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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 11(A)(12)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: December 1, 2009

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

SUBJECT: Resolution setting policy for Miami-Dade-County prohibiting County employees from text messaging, emailing and talking on cellular telephones while driving on duty; directing the Mayor or Designee to prepare an implementing order effectuating this policy and providing exceptions

Resolution No. R-1390-09

This item was amended at the Government Operations Committee to allow an exception for hands-free devices and to remove a prohibition on County employees texting or talking on cell phones while in private vehicles.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Katy Sorenson.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: December 1, 2009

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

SUBJECT: Agenda Item No. 11(A)(12)

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 Manager'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)(12)
12-1-09

RESOLUTION NO. **R-1390-09**

RESOLUTION SETTING POLICY FOR MIAMI-DADE COUNTY PROHIBITING COUNTY EMPLOYEES FROM TEXT MESSAGING, EMAILING AND TALKING ON CELLULAR TELEPHONES WHILE DRIVING ON DUTY; DIRECTING THE MAYOR OR DESIGNEE TO PREPARE AN IMPLEMENTING ORDER EFFECTUATING THIS POLICY AND PROVIDING EXCEPTIONS

WHEREAS, a study by the Virginia Tech Transportation Institute has concluded that people who send text messages while driving are 23 times more likely to be involved in a crash; and

WHEREAS, a test by Car and Driver Magazine found that in some cases, a person's reaction time was harmed more by texting while driving than while driving under the influence of alcohol; and

WHEREAS, a study by the University of Utah found that college students using a driving simulator were eight times more likely to have an accident while texting; and

WHEREAS, on October 1, 2009, President Obama issued an executive order prohibiting federal employees from texting while driving government vehicles or while driving privately-owned vehicles on official government business; and

WHEREAS, 14 states and the District of Columbia have passed laws prohibiting texting while driving; and

WHEREAS, the Florida Legislature has not prohibited texting, emailing or talking on a cellular telephone while driving, although this Board has urged the Legislature to pass such legislation, R-864-09; and

WHEREAS, while not prohibiting texting, emailing or talking on cellular telephones while driving, the State of Florida has preempted local governments from regulating the use of commercial mobile radio services and other electronic communications devices in motor vehicles; and

WHEREAS, such preemption does not extend to County oversight of County employee conduct while on duty,

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

Section 1. It is the policy of Miami-Dade County that County employees shall not engage in text messaging, emailing or talking on a cellular telephone, Blackberry, iPhone or other personal wireless handheld device [[~~(i)~~]][1] when driving county-owned or county-leased vehicles >>unless a hands-free device is used<<[[~~, or (ii) when driving privately-owned vehicles on official County business~~]]. >>Hands-free device means an internal device, attachment, add-on or addition to a cellular telephone or a motor vehicle, whether or not permanently installed in the motor vehicle, that when used (i) allows the operator of a motor vehicle to maintain both hands on the steering wheel and (ii) allows for surrounding sound to be heard by at least one ear.<<

[1] Committee amendments are indicated as follows: words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or »double arrowed« constitute the amendment proposed.

This policy shall not apply to those circumstances, employees and equipment where particular job duties require the use of cellular telephones and other devices while driving as specified by the Mayor or Designee pursuant to Section 2.

Section 2. Within 120 days of the effective date of this resolution, the Mayor or Designee shall bring to the Board for approval an Implementing Order to effectuate this policy. Such Implementing Order may exempt from the requirements of this policy, in whole or in part, emergency circumstances and particular employees, devices or vehicles where circumstances warrant.

Section 3. The Mayor or Designee shall conduct education, awareness and other outreach for County employees about the safety risks associated with texting and talking on cellular telephones while driving; and encourage voluntary compliance with the County's policy related to text messaging and cellular telephone use while off duty.

The Prime Sponsor of the foregoing resolution is Commissioner Katy Sorenson. It was offered by Commissioner Sally A. Heyman, who moved its adoption. The motion was seconded by Commissioner Joe A. Martinez and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman aye
Jose "Pepe" Diaz, Vice-Chairman aye

Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of December, 2009. 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 **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jess M. McCarty

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	11(A)12
File Number:	093046
Committee(s) of Reference:	Board of County Commissioners
Date of Analysis:	November 4, 2009
Type of Item:	Prohibiting Text Messaging
Prime Sponsor:	Commissioner Katy Sorenson

Summary

This resolution creates a policy prohibiting County employees from text messaging, emailing and talking in cellular telephones while driving on duty. The proposed resolution directs the Mayor or his designee to prepare an implementing order effectuating this policy and provide for exceptions.

During the November 9, 2009 Government Operations meeting this resolution was amended to not include policy that covers privately-owned vehicles on official County business engaging in text messaging, emailing or talking on a cellular telephone, Blackberry, iPhone or other personal wireless handheld device.

Background and Relevant Information

In 2008, nine (9) bills concerning the use of handheld cell phones and/or text messaging devices were proposed at the state level, but none made it out of committee; seven (7) bills regarding such use died in committee in 2009.

Three bills are currently proposed for 2010, including two by Sen. Frederica Wilson (D-Miami Gardens), who reintroduced Heather's Law, which would prohibit the use of handheld cell phones while driving, and a stand-alone text messaging bill (draft number 33-00095). Sen. Thad Altman (R-Viera) supports restrictions on texting only, as does Rep. Doug Holder, (R-Sarasota), who introduced H.B. 41. Rep. Matt Hudson (R-Naples) said that bill is in three committees and may be heard in November.[1]

In California, all drivers are prohibited from using hand-held cell phones, but drivers 18 and older can use hands-free devices. The state's new text messaging law, which took effect July 1, prohibits all drivers from texting while operating a motor vehicle.

According to the National Highway Traffic Safety Administration's 2008 distracted driving statistics:

[1] *Legislative Bill Proposes to End Texting*, Naples News, October 7, 2009

- 515,000 injuries occurred;
- There were 5,870 deaths; and
- On any day, nearly 800,000 drivers used a handheld cell phone.

Legislative History

On December 2, 2008, the Board of County Commissioners, through Resolution 1390-08, urged the Florida legislature to prohibit talking, text messaging or otherwise using wireless communication devices, including cellular telephones and personal digital assistants, while driving in a school zone at times reduced speeds are in effect.

Prepared by: Michael Amador-Gil