



**MEMORANDUM**

**TO:** City Council

**FROM:** Kathleen Dooley, City Attorney  
David W. Nye, Chief of Police

**DATE:** September 30, 2019

**RE:** Proposed amendments to City Code §66-56

**Issue:**

Shall City Council amend City Code §66-56, “Pedestrians in roadway,” to repeal the prohibition against standing, sitting, or laying within three feet of the public roadway shoulder?

**Recommendation:**

Yes. Council may narrow the reach of this ordinance and still accomplish the purpose of the ordinance, which is to facilitate the normal flow of traffic on public streets and highways and to promote the safety and convenience of motorists and pedestrians on the public streets. The existing prohibition reaches many places where people may safely stand, sit, or lay. Because the ordinance regulates speech activities, it is very important to narrow the scope of the ordinance to better fit the public interests that it promotes.

**Background:**

- **The purpose of the ordinance and its impact on speech activities:**

The purpose of City Code §66-56 is to facilitate the normal flow of traffic on public streets and highways and to promote the safety and convenience of motorists and pedestrians on the public streets. Generally speaking, this section prohibits people from standing, sitting, or laying in the public streets and public street medians in specific places where this activity would be dangerous to the pedestrian or would interfere with the normal flow of motor

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vehicle traffic. Those specific places are: (1) where the roadway has four or more travel lanes, including when those lanes are divided by a median; (2) where the roadway has a posted speed limit of 35 miles per hour or greater; (3) within 75 feet of any intersection that has a posted speed limit of 35 miles per hour or greater on one of the intersecting roadways, or within 75 feet of any intersection that is controlled by a traffic light. The ordinance provides exceptions to the prohibition, for pedestrians legally crossing the street, emergency personnel and public employees or contractors performing work, and persons occupying public rights of way under a special events permit.

The prohibition in City Code §66-56 currently applies to any place “within three feet of the public roadway shoulder.” The “roadway shoulder” is defined as “that part of a roadway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.”<sup>1</sup> The “roadway” itself is “that portion of a highway improved, designed, or ordinarily used for vehicular travel.” Many public sidewalks throughout the City, for example, are located within three feet of the roadway shoulder. Standing or walking outside the roadway shoulder, even within three feet of the roadway shoulder, need not be prohibited.

- **Constitutional protections for speech activities:**

The ordinance is not a direct prohibition of speech as such. However, to the extent that a person may stand or sit in the regulated areas for the purpose of speaking – for example soliciting funds or donations, panhandling, promoting commercial activity, distributing pamphlets, or conveying a political message – that conduct is regulated or prohibited by the ordinance, and the ordinance is therefore subject to review under the First Amendment.

Public streets and sidewalks are “traditional public forums” – places which by long tradition have been devoted to public assembly and debate – where legal protections of speech are particularly strong, and where the rights of the government to limit speech are sharply circumscribed.

The government’s power to regulate speech in a traditional public forum is limited, though not foreclosed. A restriction on speech in a public forum will pass constitutional muster only if (1) it is content-neutral; (2) it is narrowly tailored to serve a significant governmental interest; and (3) it leaves open ample alternative channels for communication of the information. These regulations are generally considered “time, place, and manner”

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<sup>1</sup> This definition is derived from Code of Virginia §46.2-100, the “Definitions” section of the Motor Vehicle code.

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restrictions, which typically are valid exercises of the police power (protection of public health, safety, and welfare) of the government. The element of “narrow tailoring” means that the regulation does not “burden substantially more speech than is necessary to further the government’s legitimate interests.” The regulation need not be the least restrictive or least intrusive means of serving the government’s interests, but it should not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance the government’s legitimate goals.

- **Recommendation to narrow the scope of the ordinance:**

The ordinance as it currently stands is content-neutral but not as “narrowly tailored” as it should be. The proposed amendment will leave a robust prohibition that accomplishes the public purposes of the ordinance and also conforms to Constitutional protections for speech activities.

**Fiscal Impact:**

None.



**MOTION:**

October 8, 2019  
Regular Meeting  
Ordinance No. 19-\_\_

**SECOND:**

**RE:** Amending City Code §66-56, “Pedestrians in Roadway” to Repeal the Prohibition Against Standing Within Three Feet of the Public Roadway Shoulder

**ACTION:** APPROVED: Ayes: 0; Nays: 0

**FIRST READ:** \_\_\_\_\_ **SECOND READ:** \_\_\_\_\_

### **Sec. I Introduction.**

The purpose of City Code §66-56 is to facilitate the normal flow of traffic on public streets and highways and to promote the safety and convenience of motorists and pedestrians on the public streets. Generally speaking, this section prohibits people from standing, sitting, or laying in the public streets and public street medians in specific places where this activity would be dangerous to the pedestrian or would interfere with the normal flow of motor vehicle traffic. The section provides exceptions, including for pedestrians legally crossing the street, or persons occupying public rights of way under a special events permit.

The prohibition is not a direct prohibition of speech as such. However, to the extent that a person may stand or sit in the regulated areas for the purpose of speaking – for example soliciting funds or donations, panhandling, promoting commercial activity, distributing pamphlets, or conveying a political message – that conduct is regulated or prohibited by the ordinance, and the ordinance is therefore subject to review under the First Amendment.

The prohibition in City Code §66-56 currently applies to any place “within three feet of the public roadway shoulder,” an area which includes some places where a person may safely stand. In adopting this ordinance, City Council intends to narrow the scope of the prohibition to meet the significant public interests of facilitating the normal flow of traffic on public roadways and the promotion of the safety and convenience of persons on the public streets and in other public places.

### **Sec. II. City Code amendment.**

City Code §66-56 is hereby amended as follows:

#### **Sec. 66-56. Pedestrians in roadway.**

- A. Purpose. The purpose of this section is to facilitate the normal flow of traffic on public roadways and to promote the safety and convenience of persons on the public streets and in other public places.
- B. Definitions. For the purposes of this section, the following terms shall have the meanings indicated:

INTERSECTION

Shall have the same meaning as in Code of Virginia, § 46.2-100.

MOTOR VEHICLE

Shall have the same meaning as in Code of Virginia, § 46.2-100.

ROADWAY

That portion of a highway improved, designed, or ordinarily used for vehicular travel.

ROADWAY MEDIAN

A physical barrier or barriers or unpaved area that divides two or more roadways.

ROADWAY SHOULDER

That part of a roadway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.

TRAFFIC LIGHT

A traffic control signal, intersection control beacon, or beacon as defined by the Federal Highway Administration's Manual on Uniform Traffic Control Devices.

- C. No person shall stand, sit, or lay in the public roadway, public roadway median, **or** public roadway shoulder, ~~or within three feet of the public roadway shoulder:~~
- (1) Where the roadway has four or more travel lanes, including when those lanes are divided by a median; *or*
  - (2) Where the roadway has a posted speed limit of 35 miles per hour or greater; *or*
  - (3) Within 75 feet of any intersection that has a posted speed limit of 35 miles per hour or greater on one of the intersecting roadways; *or*
  - (4) Within 75 feet of any intersection that is controlled by a traffic light.
- D. The prohibition in § 66-56C does not apply to:
- (1) Pedestrians legally crossing the street;
  - (2) Emergency personnel and City, state, and federal employees and contractors when performing within the course of their duties;
  - (3) Activities within the scope of a special event permit approved under Chapter 66, Article II, of the City Code.

(4) Emergency situations.

E. Penalties. Violation of this section shall constitute a misdemeanor punishable by 10 hours of community service. Any person convicted of a third or subsequent violation of this article is guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$250 or more than \$2,500, either or both. In lieu of the imposition of a fine and confinement in jail for a third or subsequent offense, the court may order the defendant to perform a mandatory minimum of 20 hours of community service.

**Sec. III. Effective date.**

This ordinance becomes effective immediately.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

Approved as to form:

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Kathleen Dooley, City Attorney

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***Clerk's Certificate***

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 19- duly adopted at a meeting of the City Council meeting held Date, 2019 at which a quorum was present and voted.*

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***Tonya B. Lacey, CMC***  
***Clerk of Council***