited to, the name of the bench provider, a contact telephone number, and the approved public right-of-way utilization permit number.

7. A trash receptacle shall be physically attached to each transit bus bench, or physically set into the ground with a concrete base, and contain a cover.

### **G. Advertising.**

Advertising may be allowed upon a transit bus bench in accordance with the following standards:

1. Commercial advertising shall be displayed upon a transit bus bench only on either the front or rear surface of the backrest area. There shall not be any additional advertising connected to or associated with the transit bus bench.
2. Advertising panels on transit bus benches must be single sided and limited to twelve square feet (12ft<sup>2</sup>) in area on one (1) side of the backrest, and be contained within the structure of the transit bus bench as sized by Section 2.F.1 above.
3. All advertising messages shall meet the requirements of the Osceola County Land Development Code, Chapter 15, Outdoor Advertising, as amended, with regard to the advertised message. Advertising messages will be in compliance with generally accepted standards of good taste and the text of such advertising messages will be subject to the approval of the County, which approval will not be unreasonably withheld. No liquor, beer, tobacco product, or sexually explicit or suggestive advertising will appear on any advertising panels.
4. In consideration of the revenues received from advertising, any transit bus bench provider shall pay, to the County, a minimum monthly fee of \$20.00 per bench, to be established in the solicitation as a Transit Bus Bench Fee Structure and incorporated into an agreement with the County. Said minimum monthly fee may be increased based on the location of the bench, the specific circumstances of the bench, and/or the amount of traffic that passes by said bench. In the even the advertising is promoting a non-profit tax exempt organization, the monthly fee shall not apply.
5. The transit bus bench provider who owns the benches and who has a valid agreement with the County shall provide the County with the first right of refusal to utilize advertising panels for community information and bus routes, at no cost to the County, in accordance with the following scale:
  - a. 0-3 benches → ten percent (10%) of advertising panels;
  - b. 4-9 benches → one (1) advertising panel;
  - c. 10-15 benches → two (2) advertising panels;
  - d. 16-25 benches → three (3) advertising panels;
  - e. 26-35 benches → four (4) advertising panels;
  - f. 36-45 benches → five (5) advertising panels;
  - g. 46 + benches → ten percent (10%) of advertising panels.

## **H. Maintenance of Transit Bus Bench Areas.**

The transit bus bench permit holder, or its licensee, will be responsible for the maintenance of the grounds within and surrounding a transit bus bench, including, but not limited to, the following: mowing of grass, weed removal, trash removal, cleaning, insect and weed control, graffiti removal, and other customary maintenance activities. If, at any time, the County observes the failure to maintain an area surrounding a transit bus bench, the County has the right to have the grounds maintained and charge the associated costs to the permit holder.

## **I. Removal of Transit Bus Benches.**

1. If the County finds any transit bus bench in violation of any portion of this Ordinance, except those determined to endanger life or property, the County shall provide written notice of the violation to the owner of the bench, who shall correct the violation or remove the transit bus bench within thirty (30) days after the date of the notice.
2. If the County finds any transit bus bench to be a danger to life or property, the County shall provide notice to the owner of the bench, who shall take immediate action to make the bench safe or remove the transit bus bench.
3. If the condition or location of a transit bus bench is not corrected in accordance with the County's notice, the County reserves the right to cause the bench to be removed and seek the cost of removal from the owner of the transit bus bench.
4. Whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration, or relocation of all or any portion of a public road, as determined by the County, any transit bus bench authorized by this Ordinance shall be immediately removed from said public right-of-way, or shall be reset or relocated thereon as required by the County, either by or at the expense of the transit bus bench owner.
5. In the event the relocation of said transit bus benches is scheduled to be conducted simultaneously with construction work, the bench owner shall coordinate with the County before proceeding. The transit bus bench owner shall cooperate with the contractor to arrange the sequence of work so as not to delay the work of the contractor.

