



Agenda Item Cover Sheet

Agenda Item N^o. D-1

Meeting Date June 03, 2015

☐ Consent Section

☐ Regular Section

☒ Public Hearing

Subject:

Public Hearing to consider adoption of an Ordinance to allow temporary pole banners on light poles along designated roadway segments.

Department Name: County Attorney's Office

Contact Person: Cameron S. Clark

Contact Phone: 272-5670

Sign-Off Approvals:

Susan Fernandez 05/21/2015
Managing County Attorney Date

Charles Fletcher 05/21/2015
County Attorney Date

NA
Joint Department Director Date

Tom Fesler 05/22/2015
Management and Budget – Approved as to Financial Impact Accuracy Date

Cameron Clark 05/21/2015
Assistant County Attorney Date

Staff's Recommended Board Motion:

Conduct a public hearing and adopt an Ordinance creating a permitting process to allow temporary pole banners to be attached to light poles in public rights-of-way along certain, designated roadway segments in order to publicize an event, or a series of events, in Hillsborough County.

This action does not increase or decrease any County Departmental budgets in any year.

Financial Impact Statement:

This action does not increase or decrease any County Departmental budgets in any year.

Background:

On February 4, 2015, the Board of County Commissioners (Board) directed the County Attorney's Office (CAO) to prepare an ordinance that would create a permitting process to allow temporary pole banners to be attached to light poles in public rights-of-way along designated roadway segments in Hillsborough County.

Street/pole banners are presently prohibited in public rights-of-way by the County's Land Development Code (LDC). However, some Florida jurisdictions, including the City of Tampa, have created regulations allowing pole banners in rights-of-way along designated roadway segments. Because this

issue affects both state and County roads, the CAO consulted regularly with the Florida Department of Transportation during the drafting of this proposed ordinance. A companion amendment to the LDC is currently under consideration by the Board as part of the current round of LDC amendments. That item is presently scheduled to appear before the Board for consideration and adoption at a separately advertised public hearing on June 18.

Per the Board's direction, this proposed ordinance has been modeled on Tampa's. The proposed ordinance designates specific roadway segments in unincorporated Hillsborough County along which applicants could request permits for the placement of temporary pole banners on light poles in rights-of-way. Among other provisions, the proposed ordinance includes permit application requirements, pole banner standards, criteria for the denial of permits, indemnification and insurance requirements, and criteria for permit revocation and removal.

List Attachments:

Draft Ordinance

ORDINANCE NO. 15- _____

AN ORDINANCE CREATING HILLSBOROUGH COUNTY CODE OF ORDINANCES AND LAWS CHAPTER 42, ARTICLE VII, ENTITLED THE POLE BANNERS IN RIGHTS-OF-WAY ORDINANCE, PROVIDING A PERMITTING PROCESS TO ALLOW TEMPORARY POLE BANNERS TO BE ATTACHED TO LIGHT POLES IN PUBLIC RIGHTS-OF-WAY ALONG DESIGNATED ROADWAY SEGMENTS IN HILLSBOROUGH COUNTY; PROVIDING FOR INTENT; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF POLE BANNERS WITHOUT PERMIT; PROVIDING FOR DESIGNATED ROADWAYS; PROVIDING FOR PERMIT APPLICATION REQUIREMENTS; PROVIDING FOR PERMIT STANDARDS; PROVIDING FOR POLE BANNER STANDARDS; PROVIDING FOR DENIAL OF PERMIT APPLICATIONS; PROVIDING FOR LIABILITY OF APPLICANT AND INDEMNIFICATION OF COUNTY; PROVIDING FOR INSURANCE REQUIREMENT; PROVIDING FOR REVOCATION OF PERMIT AND REMOVAL OF POLE BANNERS; PROVIDING FOR APPLICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR INCLUSION IN THE HILLSBOROUGH COUNTY CODE; PROVIDING FOR FILING OF THE ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01(1)(m), Florida Statutes, the Board of County Commissioners is empowered to regulate roads and related facilities, including the placement of signs and other structures within the rights-of-way of the county road system; and

WHEREAS, pursuant to Section 337.408(6), Florida Statutes, public service messages and advertisements may be attached to street light poles within the right-of-way limits of county roads in accordance with county ordinances; and

WHEREAS, pursuant to Section 337.408(6), Florida Statutes, public service messages and advertisements may be attached to street light poles within the right-of-way limits of the State Highway System in accordance with permitting requirements established by administrative rule of the Florida Department of Transportation, provided that such signage is authorized by the local

government entity within whose jurisdictional boundaries the subject signage is sought to be placed; and

WHEREAS, Section 14-43.001 of the Florida Administrative Code creates specific permitting standards for the placement of pole banners in rights-of-way along state roads.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA:

SECTION 1: The aforementioned recitations contained herein are true and correct, but are not required to be incorporated into the Hillsborough County Code of Ordinances.

