

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	May 19, 2015	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
Department		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Submitted By:	COUNTY ATTORNEY		
Submitted For:	COUNTY ATTORNEY		

I. EXECUTIVE BRIEF

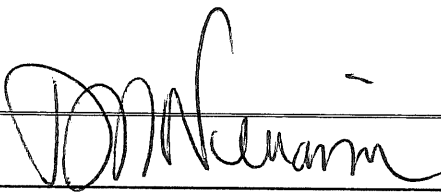
Motion and Title: Staff recommends motion to approve: On preliminary reading and advertise for public hearing on June 23, 2015 at 9:30 a.m., an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, to be known as the Palm Beach County Solicitation and Distribution on Public Roads Ordinance; providing for title; providing for intent; providing for definitions; providing for findings and determinations; providing for prohibitions; providing for applicability; providing for penalties; providing for severability; providing for inclusion in the code of laws and ordinances; providing for captions; and providing for an effective date.

Summary: This ordinance will prohibit persons from displaying information, soliciting business or charitable contributions and distributing materials or goods on county and state roads, in the unincorporated area of the county. Prohibited activities include, but are not limited to panhandling, collection of donations for or by non-profit organizations or the sale or distribution of merchandise or publications. Shoulders and sidewalks are not covered by this ordinance. Unincorporated County (MRE)

Background and Policy Issues: The County has been evaluating the use of public roads in unincorporated Palm Beach County by individuals who display information, distribute materials or goods and solicit business or charitable contributions on travel lanes and medians. First Amendment issues and case law made regulating these activities difficult. However, a recent incident in Palm Beach County has focused attention on the danger of standing on medians in close proximity to vehicles. Early this year a hit and run driver struck and killed a man as he stood on the median at Okeechobee Boulevard and the entrance to the Turnpike. The heightened dangers of individuals, construction workers and law enforcement officers being injured or killed on or near roads establishes the need to regulate the activities of individuals in close proximity to vehicles and such regulation is in the best interest of the health, safety and welfare of the public. This ordinance applies only to roads including medians and is therefore, narrowly tailored to serve a significant government interest while leaving open alternative channels of communication, such as shoulders and sidewalks for the activities described above.

Attachments:

1. Proposed Ordinance

Recommended by:		5/8/15
	County Attorney	Date

Approved by: _____ N/A _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> *</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Sherry Br...
 5/5/15 OFMB

J. J. Jacobson 5/11/15
 Contract Development and Control
 5-11-15 B Wheeler

B. Legal Sufficiency:

Mark R. ... 5/5/15
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

ORDINANCE NO. 20 ____ - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY SOLICITATION AND DISTRIBUTION ON PUBLIC ROADS ORDINANCE; PROVIDING FOR TITLE; PROVIDING FOR INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS AND DETERMINATIONS; PROVIDING FOR PROHIBITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 125.01(1)(m), Florida Statutes, authorizes the Board of County Commissioners of Palm Beach County (hereinafter “County”) to regulate roads within Palm Beach County; and

WHEREAS, Section 125.01(1)(w), Florida Statutes, authorizes the County to perform acts that are in the common interest of the people of Palm Beach County, and to exercise all powers and privileges not specifically prohibited by law; and

WHEREAS, both State and County transportation agencies design public roadways for the safe and efficient movement of motor vehicles and pedestrians on such roadways; and

WHEREAS, the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, hereinafter “Florida Greenbook”, does not include provisions for any kind of transaction to take place between occupants of motor vehicles and pedestrians sitting or standing close to the travel lanes of public roads; and

WHEREAS, the Florida Greenbook requires that planning and design of new streets and highways include provisions that minimize vehicle and pedestrian conflicts and recommends that pedestrian pathways be placed as far from roadway as practical because of the inherently dangerous nature of vehicles and pedestrians in close proximity to each other; and

WHEREAS, medians are part of the road and are designed to separate opposing traffic, channel and direct traffic and provide a vehicle refuge area for an errant vehicle; and

WHEREAS, due to the possibility that an errant vehicle may proceed into the median, and to afford the maximum visibility for traveling public, the Florida Greenbook requires that in order to locate objects, such as landscaping, signage and poles in medians, clear zone and site distance standards must be met; and

WHEREAS, State and local policies require that workers on roads and medians establish and maintain certain safety procedures to warn drivers of the presence of workers, direct vehicles to use caution and to direct vehicles away from areas where workers are present; and

