



# Repeal of County Code §18-12

Restrictions on activities on the highways, public roadways and medians.

# Spotsylvania County Code §18-12 restricts activities on the highways, public roadways and medians.

Sec. 18-12. - Restrictions on activities on the highways, public roadways and medians.

The following activities are prohibited on the highways, public roadways and medians within the county:

- (1) The distribution of handbills, leaflets, bulletins, literature, advertisements, or similar material to the occupants of motor vehicles;
- (2) The solicitation of contributions of any nature from the occupants of motor vehicles; and
- (3) The sale of merchandise or services or the attempted sale of merchandise or services to the occupants of motor vehicles.

(Ord. No. 18-3, 7-13-10)

# Section 18-12 is authorized by the Virginia Code

§ 46.2-931. Localities may prohibit or regulate distribution of handbills, etc., solicitation of contributions, and sale of merchandise or services on highways within their boundaries or on public roadways and medians

A. Any county, city, or town is hereby authorized to adopt an ordinance prohibiting or regulating:

1. The distribution of handbills, leaflets, bulletins, literature, advertisements, or similar material to the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians;
2. The solicitation of contributions of any nature from the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians; and
3. The sale of merchandise or services or the attempted sale of merchandise or services to the occupants of motor vehicles on highways located within its boundaries or on public roadways and medians.

B. Ordinances adopted pursuant to this section may provide that any person violating the provisions of such ordinances shall be guilty of a traffic infraction.

C. The Virginia Department of Transportation may regulate activities within such streets and highways under its jurisdiction, subject to regulations promulgated by the Commonwealth Transportation Board. Nothing in this section shall be construed to allow any locality to permit activities within any highway under the maintenance and operational jurisdiction of the Virginia Department of Transportation.

1980, c. 113; 1989, c. 727; 2005, cc. 488, 541; 2008, cc. 120, 235, 310; 2009, cc. 422, 656, 722; 2010, cc. 378, 589.

However, the 4<sup>th</sup> Circuit (our regional federal appellate court) found a nearly identical ordinance unlawful

Reynolds v. Middleton, 779 F.3d 222 (4th Cir. 2015)

- Fourth Circuit applied McCullen to *Henrico County's highway solicitation ordinance*, which had been *enacted pursuant to Va. Code § 46.2-931*.
- “Even without evidence of injuries or accidents involving roadway solicitors, we believe the county’s evidence, particularly when it is considered along with a healthy dose of common sense, is sufficient to establish that roadway solicitation is dangerous,” and thus the *Henrico County's ordinance furthered its interest in traffic safety by banning a dangerous activity*.



## Reynolds v. Middleton, (continued):

- However, Henrico County's argument failed for "lack of evidentiary support."
- The *ordinance applied county-wide, but the evidence did not show a county-wide problem with roadway solicitation.*
- In addition, "*the burden of proving narrow tailoring require[d] [Henrico] County to prove that it actually tried other methods to address the problem.*"

## Reynolds v. Middleton, (continued):

- “There [was] no evidence that [Henrico] County ever tried to improve safety by prosecuting any roadway solicitors who actually obstructed traffic, or that it ever even considered prohibiting roadway solicitation only at those locations where it could not be done safely.”

# County Code §18-12 is nearly identical to the ordinance at issue in Reynolds v. Middleton

- Former Henrico County ordinance

Sec. 22-195. Distributing handbills, soliciting contributions or selling merchandise or services in highway.

(a) It shall be unlawful for any person while in the highway to:

(1) Distribute handbills, leaflets, bulletins, literature, advertisements or similar material to the drivers of motor vehicles or passengers therein on highways located within the county.

(2) Solicit contributions of any nature from the drivers of motor vehicles or passengers therein on highways located within the county.

(3) Sell or attempt to sell merchandise or services to the drivers of motor vehicles or passengers therein on highways located within in the county.

(b) For purposes of this section, the term "highway" means the entire width of a road or street that is improved, designed, or ordinarily used for vehicular travel and the shoulder, the median, and the area between the travel lane and the back of the curb.

- Spotsylvania County Code §18-12

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(Ord. No. 18-3, 7-13-10)

## Additional similarities:

- §18-12 was enacted pursuant Va. Code § 46.2-931;
- §18-12 furthers the County's interest in traffic safety by banning dangerous activities;
- §18-12 applies County-wide rather than most dangerous areas;
- Need to show efforts to improve safety by prosecuting those who obstruct traffic.





## RECOMENDATIONS:

1. REPEAL County Code §18-12

## Then what?

- ENACT NEW ORDINANCE PURSUANT TO VA. CODE §46.2-931? NOT RECOMMENDED
  - MINIMAL GUIDANCE FROM 4<sup>TH</sup> CIRCUIT
  - NO FURTHER BINDING PRECEDENT
- RECOMMEND NOT BEING THE “TEST CASE” WITH NEW ORDINANCE

## Then what?

- Remember **Reynolds v. Middleton**: “There [was] no evidence that [Henrico] County ever tried to improve safety by prosecuting any roadway solicitors who actually obstructed traffic,”
- **ENFORCE EXISTING TRAFFIC LAWS**

# ENFORCE EXISTING LAWS

**§ 46.2-926. Pedestrians stepping into highway where they cannot be seen.**

No pedestrian shall step into a highway open to moving vehicular traffic at any point between intersections where his presence would be obscured from the vision of drivers of approaching vehicles by a vehicle or other obstruction at the curb or side. The foregoing prohibition shall not apply to a pedestrian stepping into a highway to board a bus or to enter a safety zone, in which event he shall cross the highway only at right angles.