## **SECTION 3. GRANDFATHER CLAUSE.**

### **A. Metropolitan Systems, Inc. Agreement.**

1. The contract with Metropolitan Systems, Inc. for the installation of transit bus benches, advertising on benches, and benches located within or in connection to transit shelters which was entered into on December 14, 1981, without public bidding, is ratified and affirmed until the expiration of the term of the contract on

December 13, 2011. Such benches may not interfere with right-of-way preservation and maintenance and must meet the safety guidelines as defined by the County and the State of Florida.

2. Any transit bus bench placed pursuant to the Metropolitan Systems, Inc. agreement that was in service prior to January 7, 2008 may be replaced if the bench is damaged, destroyed, or otherwise becomes unusable. Each transit bus bench replacement must meet the design and placement requirements of this Ordinance.
3. Within thirty (30) days of the expiration of the contract with Metropolitan Systems, Inc., Metropolitan Systems, Inc. may apply for a right-of-way utilization permit for each location where it presently has a transit bus bench. All transit bus benches belonging to Metropolitan Systems, Inc. shall be in full compliance with the provisions of this Ordinance by the end of the thirty (30) day period mentioned above. Failure of Metropolitan Systems, Inc. to apply for permits will result in those locations being available for inclusion into future transit bus bench provider solicitations.

**B. Other Agreements.**

1. By enacting this Ordinance, it is the intention of the County that the remaining contracts with bench providers be terminated, in accordance with the terms of said agreements.
2. All transit bus benches belonging to the aforementioned bench providers must come into substantial compliance with the provisions of this Ordinance, as the compliance applies to safety, within thirty (30) days of its adoption and in full compliance with the provisions of this Ordinance within 365 days of its adoption. In the event of non-compliance with this section, the County reserves the right to remove the non-compliant benches, charge the associated costs for removal to the bench owner, and hold the non-compliant benches for a period of fourteen (14) days, after which time, if the benches remain unclaimed, the County may dispose of same as deemed appropriate.

**SECTION 4. ENFORCEMENT.**

- A. The County's Code Enforcement Board shall have jurisdiction to hear and decide alleged violations of this Ordinance. Any person who violates any of these provisions shall, upon code enforcement action, be punished as provided in Chapter 7 of the Osceola County Code of Ordinances, as amended.
- B. The jurisdiction of the Code Enforcement Board shall not be exclusive. Any alleged violation of any provision of this Ordinance may be pursued by appropriate remedy, whether injunctive, declaratory, or other civil relief or criminal sanction in court at the option of the County.

**SECTION 5. SEVERABILITY.**

If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance, or any provision thereof, shall be held to be inapplicable to any person, property, or circumstance, such holding shall not affect it's applicably to any other person, property, or circumstances:

**SECTION 6. CONFLICT.**

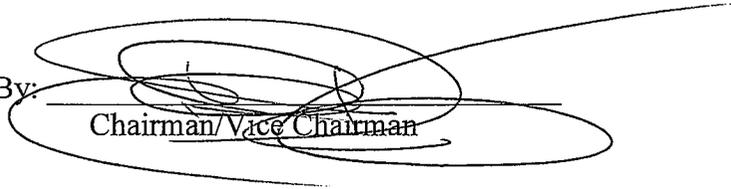
Any ordinance or part of any ordinance in conflict herewith is hereby repealed to the extent of any conflict.

**SECTION 7. EFFECTIVE DATE.**

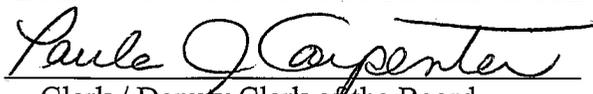
The Clerk of the Board shall file a certified copy of this Ordinance with the Department of State within ten (10) days of its adoption. This Ordinance shall become effective immediately upon its adoption by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of Osceola County, Florida, at its regular meeting this 10<sup>th</sup> day of August, 2009.

**BOARD OF COUNTY COMMISSIONERS  
OSCEOLA COUNTY, FLORIDA**

By:   
Chairman/Vice Chairman

**ATTEST:  
OSCEOLA COUNTY CLERK OF THE BOARD**

BY:   
Clerk / Deputy Clerk of the Board

