

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 26, 2022

Consent Regular
 Public Hearing Workshop

Department: County Attorney's Office
Submitted By: County Attorney
Submitted For: County Attorney

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: an Ordinance of the Board of County Commissioners (BCC) of Palm Beach County, Florida (County) repealing County Code Chapter 18, Article I, Section 18-17, the "Palm Beach County Solicitation and Distribution on Public Roads Ordinance" (Solicitation Ordinance); providing for repeal of laws in conflict; providing for inclusion in the code of laws and ordinances; providing for an effective date.

SUMMARY: Adoption of this Ordinance repeals the Solicitation Ordinance, which prohibits persons from displaying information of any kind, distributing materials or goods, or soliciting business or charitable contributions of any kind, on roads. In light of recent First Amendment case law, where courts have found regulations similar to the Solicitation Ordinance as unconstitutional, staff recommends repeal of the Solicitation Ordinance in its entirety. Countywide (YBH)

Background and Justification: On June 23, 2015, the BCC adopted the Solicitation Ordinance. The BCC sought to promote public safety, and the normal, orderly, and safe flow of traffic due to, among other things, a pedestrian who was standing on a median in the County and was struck and killed when a vehicle crossed the median curb. The U.S. Supreme Court has clarified the First Amendment analysis of speech regulations, stating that strict scrutiny applies to content-based regulations, regardless of the government's benign, content-neutral motive or justification. Content-neutral regulations are subject to intermediate scrutiny. However, an ordinance in another jurisdiction that prohibited virtually all activity on median strips was found unconstitutional under the First Amendment. Therefore, based on recent cases, staff recommends adoption of the above Ordinance.

Attachments:

- 1. Proposed Ordinance
- 2. 2015-025 Palm Beach County Solicitation and Distribution on Public Roads Ordinance

Recommended By:  _____ Date _____

Approved By:  _____ Date 4/11/22

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT					
#ADDITIONAL FTE POSITIONS (CUMULATIVE					

Is Item Included in Current Budget? Yes No
 Does this item include the use of federal funds? Yes No

Budget Account No:

Fund Agency Organization Object

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

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

Shirley Mente 4/7/22
 Supp OFMB 9A4.722

John J. Jacobson 4/8/22
 Contract Dev. & Control
 4-7-22 TD

B. Legal Sufficiency

Helene C. Striped 4-8-22
 Assistant County Attorney

C. Other Department Review

 Department Director

ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING SECTION 18-17, "PALM BEACH COUNTY SOLICITATION AND DISTRIBUTION ON PUBLIC ROADS ORDINANCE"; PROVIDING FOR LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about June 23, 2015, the Board of County Commissioners ("Board") enacted Palm Beach County Code Chapter 18, Article I, Section 18-17, Ordinance No. 2015-025, referred to as the Palm Beach County Solicitation and Distribution on Public Roads Ordinance ("Solicitation Ordinance"); and

WHEREAS, the Solicitation Ordinance prohibits persons from displaying information of any kind, distributing materials or goods, or soliciting business or charitable contributions of any kind, on roads; and

WHEREAS, in adopting the Solicitation Ordinance, the Board sought to promote public safety, and the normal, orderly, and safe flow of traffic due to, among other things, a pedestrian who was standing on a median in Palm Beach County and was struck and killed when a vehicle crossed the median curb; and

WHEREAS, in Reed v. Town of Gilbert, 576 U.S. 155 (2015), the U.S. Supreme Court clarified the First Amendment analysis of speech regulations, stating that strict scrutiny applies to content-based regulations, regardless of the government's benign, content-neutral motive or justification; and

WHEREAS, content-neutral regulations are subject to intermediate scrutiny. In Cutting v. City of Portland, 802 F.3d 79 (1st Cir. 2015), the court found that an ordinance prohibiting virtually all activity on median strips was unconstitutional under the First Amendment; and

WHEREAS, in light of recent First Amendment case law, where courts have found regulations similar to the Solicitation Ordinance as unconstitutional, the Board wishes to repeal the Solicitation Ordinance.

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

Section 1.

Chapter 18, Article I, Section 18-17 is hereby repealed in its entirety.

1 **Section 2. REPEAL OF LAWS IN CONFLICT:**

2 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed
3 to the extent of such conflict.

4 **Section 3. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

5 The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code.
6 The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word
7 “ordinance” may be changed to “section”, “article”, or other appropriate word.

8 **Section 4. EFFECTIVE DATE:**

9 The provisions of this Ordinance shall become effective upon filing with the Department of State.

10 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on
11 this the ____ day of _____, 2022.

12
13 JOSEPH ABRUZZO, CLERK
14 OF THE CIRCUIT COURT &
15 COMPTROLLER

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

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19 By: _____
20 Deputy Clerk

By: _____
Robert S. Weinroth, Mayor

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23
24 APPROVED AS TO FORM AND
25 LEGAL SUFFICIENCY

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28
29 By: /s/Yelizaveta B. Herman
30 Assistant County Attorney

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32 EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 2022.

ORDINANCE NO. 2015 - 025

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, undisrupted 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 any 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 and to all municipalities within Palm Beach County that elect to have the provisions of this ordinance apply within their respective jurisdictions.

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:

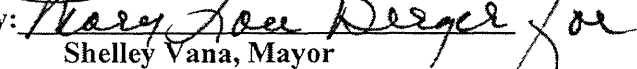
Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective when the acknowledgment 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 23rd day of June, 2015.

SHARON R. BOCK, CLERK

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

By: 
Deputy Clerk

By: 
Shelley Vana, Mayor
Mary Lou Berger Vice Mayor



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 25 day of June, 2015.



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 25, 2015

Honorable Sharon R. Bock
Clerk and Comptroller
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

Attention: Gretel Sarmiento, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2015-025, which was filed in this office on June 25, 2015.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb