

ORDINANCE NO. 1951

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING TITLE 5 OF THE CITY OF SAN RAFAEL MUNICIPAL CODE TO ADD NEW CHAPTER 5.38 RELATED TO TRAFFIC SAFETY RULES FOR THE USE OF MEDIANS

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 1. Findings.

A. The City Council desires to amend Title Five entitled "Traffic Regulations" of its Municipal Code by adding Chapter 5.38 in its entirety, entitled "Regulations For Medians," to provide rules for the use of medians to promote the safety of both pedestrians and motorists.

B. In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity on public and private property. The City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution but instead desires to enact reasonable content-neutral time, place and manner regulations that address the need to prevent dangerous and hazardous situations from arising and to promote pedestrian and vehicular safety.

C. The City Council in enacting this Ordinance does hereby take legislative notice of the various decisions regarding content-neutrality, regulation of activity in the public right-of way, such as streets and medians, and regulation of activity on private property, including but not limited to the following: *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015) (regulations are content based if they apply to particular speech because of the topic discussed or the idea or message expressed); *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015) (prohibition against standing on medians was content-neutral but was overbroad as it applied to all medians regardless of size or location); *The Contributor v. City of Brentwood*, 726 F.3d 861 (6th Cir. 2013) (prohibition against solicitation from occupants of vehicles was constitutional as solicitors' audience was general public and this audience could be reached through alternative channels of communication); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011) (prohibition against solicitation on streets and highways was geographically over-inclusive); *Houston Chronicle v. City of League City*, 488 F.3d 613 (5th Cir. 2007) (prohibition on soliciting or selling material to the occupant of cars stopped in obedience to traffic lights was constitutional as it was narrowly tailored to the most congested locations with the highest traffic and safety concerns); *Fashion Valley Mall LLC v. National Labor Relations Board*, 42 Cal.4th 850 (2007) (liberty of speech clause of California Constitution protects free speech rights at private shopping centers); *Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8*, 55 Cal.4th 1083 (2012) (free speech rights under the California Constitution are protected only in the common areas of privately owned shopping centers which have amenities that encourage shoppers to stop, linger or congregate); *Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach*, 232 Cal.App.4th 1171 (2014) (sidewalk and apron areas at private shopping mall was not a public forum area in which individuals had a right to exercise their speech rights under the California Constitution); and *United States v. Kokinda*, 497 U.S. 720 (1990) (finding that postal sidewalk was not a traditional public forum and that regulations met with the reasonableness test for a nonpublic forum).

D. The function of medians, whether on public property or private property, is to enhance traffic safety by separating traffic streams, to guide turning movements at intersections and to prevent certain turning movements deemed unsafe. Medians provide a visual separation between driving lanes and help direct traffic. Small medians less than four feet in width are not suitable for lingering, loitering, or sitting on by individuals or groups.

E. Lingering and loitering on small medians is unsafe and hazardous for both pedestrians and motorists. Pedestrians lingering or loitering on the small medians of less than four feet in width endanger themselves by their close proximity to moving traffic streams and increase the risk of motorists becoming distracted from their primary duty to drive safely. This increases the likelihood of automobile crashes, pedestrian-involved crashes, congestion and blockage of streets which delays and obstructs the free flow of travel. These issues constitute substantial traffic safety problems.

F. Obstruction of traffic signs and signals on medians of any size by pedestrians also causes safety hazards by preventing motorists from having a clear view of the roadways and the applicable traffic directions.

G. The City Traffic Engineer has found pedestrians loitering and lingering on small medians to be a public safety issue. The City Engineer has also found that pedestrians obstructing signs or signals on any median also constitutes a public safety issue. Loitering and lingering and obstructing signs and signals creates dangerous and hazardous conditions for both pedestrians and motorists, such as increased potential for pedestrian-injury collisions, sudden lane changes, increased red-light-running at signalized intersections, and increased potential for rear-end collisions.

H. The City's Police Department has received numerous complaints about safety concerns caused by pedestrians lingering or loitering on medians or the adjoining roadways. Safety concerns include: concerns about motorists' line-of-sight being blocked by pedestrians on the medians; conflicts between the use of the roadway by motorists and pedestrians; reduced speed and disruption of the flow of traffic caused by pedestrian use of the medians; and abrupt and unsafe stops by motorists in response to pedestrians on the medians.

