

MEMORANDUM

April 29, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 12-11, Ethics – Gifts – County Employees – Roadside Solicitation

Bill 12-11, Ethics – Gifts – County Employees – Roadside Solicitation, sponsored by Councilmember Andrews, Council President Ervin, and Councilmember Rice, was introduced on April 5, 2011. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for June 13.

Bill 12-11 would amend the County Ethics law to prohibit a County employee from standing in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle during official work hours.

Background

The County Ethics Law, §19A-16, generally prohibits a County employee from soliciting a gift to the employee or another person or organization during official work hours or while wearing an official County uniform. However, the Ethics Law contains an exception to this general prohibition to permit an employee to solicit charitable donations during official work hours or while identifiable as a County employee if the charity drive is approved by the County Executive. One example of an “approved” charity drive for County employees is the annual “Pass the Boot” campaign where Montgomery County Fire and Rescue employees solicit donations for the Muscular Dystrophy Association during official work hours while wearing County issued uniforms. A copy of Executive Order No. 277-07 approving this charitable campaign is attached at ©6-7. During this campaign, County fire fighters routinely solicit donations from the drivers of motor vehicles while standing on roadway intersections and median dividers.

The County has limited authority to regulate roadside solicitation due to State law preemption. The Maryland Vehicle Law applies generally throughout the State. The Maryland

Transportation Code, TR §25-101.1¹ preempts all County legislation on any subject covered by the Maryland Vehicle Law unless expressly permitted by a public general law. Any County law that is inconsistent or identical to a provision of the Maryland Vehicle Law is preempted. Therefore, the County does not have the authority to enact a law either permitting or prohibiting the solicitation of money or donations on any part of a roadway, median divider, or intersection.

Two provisions of the Maryland Vehicle Law regulate the conduct of pedestrians in roadways. First, TR §21-507(a) prohibits standing in a roadway to “solicit a ride, employment, or business from the occupant of any vehicle” except for the occupant of a disabled vehicle who seeks help from another vehicle. A “roadway” is defined as “that part of a highway that is improved, designed, or ordinarily used for vehicular travel, other than a shoulder.” TR §11-151. The Attorney General has interpreted this statute broadly to include the solicitation of donations due to the public safety purpose of the statute. See 93 Op. Atty Gen. Md. 31 (2008).

Second, in Montgomery County only, a minor must not stand in “a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle.” TR §507(g). This subsection is enforceable in the County by issuing a warning to a minor. Unless specified otherwise, a violation of the Maryland Vehicle Law is a misdemeanor. TR §27-101.

However, the General Assembly has banned roadside solicitation in other counties. TR §21-507(c) prohibits a person from standing on a roadway, median divider, or intersection to solicit money or donations from the occupant of a vehicle in Carroll, Charles, Frederick, Harford, and Washington Counties. TR §21-507(d), (e), and (i) prohibit a person from standing in a “highway” to solicit money or donations from the occupant of a vehicle in Prince George’s, Anne Arundel, and Howard Counties. “Highway” is defined as broader than roadway, and includes shoulders, median dividers, bicycle and walking paths, and other property in and near the roadway.

These limits on roadside solicitation in neighboring counties were enacted to protect both pedestrians and motorists and to permit the free flow of traffic. Although the County does not currently have the authority to enact a general ban on roadside solicitation,² the County does have the authority to limit roadside solicitation by County employees during official work hours. The County has a special duty to provide for a safe workplace for its employees under both State and Federal occupational safety and health laws. Although a County employee has not yet suffered an injury while soliciting donations during official work hours, fire fighters have recently suffered injuries in other states while participating in a roadside solicitation charity drive. Newspaper reports of an accident in 2009 and another in 2010 are at ©9-10.

Bill 12-11 would prohibit a County employee from standing in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle during official work hours. Councilmember Andrews explained the purpose of this Bill in a memorandum attached at ©8. It is important to note that this Bill would not eliminate the MCFRS employee “Pass the Boot” campaign for Muscular Dystrophy. Fire personnel could still

¹ References to the Md. Transportation Code are stated throughout as “TR.”

² A State Bill that would have authorized the Council to enact a local law regulating roadside solicitation was withdrawn by its sponsor during the 2011 legislative session.

solicit donations during work hours³ at approved parking lots or other public spaces away from roadways. Under current law, a County employee can engage in roadside solicitation when not at work as long as the employee does not violate State law.⁴ The Bill would not change this.

