MEMORANDUM

Agenda Item No. 11(A)(18)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	November 5, 2013
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution urging the Florida Legislature to enact legislation making texting while driving a primary offense

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 5, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(18)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(18)
11-5-13

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO ENACT LEGISLATION MAKING TEXTING WHILE DRIVING A PRIMARY OFFENSE

WHEREAS, each day in the United States, more than nine (9) people are killed and more than 1,060 people are injured in crashes that are reported to involve a distracted driver, according to the National Highway Traffic Safety Administration (NHTSA); and

WHEREAS, in 2011, 3,331 people were killed in crashes involving a distracted driver, compared to 3,267 in 2010; and

WHEREAS, in 2010, nearly one in five crashes in which someone was injured involved distracted driving; and

WHEREAS, in June, 2011, more than 196 billion text messages were sent or received in the U.S., up nearly 50 percent from June 2009, according to the NHTSA; and

WHEREAS, distracted driving is driving while doing another activity that takes your attention away from the road, and can substantially increase the chance of a motor vehicle crash; and

WHEREAS, there are three main types of driver distraction, according to the Centers for Disease Control and Prevention (CDC):

1. Visual, which consists of a driver taking his or her eyes off the road;
2. Manual, which consists of a driver taking his or her hands off the wheel; and
3. Cognitive, which consists of a driver taking his or her mind off the task of driving; and

WHEREAS, texting while driving is considered to be one of the most dangerous forms of driver distraction because it combines all three of these types of driver distraction, and takes the driver's attention away from driving more frequently and for longer periods than other distractions; and

WHEREAS, 31 percent of U.S. drivers between ages 18 and 64 reported that they had read or sent text messages or email messages while driving at least once within the 30 days before they were surveyed, according to the CDC; and

WHEREAS, younger, inexperienced drivers under the age of 20 may be at increased risk because statistics show that they have the highest proportion of distraction-related fatal crashes, according to the NHTSA; and

WHEREAS, public concern over distracted driving has resulted in a number of jurisdictions making it illegal to use hand-held cellular telephones for talking or texting or both while driving; and

WHEREAS, in October, 2001, Miami-Dade County was among the first jurisdictions in Florida to pass an ordinance prohibiting the use of cellular telephones while operating a motor vehicle except with a hands-free device when this Board passed Ordinance No. 01-148; and

WHEREAS, shortly thereafter, during the 2002 regular session, the Florida Legislature enacted Chapter 2002-179, Laws of Florida (HB 358), which preempted local governments from regulating the use of electronic communications devices in motor vehicles; and

WHEREAS, on September 30, 2009, President Barack Obama issued an Executive Order prohibiting federal employees from texting while driving government-owned vehicles or with government-owned equipment; and

WHEREAS, in November, 2009, this Board enacted Resolution No. 1390-09, which prohibited County employees, with certain exceptions, from text messaging, emailing or talking on a cellular telephones or other personal wireless handheld device when driving county-owned or -leased vehicles unless a hands-free device is used; and

WHEREAS, on October 27, 2010, the Federal Motor Carrier Safety Administration enacted a ban that prohibits commercial vehicle drivers from texting while driving; and

WHEREAS, on December 13, 2011, the NHTSA urged all states to ban drivers from using electronic devices while driving, including for text messaging, after several investigations found that texting was the cause of deadly accidents; and

WHEREAS, as of October 1, 2013, 41 states, the District of Columbia and Puerto Rico have banned texting while driving for all drivers; and

WHEREAS, another six (6) states have banned texting while driving for novice drivers and another three (3) states have banned texting while driving for school bus drivers, according to the Governors Highway Safety Association; and

WHEREAS, this Board has urged the Florida Legislature to ban texting while driving for a number of years, including R-950-10 for the 2011 session, R-78-12 for the 2012 session and R-723-12 for the 2013 session; and

WHEREAS, Florida was one of the last states to ban texting while driving; and

WHEREAS, during the 2013 session, the Florida Legislature enacted Chapter 2013-58, Laws of Florida (SB 52) by Senator Nancy Detert (R – Sarasota), entitled the "Florida Ban on Texting While Driving Law", which prohibits the operation of a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other text in a handheld wireless

communication device, or sending or reading data in the device for the purpose of non-voice interpersonal communication; and

WHEREAS, Chapter 2013-58 includes a number of exceptions including for:

1. Emergency workers performing official duties;
2. Reporting emergencies or suspicious activity;
3. Receiving various types of navigation information, emergency traffic and weather information and radio broadcasts;
4. Autonomous vehicles;
5. Interpersonal communications that can be conducted without manually typing the message or without reading the message, such as Apple's Siri; and
6. When a vehicle is stationary, such as at a red light; and

WHEREAS, under Chapter 2013-58, the prohibition on texting while driving is not considered a primary offense, but instead is enforceable only as a secondary offense, and a first violation is punishable as a nonmoving violation, with a fine of $30 plus court costs that vary by county; and

WHEREAS, a secondary offense is an offense on which a law enforcement officer can only issue a ticket if a driver has been pulled over for another violation; and

WHEREAS, Florida is one of only four states along with Iowa, Nebraska and Ohio, that considers texting while driving a secondary rather than a primary offense; and

WHEREAS, while the Florida Legislature's enactment of Chapter 2013-58 was a step in the right direction, more can be done to reduce death and injury from texting while driving; and

WHEREAS, this Board would like to urge the Florida Legislature to make texting while driving a primary offense,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to enact legislation that would make texting while driving a primary offense.

Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, the Chair and Members of the Miami-Dade County State Legislative Delegation and Senator Nancy Detert.

Section 3. Directs the County's state lobbyists to advocate for the passage of the legislation set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to include this item in the 2014 State Legislative Package when it is presented to the Board.

The Prime Sponsors of the foregoing resolution are Commissioner Barbara J. Jordan. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of November, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jess M. McCarty