I. The City has determined that lingering or loitering on any median less than four feet in width will create similar traffic safety concerns and hazards for both pedestrians and motorists. In addition, to the hazards noted above, pedestrians lingering or loitering on small medians of less than four feet in width risk colliding with the mirrors, lights and other safety devices projecting from the side of vehicles in adjoining travel lanes, especially oversized vehicles (which are permissible under the California Vehicle Code). This concern is reduced when pedestrians linger or loiter on larger medians (*i.e.* medians four feet or more in width) as pedestrians have the needed space to reduce their proximity to moving traffic streams. By contrast, pedestrians lingering or loitering on small medians less than four feet in width cannot reduce their close proximity to moving traffic streams. Thus, the City has determined that lingering or loitering on any small median less than four feet in width endangers pedestrians, increases the risk of distracting motorists, increases the likelihood of automobile crashes and pedestrian-involved crashes, and increases the likelihood of congestion and blockage of streets.

J. The City has also determined that obstructing the traffic and directional signals or signs located on medians of any size will also cause traffic safety issues. Traffic devices commonly installed in medians

include regulatory signs and equipment such as turn prohibitions and signal indications, and warning devices such as reflectorized delineators, which if blocked are a traffic safety concern.

K. By enacting this Ordinance the City Council does not intend to interfere with the exercise of free speech rights of those engaged in solicitation. Rather, this Chapter regulates the conduct of lingering or loitering on small medians so as to minimize the safety hazards associated with such conduct for both pedestrians and motorists.

L. The restrictions of this Ordinance are content-neutral and are narrowly tailored to serve a significant governmental interest, but still provide alternative avenues of communication. The reasonable time, place, and manner restrictions in this Ordinance avoid the negative effects of lingering or loitering on medians without targeting the message or topic of speech and also allow ample alternative means of communicating including on sidewalks or medians larger than four feet in width.

DIVISION 2. AMENDMENT.

Title 5 entitled "TRAFFIC REGULATIONS" of the San Rafael Municipal Code is hereby amended to add Chapter 5.38 entitled "REGULATIONS FOR MEDIANS" to read in its entirety as follows:

5.38.010 - Definitions

For purposes of this Chapter the terms listed below shall have the following meaning:

- a. "Median" means a paved or planted raised area located in a roadway and dividing the roadway according to the direction of travel.
- b. "Linger" means to remain on a median longer than two traffic signal cycles, or, for locations without a traffic signal, for longer than three minutes, except in an emergency or for public works or maintenance.
- c. "Loiter" means to stand or linger on a median for any purpose other than to safely and lawfully cross the street, except in an emergency or for public works.
- d. "Public Works" means work or maintenance performed by the City, a State agency, public utility, their respective contractors, or other authorized public agency.
- e. "Roadway" means any publicly or privately owned or maintained road or street open to the use of the public for purposes of vehicular traffic.

5.38.020 - Lingering and Loitering Prohibited On Small Medians

- a. It is prohibited for any person to linger or loiter on any median less than four feet in width located within any public roadway.
- b. This prohibition is required to ensure the safety of both pedestrians and motorists, as small medians are not designed to accommodate prolonged pedestrian use. The only exceptions to this prohibition are for the following circumstances: (1) as may be necessary to cross a roadway; (2) as is necessary for emergencies; or (3) as is necessary for public works.

5.38.030 - Obstructing Traffic Signs and Signals Prohibited On All Medians

- a. It is prohibited for any person to block traffic signs and signals located on or within any median for more than two traffic signal cycles, or, for locations without a traffic signal, for longer than three minutes.

- b. This prohibition is required to ensure that the traffic signs and signals located on medians remain adequately visible to approaching motorists. The only exceptions to this prohibition are for the following circumstances: (1) as is necessary for emergencies; or (2) as is necessary for public works.

5.38.040 - Violations and Penalties

It shall be unlawful for any person to violate any provision of this chapter. Enforcement, violations, remedies, and penalties shall be governed by Chapter 5.12 - ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS of the San Rafael Municipal Code, and any other applicable law.

DIVISION 3. SEVERABILITY.

If any part of this chapter or the application thereof to any person is held invalid, the remainder of the chapter and the application of such provisions to other persons shall not be affected thereby.

DIVISION 4

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

ESTHER BEIRNE, City Clerk

The foregoing Ordinance No.1951 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 18th day of December, 2017 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 16th day of January, 2018.

ESTHER BEIRNE, City Clerk