WHEREAS, in response to law enforcement agencies concerns regarding the number of law enforcement officers injured or killed in the course of conducting routine traffic stops adjacent to roadways, the Florida Legislature enacted Florida statute 316.126, known as the “Move Over Act”; and

WHEREAS, a pedestrian standing on a median in Palm Beach County was struck and killed when a vehicle crossed the median curb; and

WHEREAS, County seeks to provide for the safety of its citizens by regulating the use of public roads and medians within Palm Beach County; and

WHEREAS, the Florida Legislature has determined that the failure to prohibit certain activities such as the free distribution or sale of any merchandise, goods, property or services; the display or solicitation for free distribution or sale of any merchandise, goods, property or services; or solicitation for charitable purposes from being conducted on the right-of-way of state transportation facilities endangers the health, safety, and general welfare of the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities; and

WHEREAS, the County finds that persons displaying information of any kind, distributing materials or goods, or soliciting business or charitable contributions on roads and medians is hazardous to public safety and impedes the normal, orderly, and safe flow of traffic; and

WHEREAS, the County finds that passage of this Ordinance will further the interest of the health, safety and general welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. TITLE:

This Ordinance shall be entitled the Palm Beach County Solicitation and Distribution on Public Roads Ordinance.

Section 2. INTENT:

It is the intent of this Ordinance to protect the health, safety and general welfare of the citizens of Palm Beach County, to assure the free, orderly, uninterrupted movement of motorized vehicles on public roads within unincorporated Palm Beach County and to provide for safety in the interest of pedestrians and occupants of motorized vehicles located on public roads within unincorporated Palm Beach County. This Ordinance is not intended to control traffic, as that term is defined in Chapter 316, Florida Statutes. This Ordinance is intended to apply evenhandedly to all persons who engage in the activities proscribed herein, regardless of their message. This Ordinance is intended to be narrowly tailored to serve the significant government interest of public safety, and to leave open ample alternative channels of displaying information, distributing goods and materials, and soliciting business and charitable contributions.

Section 3. DEFINITIONS:

“Road” shall include roads, streets, roadbeds, ramps, medians, traffic islands and all other ways open to travel by operators of motorized vehicles within unincorporated Palm Beach County. This definition excludes private roads and roads that are not open to motor vehicle travel.

Section 4. FINDINGS AND DETERMINATIONS:

The County hereby finds and determines that allowing the interaction of pedestrians and motor vehicles in close proximity is inherently dangerous on State and County Roads and persons engaging in displaying information of any kind, distributing, materials or goods, or soliciting business or charitable contribution on Roads is hazardous to public safety, both for occupants of vehicles located on public Roads and for persons engaging in such display of information, distribution of material or goods and solicitation of business or charitable contribution.

The County further hereby finds and determines that the prohibitions set forth in this Ordinance are narrowly tailored to serve the significant interest of promoting and protecting the

public health, safety and welfare of the citizens of Palm Beach County, and that said prohibitions leave open ample alternative channels of communication.

Section 5. PROHIBITIONS:

- (1) No person shall be upon or go upon Road for the purpose of displaying information of any kind.
- (2) No person shall be upon or go upon any Road for the purpose of distributing materials or goods or soliciting business or charitable contributions of any kind.
- (3) The language in this section is not intended to apply to traffic control signage or personnel or maintenance and construction personnel engaged to perform authorized activities on Roads.

Section 6. APPLICABILITY:

The provisions of this Ordinance shall embrace all public Roads that are open to motor vehicle traffic within the unincorporated area of Palm Beach County, including State Roads, interstate ramps and County Roads.

Section 7. PENALTIES:

- (1) Pursuant to Section 125.69(1), Florida Statutes, any person convicted of violating the provisions of this Ordinance shall be punished by a fine not to exceed \$500, by imprisonment not to exceed 60 days, or by such fine and imprisonment.
- (2) In addition to the penalties provided by subsection (1) of this Section, any violation of this Ordinance shall be subject to appropriate civil action in a court of appropriate jurisdiction.

Section 8. SEVERABILITY:

It is declared to be the intent of the County, that if any section, subsection, paragraph, sentence, clause or provision of this Ordinance be held invalid, the remainder of this Ordinance shall not be affected.

Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish such and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 10. CAPTIONS:

The captions, section headings and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 11. EFFECTIVE DATE:

Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective when the acknowledgment is received from the Secretary of State that the Ordinance has been duly filed.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the ____ day of _____, 20____.

SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 20____.