SECTION 2: There is hereby created Chapter 42, Article VII of the Hillsborough County Code of Ordinances and Laws, to be entitled the “Hillsborough County Pole Banners in Rights-of-Way Ordinance,” which shall read as follows:

2.1. Intent.

The purpose of this Ordinance is to create a permitting process to allow temporary pole banners to be attached to light poles in public rights-of-way along designated roadway segments in order to publicize an event, or a series of events, in Hillsborough County. It is not the County’s intent to create a general public forum on light poles for messages or advertising within public rights-of-way. Permits to place pole banners on light poles within rights-of-way will be limited to promotions of temporary events, such as cultural, entertainment, artistic and sporting events, or other matters of public interest. No advertisement of businesses, products, or other private and personal messages will be allowed on pole banners. The County will not discriminate based on

the nature of the event, provided that the requested pole banner meets all requirements of this Ordinance.

2.2. Authority.

This Ordinance is enacted under the authority of §125.01(1)(m), Florida Statutes, which assigns to counties the power to regulate roads and related facilities, including the placement of signs and other structures within the rights-of-way of the county road system; and §337.408(6), Florida Statutes, which specifically authorizes the placement of pole banners in state and county rights-of-way.

2.3. Definitions.

- “Administrator” means the Hillsborough County Administrator or his/her designee.
- "Event(s)" means any happening(s), occurrence(s), or program(s), scheduled for a date and time certain, including cultural, entertainment, charitable, artistic or sporting event(s), or other matter(s) of public interest, taking place within Hillsborough County at a venue that is open for attendance by the public.
- “FDOT” means the Florida Department of Transportation.
- “Light Pole” means an underground fed pole that supports no utility other than a street light, and does not include electric transmission or distribution poles.
- “Pole Banner” means a temporary, non-rigid sign made of plastic, fabric, or other flexible material commonly used in the industry, which is located adjacent to the travel lanes of a roadway and which is attached by brackets at the top and bottom to a light pole.

2.4. Pole Banners Prohibited Without Permit.

No pole banner shall be installed or maintained on light poles located in, on, or in any manner affecting public rights-of-way of Hillsborough County unless a permit has been issued for the installation and maintenance of the pole banners pursuant to the terms of this Ordinance. Persons or organizations desiring to publicize an event, or a series of events, in Hillsborough County may apply to the Administrator for a permit to place temporary pole banners on light poles in designated public rights-of-way in the unincorporated areas of the County. Pole banners shall be subject to bilateral agreements between the permit applicant and owner of the light poles, which shall consider, among other things, power source rates, design, safety, operational and maintenance concerns, and other matters of public importance.

2.5. Designated Roadways.

Pole banners may be permitted to be installed and maintained on light poles that are located in public right(s)-of-way alongside the segments of state and county roadway that are designated in this subsection. No pole banners shall be installed or maintained unless a permit has been issued by the Administrator or FDOT, depending on whether the subject roadway segment is a County or state road. Pole banners shall be permitted to be installed and maintained on eligible light poles within unincorporated Hillsborough County at the locations listed below:

2.5.1. State Roads.

State law and the Florida Administrative Code allow FDOT to permit pole banners to be placed on light poles along certain, non-limited access state roads, provided said pole banners are authorized in writing by the local governmental entity within whose

jurisdictional boundaries the pole banners are to be placed. Hillsborough County hereby authorizes FDOT to permit the placement of pole banners on the roadway segments listed below. Permits for the roadway segments listed below will be issued by FDOT and will be subject to the terms of this Ordinance and to the applicable provisions of the Florida Administrative Code governing pole banner placement along state roads:

- W. Hillsborough Ave. between Memorial Hwy. and Montague St.
- Dale Mabry Hwy. between Exciting Idlewild Blvd. and W. County Line Rd.
- W. Busch Blvd. between Dale Mabry Hwy. and N. Armenia Ave.
- US 41 (N. Nebraska Ave.) between E. Fowler Ave. and W. County Line Rd.
- N. Florida Ave. between E. Fletcher Ave. and US 41 (N. Nebraska Ave.)
- N. 56th St. between Martin Luther King, Jr. Blvd. and Puritan Rd.
- US 301 between CR 672 (Balm Rd.) and Raulerson Ranch Rd.
- Causeway Blvd. between S. 45th St. and US 301
- SR 60 between US 301 and Clarence Gordon, Jr. Rd.

2.5.2. County Roads.

Hillsborough County hereby authorizes permits to be issued for the installation and maintenance of pole banners on light poles along the segments of County roads listed below, subject to the terms of this Ordinance:

- Countryway Blvd. between Racetrack Rd. and Steppingstone Blvd.
- Countryway Blvd. between W. Hillsborough Ave. and Waters Ave.
- W. Linebaugh Ave. between Sheldon Rd. and Countryway Blvd.

