



*Office of*  
**INDIAN RIVER COUNTY  
ATTORNEY**

Dylan Reingold, County Attorney  
William K. DeBaal, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

### MEMORANDUM

**TO:** Board of County Commissioners

**FROM:** Dylan Reingold, County Attorney *DR*

**DATE:** October 24, 2016

**SUBJECT:** Right-of-Way Ordinance Amendment

#### BACKGROUND.

On August 16, 2016, the Indian River County Board of County Commissioners (the "Board") authorized the County Attorney's Office to review the Indian River County Right-of-Way Ordinance in light of the United States Supreme Court's decision in Reed v. Town of Gilbert. Section 312.06 of the Indian River County Code of Ordinances prohibits begging, peddling, soliciting, or canvassing on any right-of-way other than a sidewalk. The United States Supreme Court in Reed explained that regulation of speech is content based if the regulation applies to particular speech because of the topic discussed or the idea or message expressed. Such regulations are presumptively unconstitutional. Content-neutral regulations on the other hand are subject to a more lenient standard of review. Content neutral time, place and manner regulations will be upheld so long as they are narrowly tailored to serve a substantial government interest and do not unreasonably limit alternative avenues of expression.

APPROVED FOR NOVEMBER 8, 2016  
B.C.C. MEETING – PUBLIC HEARINGS

*[Signature]*  
COUNTY ATTORNEY

Indian River Co.	Approved	Date
Admin		
Co. Atty.	<i>DR</i>	<i>10/24/16</i>
Budget		
Dept.	---	---
Risk Mgr.	---	---

Consistent with the Board's direction, the County Attorney's Office drafted language to address both the United States Supreme Court's ruling in Reed and the need for protections for drivers, passengers and pedestrians alike. The Indian River County Sheriff's Office has provided data to the County Attorney's Office that demonstrates that an increase in crashes has occurred at several intersections in Indian River County. Distractions, such as exchanges between drivers and pedestrians at intersections, can interfere with or impede the safe flow of traffic at intersections leading to crashes. Thus, an ordinance with the proposed language would be designed to promote the safe and efficient use of the rights-of-ways within Indian River County. On October 4, 2016, the Board authorized the County Attorney's Office to draft an ordinance consistent with the initially proposed language and notice a public hearing concerning the proposed ordinance.

The attached proposed ordinance contains the same language as presented to the Board on October 4, 2016. The proposed ordinance does not address speech, but instead focuses on behavior which can distract drivers. Under the proposed ordinance, people will be prohibited from standing or entering into the right-of-way, other than on a sidewalk, for the purpose of distributing items with the driver or a passenger of the vehicle. Under the proposed ordinance, distributing is defined as exchanging of items between any persons within a right-of-way and the driver or a passenger of a vehicle at such location that requires an acceptance or rejection of the items being offered for exchange.

#### **FUNDING.**

The only cost associated with this matter is the cost of advertising the notice of public hearing. The cost was \$150.51. This cost was funded from General Fund/County Attorney/Legal Account No. 00110214-033110.

#### **RECOMMENDATION.**

The County Attorney's Office respectfully requests that the chair open the public hearing and take any comments from the public and then have the Board vote to approve the proposed ordinance.

#### **ATTACHMENTS**

Proposed Ordinance