


**VIRGINIA DEPARTMENT OF TRANSPORTATION**

***TRAFFIC ENGINEERING DIVISION***

**MEMORANDUM**

<b>NUMBER:</b> TE-364	<b>DATE:</b> August 14, 2009	
<b>SUPERSEDED:</b> None	<b>SUNSET DATE:</b> None	
<b>GENERAL SUBJECT:</b> Traffic Signs		
<b>SPECIFIC SUBJECT:</b> No Loitering Signs		
<b>DISTRIBUTION TO:</b>		
<ul style="list-style-type: none"> <li>• District Administrators</li> <li>• Regional Operations Directors</li> <li>• Regional Traffic Engineers</li> <li>• Regional Operations Maint. Managers</li> <li>• Maintenance Div. Administrator</li> </ul>		VDOT - Traffic Engineering Richmond, Virginia Traffic Engineer

The 2008 General Assembly amended the Code of Virginia Section 46.2-930 to provide the Commissioner with the authority to place signs to prohibit loitering on bridges and any portions of highway right-of-way if determined to present a public safety hazard (see attached statute – page 4 of this document). Cities and towns have the authority to adopt their own procedures for placing such signing on their streets and bridges.

The 2009 General Assembly further amended this Section of the Code (reference attached), changing it to allow counties the privilege of determining that loitering activity is a public safety hazard at a given location and the authority to adopt their own procedures for placing such signing on their streets and bridges. This 2009 change also required that *“Local jurisdictions shall obtain concurrence from the Commonwealth Transportation Commissioner on the placements of signs on the right-of-way of any bridge or highway under the jurisdiction and control of the Commonwealth Transportation Commissioner or the Virginia Department of Transportation.”* It further states *“however, the local jurisdiction shall be responsible for all costs of the production, installation, and maintenance of the signs”*. The effective date of this amended Section of the Code of Virginia was July 1, 2009.

VDOT should not post such a sign on its own accord; but, should rely on the local government to request the installation of these signs within the highway rights-of-way.

The locality should clearly show how the No Loitering signs will aid in the enhancement of safety. The Commissioner's concurrence for the placement of the signs within the right-of-way shall be through the issuance of a Land Use Permit. The permitting process for the signs shall be used to record where such signs are installed, by whom (establishing responsibility for maintenance), and most importantly, shall, for the record, include all documentation inclusive of the jurisdiction's resolution.

### **Locality's Responsibilities**

To initiate action, the locality shall first, by resolution adopted by the governing body, define the term "Loitering" as it will be applied in that jurisdiction. VDOT should direct their attention to the case law of *Lytle v. Doyle*, 326 F.3d 463 (4<sup>th</sup> Cir. 2003), Page 469 as it defines *"loitering" by stating it has "by long usage acquired a common and accepted meaning."* Further, it says that according to Webster's Dictionary, this meaning is *"to stand idly about"*; and Page 470 states *"the State may act to protect its substantial and legitimate interest in traffic safety" with "time, place, and manner restrictions."* Though the term "State" is used in this case history, it is reasonable to assume that a local government would also have the right to act similarly.

In addition, the jurisdiction shall request from VDOT, accompanied by the resolution adopted by the governing body, permission in the form of a Land Use Permit application, to install the appropriate signs on state-maintained right-of-way, as stipulated in Section 46.2-930 of the Code of Virginia. This request for permission shall be submitted to the appropriate Permits Section or office.

The resolution shall identify the location of the site(s) where a loitering problem is creating a public safety hazard, as documented by the local law enforcement agency. Evidence of such public safety hazard shall be submitted with the resolution and signed by the chief law enforcement officer of the jurisdiction. Supporting evidence may include recurring and regular occurrences of some or all of the following traffic safety issues. The list below is not all inclusive and other traffic safety guidelines may be considered by the locality.

- Lack of pedestrian facilities to accommodate the activities
- Documented complaints of such activities impacting the traffic safety to motorists and pedestrians
- Documented indications that such activities restricted the sight distances at the intersection
- Documented indications that such activities restricted public transit, emergency responses access
- Documented indications that such activities obstruct, delay or interfere with the normal flow of pedestrian or vehicular traffic along a section of a highway or at an intersection
- Documented accident history due to conflicts with such activities
- Indication of lack of sufficient roadway lighting at the site during certain time period to ensure the safety of pedestrians

The resolution shall include the location(s) where the signs are proposed to be installed. VDOT reserves the right to review all requests to assure compliance with state and federal signing standards and guidelines.

The enforcement of the no loitering resolution shall be the responsibility of the local government.

### **VDOT Responsibilities**

The Permits Section or office, upon receipt of the adopted resolution, permit request, and documented evidence of the public safety hazard, shall conduct a field review with assistance from the regional traffic engineer, to assure the proposed signs will not be in conflict with other traffic control devices or VDOT guidelines. The Permits Section or office shall submit all documents to the VDOT District Administrator with a recommendation to accept or deny.

If the District Administrator, acting on the authority delegated to him by the Commissioner, finds the jurisdiction's request and documentation sufficient, he shall accept it and have a no fee permit issued, allowing the locality to install the sign(s) as soon as practical. The District Administrator or the Permits Section or office acting on his behalf, will notify the jurisdiction of his actions. A copy of all actions shall be maintained in the Permits Section or office.

For those sign locations where the District Administrator finds the request and documentation to be sufficient and determines that signs will be allowed under a permitting process, he/she shall have the permit issued with a term limit of five (5) years. In order for the local government to continue use of these signs beyond the five year period, a full review, with documentation, shall be conducted by the local government and a new permitting process shall be initiated by them.

Decisions of the District Administrator may be appealed to the Commonwealth Transportation Commissioner.

All signs allowed by VDOT under this policy shall be designed and installed in accordance with federal and state guidelines. The following is offered as a guide:

NO LOITERING signs are directed to the pedestrian and not the motor vehicle operator. As such, they should be kept small in size. The MUTCD series of signs for parking restrictions should be used as the model for these signs. A sign(s) of size, shape and color similar to the R7 series of signs, having the words NO LOITERING and a descriptor such as ON BRIDGE, WITHIN 50 FOOT OF INTERSECTION, BETWEEN SIGNS, etc shall be installed. The installation should be such that the position of the sign will capture the attention of approaching foot traffic as opposed to the vehicular traffic.

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**CHAPTER 503**

*An Act to amend and reenact § 46.2-930 of the Code of Virginia, relating to loitering in the rights-of-way of certain highways.*

[H 1629]

Approved By the Governor March 27, 2009

Effective July 1, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-930 of the Code of Virginia is amended and reenacted as follows:

§ 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 Commonwealth Transportation Commissioner or the local governing body of any *county*, city, or town to present a public safety hazard and on which the Commonwealth Transportation Commissioner or the governing body of any *county*, city, or town has posted signs prohibiting such action. *Local jurisdictions shall obtain concurrence from the Commonwealth Transportation Commissioner on the placements of signs on the right-of-way of any bridge or highway under the jurisdiction and control of the Commonwealth Transportation Commissioner 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.