- S. Village Dr. between Dale Mabry Hwy. and Ehrlich Rd.
- W. Village Dr. between S. Village Dr. and Ehrlich Rd.
- Lowell Rd. between S. Village Dr. and Casey Rd.
- Causeway Blvd. between US 301 and S. Falkenburg Rd.
- Brandon Pkwy. between Town Center Blvd. and W. Lumsden Rd.
- S. Lakewood Dr. between Brandon Pkwy. and SR 60
- Town Center Dr. between S. Gornito Lake Rd. and Providence Rd.
- Sheldon Rd. between Old Hixon Rd. and Beaty Grove Dr.
- Gunn Hwy. between Tarpon Springs Rd. and Van Dyke Rd.
- Casey Rd. between S. Village Dr. and Lowell Rd.

2.6. Permit Application Requirements.

Applications for pole banner permits for the County roadway segments listed in Section 2.5. must be filed with the Administrator and must contain the information described herein. In addition, applications for pole banner permits for the state roadway segments listed in subsection 2.5.1. must also comply with any application requirements contained in the Florida Administrative Code:

- The name and address of the applicant and the applicant's authorized agent, if applicable.
- The name of the event to be publicized by the pole banner.

- A sketch of the proposed pole banner, including the message, lettering, logo, emblems and any other representations contained thereon.
- A site plan of all specific locations where the pole banners are requested to be installed, including but not limited to the height of the pole banners, location of the pole banner supports, and the location of the light poles.
- The date the pole banner display is requested to be installed and the date the pole banner display will be removed.
- Evidence that the light poles and the pole banners to be attached thereto comply with all of the requirements contained in this Ordinance.
- A description of the method that will be utilized to install the pole banner(s) to the support structure or brackets.
- Evidence of insurance as required in this Ordinance.
- Evidence of a written contractual agreement between the owner of the light pole and the applicant that authorizes the installation of the pole banners.
- Hold harmless and indemnification agreement as required in this Ordinance.
- Evidence of proper licensure for the installing contractor.
- Payment of the permit fee.

2.7. Permit Standards.

2.7.1. Only one permit may be issued per location. For purposes of this article, location is defined as the right-of-way segment(s) requested in the permit application.

2.7.2. Applications for permits must be filed with the Administrator no more than one hundred eighty (180) days and not less than ninety (90) days prior to the requested date of installation. Completed permit applications will be considered in the order received. Upon receipt of a completed permit application, the Administrator shall have thirty (30) business days to review the application and determine whether to issue or deny a permit for the proposed pole banners.

2.7.3. Pole banners authorized by this article may be installed no more than thirty (30) calendar days in advance of an event and shall be removed within five (5) business days of the conclusion of the event. Permits for pole banners relating to a series of events may be issued for thirty (30) calendar days and may be renewed for no more than two (2) similar periods upon application therefor. Permits for renewal shall be for and upon the same terms and conditions as initially issued and all requirements applicable to the original approval shall be met. A permit renewal request must be submitted in writing to the Administrator at least ten (10) business days prior to expiration of the initial permit. A permit renewal shall not be issued if the Administrator has already received a completed application for new pole banner permit(s) on the same light poles that are the subject of the renewal request.

2.8. Pole Banner Standards

2.8.1. Pole banners located on County roads must be affixed to light poles with brackets installed by, or at the direction of, the owner of the light poles, at no cost to the County, and installed in compliance with the current edition of the National Electric Safety Code,

as it may be amended from time to time. FDOT requirements shall govern the placement of brackets on light poles on state roads.

2.8.2. Pole banners shall not exceed thirty (30) inches in width and ninety (90) inches in height. Pole banners shall not extend beyond the edge of pavement or the back of the curb and be a minimum of fourteen and one-half (14.5) feet in height from the grade of the street.

2.8.3. Pole banners shall be made of material commonly used in the industry capable of withstanding wind loads as prescribed by the Florida Department of Transportation and/or the owner of the light pole(s).

2.8.4. Identification of any sponsoring organization(s), if any, shall not exceed a total of ten (10) percent of the face of the pole banner.

2.8.5. Pole banners shall be erected by a properly licensed electrical contractor.

2.8.6. The permittee shall maintain the pole banners to conform to their original, approved condition. Failure to maintain the pole banners in their original condition shall result in the revocation of the permit and the removal of the pole banners.

2.8.7. Any other provision of this Section notwithstanding, the Administrator may order the immediate removal of the permitted pole banners if necessary to protect the public health, safety and welfare, or if the County or the State of Florida at any time requires the use of the light poles or the right-of-way. Any pole banners removed may be forfeited by the owner and/or permittee, at the discretion of the Administrator.