Punished as **traffic infraction**



# ENFORCE EXISTING LAWS

**§ 46.2-928. Pedestrians not to use roadway except when necessary; keeping to left.**

Pedestrians shall not use the roadways for travel, except when necessary to do so because of the absence of sidewalks which are reasonably suitable and passable for their use. If they walk on the hard surface, or the main travelled portion of the roadway, they shall keep to the extreme left side or edge thereof, or where the shoulders of the highway are of sufficient width to permit, they may walk on either shoulder thereof.

Punished as **traffic infraction**

# ENFORCE EXISTING LAWS

## § 46.2-930. Loitering on bridges or highway rights-of-way.

Pedestrians shall not loiter on any bridge or in any portion of the right-of-way of any highway where loitering has been determined by the Commissioner of Highways or the local governing body of any county, city, or town to present a public safety hazard and on which the Commissioner of Highways or the governing body of any county, city, or town has posted signs prohibiting such action. Local jurisdictions shall obtain concurrence from the Commissioner of Highways on the placements of signs on the right-of-way of any bridge or highway under the jurisdiction and control of the Commissioner of Highways or the Virginia Department of Transportation; however, the local jurisdiction shall be responsible for all costs of the production, installation, and maintenance of the signs. Any person violating the provisions of this section shall be guilty of a traffic infraction. (SAME PENALTY AS COUNTY CODE §18-12)

# Same penalty as Section which repeal is recommended

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## § 46.2-930. Loitering on bridges or highway rights-of-way.

- Has already been upheld by the 4<sup>th</sup> Circuit!
- Lytle v. Doyle, 326 F.3d 463 (4<sup>th</sup> Cir. 2003)
  - Plaintiff protesters challenged the constitutionality of Section 46.2-930 after police officers of defendant city threatened them with arrest while participating in a peaceful protest.
  - Application of the statute to the plaintiffs was invalid (because explicitly prohibits only “loitering”), but the statute, itself, was not unconstitutional on its face.
  - “**Loitering**”: has “by long usage acquired a common and accepted meaning.” This meaning is “**to stand idly about.**”
  - Does not prohibit activities that are purposeful.



## § 46.2-930. Loitering on bridges or highway rights-of-way.

- Section 46.2-930 of the Code of Virginia: Loitering on bridges or highway rights-of-way.
  - Prior to a series of amendments that began in 2008, the Commissioner of Highways was authorized to prohibit loitering on **bridges**.
  - At present:
    - Any locality, through its governing body, may request authorization from the Commonwealth Transportation Commissioner to place signs prohibiting loitering on **any bridge or highway** that is under the jurisdiction and control of the Commonwealth Transportation Commissioner or the Virginia Department of Transportation (at the locality's expense).
    - Cities and Towns have the authority to adopt their own procedures for placing such signage on their streets and bridges.

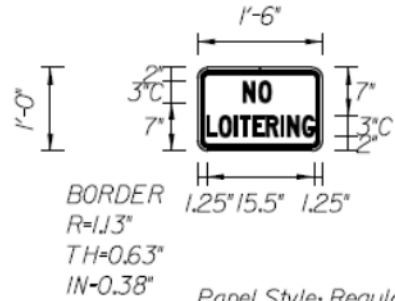
## RECOMENDATIONS:

1. REPEAL County Code §18-12;
2. Implement “No Loitering” signs in County’s most dangerous traffic areas;

# Implementing signs:

- To obtain VDOT approval:
  - Locality would need to submit a location plan and sign assembly drawing to VDOT for review.
  - VDOT would review for compliance with the Manual on Uniform Traffic Control Devices (MUTCD), consider other factors such as median width, available posts for installation, sight distance, etc.
  - A field review may be scheduled to clarify locations.
  - A Land Use Permit Application (LUP-A) would be completed and processed once the plan is approved.
  - The locality can schedule and begin sign installation once the permit is issued.

## SIGN DETAIL



Panel Style: Regulatory (18 in. x 24 in.).ss1  
M.U.T.C.D.: 2009 Edition

SIGN NUMBER	name
WIDTH x HIGHT.	1'-6" x 1'-0"
BORDER WIDTH	0.63"
BORDER INSET	0.38"
PANEL RADIUS	1.13" plus 0.38"
MOUNTING	Ground
BACKGROUND	TYPE: Reflective
	COLOR: Black/White
LEGEND/BORDER	TYPE: Reflective
	COLOR: Black/Black

[illegible]

Dimensions are in      inches, tenths

Letter locations are panel edge to lower left corner

[illegible]





QUESTIONS?