

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 19, 2012

Division: County Attorney

Bulk Item: Yes XX No

Staff Contact Person: Christine Limbert-Barrows

AGENDA ITEM WORDING: Approval to advertise a public hearing for an ordinance creating Section 17-5 of the Monroe County Code to prohibit persons from loitering after warning or where a no loitering sign has been posted.

ITEM BACKGROUND: The County currently has no loitering ordinance, so creation of this ordinance would provide for regulation to ensure that public safety and peace is maintained and to prevent the obstruction of free access and use by other members of the public.

PREVIOUS RELEVANT BOCC ACTION: None

CONTRACT/AGREEMENT CHANGES:
NA

STAFF RECOMMENDATIONS:
Approval to advertise.

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes No

AMOUNT PER MONTH **Year**

APPROVED BY: County Atty *CLB* OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION:

AGENDA ITEM #

ORDINANCE NO. _____ - 2012

AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS CREATING SECTION 17-5 OF THE MONROE COUNTY CODE TO PROHIBIT PERSONS FROM LOITERING AFTER WARNING OR WHERE A NO LOITERING SIGN HAS BEEN POSTED; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners finds that certain public areas in unincorporated Monroe County should be regulated to ensure that public safety and peace is maintained and to prevent obstruction of free access and use by other members of the public ; and

WHEREAS, loitering in these public areas can obstruct and hinder other pedestrians and traffic and also unreasonably disturb or interfere with the enjoyment of said areas by other members of the public; and

WHEREAS, the Board of County Commissioners finds that when a “No Loitering” sign has been posted or when persons are warned by law enforcement officers to refrain from behavior that obstructs or hinders access and/or threatens public safety thereby interfering with enjoyment by other members of the public, any such activity should be prohibited; and

WHEREAS, the Florida Second District Court of Appeal in *State v. Kemp*, 429 So.2d 822 (2nd DCA 1983) upheld an ordinance prohibiting loitering when a “no loitering” sign has been posted or when a prior warning by a law enforcement officer has been given;

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

SECTION 1. That Section 17-5 of Chapter 17 Offenses and Miscellaneous Provisions is hereby created to read as follows:

Sec. 17-5 Disobedience to warning or “no-loitering” sign prohibited

It shall be unlawful for any person, after first being warned by a law enforcement officer, or where a “no loitering” sign or signs have been posted, to loiter, stand, sit or lie in or upon any public or quasi-public sidewalk, street, alley, curb, crosswalk, walkway area, bridge, plaza, park, parking lot, building open to the general public, boat ramp, or other water access area utilized for public use, so as to hinder or obstruct unreasonably the free passage of pedestrians or vehicles thereon; nor shall any person block, obstruct or prevent free access or otherwise threaten public safety or create a breach of peace.

Penalties.

Violation of this Section shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment.

SECTION 2. SEVERABILITY. If any portion of this ordinance is for any reason held invalid or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

SECTION 3. CONFLICT WITH OTHER ORDINANCES. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

SECTION 4. INCLUSION IN CODE OF ORDINANCES. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

SECTION 5. TRANSMITTAL AND EFFECTIVE DATE. This Ordinance shall be filed with the Department of state and shall be effective as provided in section 125.66(2), Florida Statutes.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the ____th day of _____, 2012.

Mayor David Rice	_____
Mayor Pro Tem Kim Wigington	_____
Commissioner Heather Carruthers	_____
Commissioner George Neugent	_____
Commissioner Sylvia Murphy	_____

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By _____
Deputy Clerk

By _____
Mayor/Chairperson

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM:
Christine Gilbert-Barrows
 CHRISTINE M. LIMBERT-BARROWS
 ASSISTANT COUNTY ATTORNEY
 Date 12/20/11