2.9. Denials of Permit Applications

The Administrator shall be entitled to deny the issuance of a permit if:

- The proposed permit does not satisfy the all the requirements contained in this Ordinance; or,
- Based on the information submitted in the application, the Administrator determines that the permitting of the pole banners would constitute a traffic hazard or otherwise negatively affect the public health, safety and welfare; or
- Based on the information submitted in the application, the Administrator determines that the permitting of the pole banners would materially interfere with any existing utilities located in the affected right(s)-of-way; or
- The Administrator determines that the proposed pole banner display would violate any applicable federal, state or local laws, statutes, ordinances, rules, regulations or permits as may exist from time to time; or
- The Administrator has previously revoked a permit issued to the applicant and/or removed any pole banners installed by the applicant, pursuant to this Ordinance.

2.10. Liability of Applicant; Indemnification of County

Any applicant to which a permit is issued pursuant to this Ordinance, as a condition precedent to issuing the permit, shall execute an agreement in favor of Hillsborough County in which the applicant shall agree at all times to indemnify, defend, and hold the County, its officers, agents and employees harmless from and against any and all claims, actions, causes of action,

suits, liability and damages of any nature whatsoever (including, without limitation, legal fees and costs) that are alleged to have resulted in part or in whole from the installation and/or maintenance of the pole banner display. If the applicant fails to defend any such suit against the County, the County may itself defend the same and the applicant agrees that, as a condition precedent to the issuance of the permit pursuant to the terms hereof, it will pay to the County upon demand all costs, charges and fees incurred in connection therewith.

2.11. Insurance Requirement

The applicant is required to obtain and maintain, during all periods of time during which the pole banners shall be permitted to be maintained in, on or within the public right(s)-of-way of the County, public liability and property damage insurance: (a) naming Hillsborough County as an additional insured in the minimum amount of one million dollars (\$1,000,000.00) per occurrence covering bodily injury and property damage resulting from or related to the installation and maintenance of the pole banners; (b) meeting such other criteria as may be established by the owner of the light poles, FDOT, or by the County's risk management department; and, (c) requiring the insurer to provide the County thirty (30) days prior written notice of any proposed termination, cancellation or change in insurance coverage or limits.

2.12. Revocation of permit; Removal of Pole Banners

Any permit authorized herein may be revoked by the Administrator pursuant to the terms of this subsection. In the event the Administrator revokes a permit, the permittee shall be required to remove the pole banners within three calendar days of revocation of the permit. If the permittee fails to remove the pole banners within three calendar days of revocation of

the permit, the County shall be entitled to remove the pole banners. If the County removes the pole banners, the permittee shall be responsible for paying all costs incurred by the County in connection with such removal and the pole banners shall be forfeited to the County. Any permit authorized herein may be revoked by the Administrator if:

- The Administrator determines that the pole banners constitute a traffic hazard or otherwise negatively affect the public health, safety and welfare; or
- The permittee included any misrepresentation(s) in the permit application, which if known by the Administrator, would have caused the Administrator to deny the permit application; or
- The permittee failed to maintain insurance as required in this Ordinance; or
- The permittee failed to comply with the any of the permit conditions, regulations or restrictions contained in this Ordinance; or
- The permittee failed to comply with the permit application as submitted and approved by the Administrator; or
- The permittee failed to comply with any other applicable federal, state, or local law, statute, ordinance, regulation or permit; or
- The permittee failed to execute a hold harmless and indemnification agreement in favor of the County, as required by this Ordinance; or
- The permittee failed to maintain the permitted pole banners to conform to their original, approved condition.

SECTION 3: APPLICATION

This ordinance shall be applicable in the unincorporated areas of Hillsborough County.

SECTION 4: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 5: CONFLICT WITH STATE LAW

Nothing in this ordinance is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this ordinance and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, control.

SECTION 6: INCLUSION IN THE HILLSBOROUGH COUNTY CODE

The provisions of this ordinance shall be included and incorporated in the Hillsborough County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Hillsborough County Code.

SECTION 7: FILING OF ORDINANCE AND EFFECTIVE DATE

In accordance with the provisions of §125.66, Florida Statutes, governing ordinances, a certified copy of this Ordinance shall be filed with the Florida Department of State by the Clerk of the Board of County Commissioners. This Ordinance shall take effect upon filing with the Florida Department of State.

STATE OF FLORIDA }
COUNTY OF HILLSBOROUGH }

I, PAT FRANK, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance adopted by the Board at its regular meeting on the ____ day of _____, 2015, by a vote of _____ voting yes and _____ voting no, as the same appears in record in Minute Book _____ of the Public Records of Hillsborough County, Florida

WITNESS my hand and official seal this _____ day of _____, 2015.

PAT FRANK
CLERK OF THE CIRCUIT COURT

BY: _____
Deputy Clerk

Approved By County Attorney
As To Form and Legal Sufficiency:

By: _____
Assistant County Attorney