Agenda Item #: 5C-1

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Part Addison Spinish	****						
Meeting Date:	April 20, 2010	[] Consent [] Public Hearing	[X] Regular				
Department							
Submitted By:	COUNTY ATTORNEY'S OFFICE						
Submitted For:							
			7146d.c.4				

I. EXECUTIVE BRIEF

Motion and Title: Staff requests board direction: regarding options for regulating the distribution of goods and materials or solicitation of funds on portions of the County's rights-of-way.

Summary: The Board requested that the County Attorney's Office research the County's ability to regulate distribution of goods and materials or solicitation of funds on the County's rights-of-way. This item offers options for the Board's consideration. Countywide (MRE)

Background and Policy Issues: As the County has become more urban and traffic has increased, the Commissioners and County staff have received an increasing number of complaints about the safety of the motoring public and individuals distributing goods and materials or soliciting funds from vehicles on County rights-of-way. The Board has expressed a desire to develop ways to address these complaints through regulating activities occurring on medians and roadways. The County Attorney's Office has researched this issue and the findings are outlined below.

Since streets and sidewalks are traditional public forums and have long been used to assemble and debate, the government's ability to restrict activity is very limited. In fact, some activities cannot be banned entirely, but may be regulated as to the time and place of the activity and the manner in which the activity is conducted. If a government regulates the time, place and manner of the activity, it must do so without regard to the content of the message espoused by the individual or group, and with a regulation that is narrowly tailored to serve a significant governmental interest. If the government prohibits expression in a traditional forum, it must leave open an alternate channel for the communication. (Continued on Page 3)

Attachments: 1. None 2.		
Recommended by:	1) Illum	325/10
	County Attorney	Date
Approved by:	N/A	
		Date

II. FISCAL IMPACT ANALYSIS

A.	A. Five Year Summary of Fiscal Impact:									
	Fiscal Years	2010	2011	2012	2013	2014				
_	al Expenditures ating Costs									
Progr	nal Revenues ram Income (County nd Match (County))								
NET	FISCAL IMPACT	*								
	ODITIONAL FTE SITIONS (Cumulative	e)								
Is Iter	n Included in Curre	nt Budget?	Yes_	No	_					
Budg	et Account No.:	Fund	Departmen	t Unit_	Object_					
		Reporting C	Category							
B.	Recommended So	urces of Fur	nds/Summaı	y of Fiscal Ir	npact:					
C.	Departmental Fisca	al Review: _	·							
		III. <u>REVI</u>	EW COMME	NTS						
	OFMB Fiscal and/o	r Contract [5/200 0	In J	Comments:	4)5)10 htrol				
B.	Legal Sufficiency:	Z.	0							
	Maluk (ttt) Assistant Coun	# 3/3/18/ ty Attorney	<u>) </u>							
C.	Other Department I	Review:								
	Department I	Director								

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THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues: (Continued from Page 1)

If the County establishes that there is significant governmental interest, such as safety, it is likely the County can successfully prohibit individuals or groups from using the travel lanes and medians of County rights-of-way. With this approach however, First Amendment considerations require that the County leave open an alternate channel for communication, such as sidewalks or shoulders. Therefore, the following discussion involves individuals and/or organizations soliciting contributions of funds from, or the distribution of goods or materials to, motor vehicles traveling on County roads in unincorporated County (hereinafter Right-of-Way Activities).

With the exception of the County's Roadside Vendor's Ordinance, which regulates commercial vendors selling certain items from the shoulder area of the rights-of-way, there are no ordinances regulating Right-of-Way Activities. Existing State law prohibits the obstruction of any public street or highway by standing or approaching motor vehicles or by endangering the safe movement of vehicles or pedestrians.

If the County finds that Right-of-Way Activities raise safety issues, and allows an alternate channel for the communication, the Board can impose time, place and manner restrictions on Right-of-Way Activities. The Board's options are as follows:

Option 1: Prohibit Right-of-Way Activity on County Roads. Adopt an ordinance regulating all Right-of-Way Activities by prohibiting such activities on medians and travel lanes on County roads. This option would prohibit Right-of-Way Activities by anyone standing on the medians and roadways of County roads in unincorporated County. There will be no exemptions for certain individuals or groups. However, this option would still allow use of the rights-of-way outside the travel lanes.

Option 2: Allow Right-of-Way Activity but regulate the time, place and manner. Adopt an ordinance allowing Right-of-Way Activities with certain restrictions as to time, place and manner on County roads. This option would allow Right-of-Way Activities, but only at specified times and locations in a manner consistent with safe use of the right-of-way. This option will require that an alternate channel for the communication is available and that the regulation is content neutral and narrowly tailored to serve a governmental interest. This option would require staff to develop specific procedures and guidelines.

Option 3: Seek Increased Enforcement of State Law on State Rights-of-Way. This third option would focus on State roads and seek increased enforcement of State laws governing activities on State rights-of-way. Statutes are in effect now that authorize and direct law enforcement agencies to enforce laws prohibiting the use of State roads by individuals engaged in the types of activities discussed above. This option would require involvement by the Palm Beach County Sheriff's Office, and no ordinance would be adopted at this time.

Board direction is requested on the following:

Implement Option 1, 2 or 3.

- 1. If the Board chooses Option 1, staff requests that the Board direct Staff to prepare an ordinance prohibiting Right-of-Way Activities.
- 2. If the Board chooses Option 2, staff will develop specific procedures and guidelines to implement and bring back to the Board.
- 3. If the Board chooses Option 3, staff will take no action on County roads and request the Sheriff to enforce existing laws which do not allow this kind of activity on State rights-of-way.