<u>This packet contains:</u>	<u>Circle #</u>
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³ A charitable campaign during official work hours must be approved by the Executive.

⁴ Photographs of County fire fighters during the September 2010 "Pass the Boot" campaign indicate that some may have violated State law by entering into the roadway to solicit contributions. See photos attached at ©11-13.

Bill No. 12 -11
Concerning: Ethics – Gifts – County
Employees – Roadside Solicitation
Revised: March 30, 2011 Draft No. 2
Introduced: April 5, 2011
Expires: October 5, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council President Ervin, and Councilmember Rice

AN ACT to:

- (1) prohibit a County employee from standing in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle during official work hours; and
- (2) generally amending the ethics law concerning the solicitation of gifts by County employees.

By amending

Montgomery County Code
Chapter 19A, Ethics
Section 19A-16, Soliciting or Accepting Gifts

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 19A-16 is amended as follows:

19A-16. Soliciting or accepting gifts.

(a) A public employee must not solicit a gift to the employee or another person or organization:

- (1) from any business or person who:
 - (A) is registered or must register as a lobbyist;
 - (B) does business with the County agency with which the public employee is affiliated; or
 - (C) is, or owns or operates a business that is, regulated by the County agency with which the public employee is affiliated;
- (2) during official work hours, or at a County agency, or from any other public employee who is supervised directly or indirectly by the public employee;
- (3) while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee;
- (4) for the employee's own benefit, unless the Ethics Commission approves the solicitation; or
- (5) with the intent of affecting or offering to affect any action by County agency.

(b) However, a public employee may solicit a gift:

- (1) from public employees during official work hours, or at a County agency, for a charitable drive that is approved by the County Executive or (for public employees of the legislative branch) the President of the Council, when the solicitation is part of the public employee's official duties;

- 27 (2) from any person to a charitable organization, as defined in the
28 state law regulating public charities, or a municipality, if the
29 public employee does not solicit gifts primarily from those
30 persons who do business with or are regulated by the county
31 agency with which the public employee is affiliated, or from
32 other employees who are supervised directly or indirectly by the
33 public employee;
- 34 (3) from any person, during official work hours, while identifiable as
35 a public employee, or at a County agency, for the benefit of a
36 County agency or a nonprofit organization formally cooperating
37 on a program with a County agency if the solicitation is
38 authorized by the County Executive or (for public employees of
39 the legislative branch) the President of the Council in an order
40 printed in the County Register that designates:
- 41 (A) the public employee authorized to solicit the gift;
 - 42 (B) the purpose for which the gift is sought;
 - 43 (C) the manner in which the gift may be solicited;
 - 44 (D) the persons or class of persons from whom gifts may be
45 solicited; and
 - 46 (E) the type of gifts that may be solicited;
- 47 (4) while wearing all or part of a uniform of the corporation, to a
48 nonprofit fire or rescue corporation of which the public employee
49 is a member; or
- 50 (5) from any person to a charitable organization, as defined in the
51 state law regulating public charities, while identifiable as an
52 elected official, if the employee lists in a supplement to each

53 annual financial disclosure statement each organization to which
54 the employee solicited a contribution during that year.

55 This subsection does not permit a public employee, during official work
56 hours, to stand in a roadway, median divider, or intersection to solicit
57 money or donations of any kind from the occupant of a vehicle.

58 * * *

59 *Approved:*

60 _____
Valerie Ervin, President, County Council Date

61 *Approved:*

62 _____
Isiah Leggett, County Executive Date

63 *This is a correct copy of Council action.*

64 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 12-11

Ethics – Gifts – County Employees – Roadside Solicitation

DESCRIPTION: To amend the County Ethics law to prohibit a County employee from standing in a roadway, median divider, or intersection to solicit money or donations of any kind from the occupant of a vehicle during official work hours.

PROBLEM: The County has a special duty to provide for a safe workplace for its employees under both State and Federal occupational safety and health laws. Roadside solicitation is dangerous, and permitting County employees to do this during official work hours undermines the County's efforts to increase pedestrian and traffic safety.

GOALS AND OBJECTIVES: To protect both pedestrians and motorists and to permit the free flow of traffic.

COORDINATION: Police Department

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Roadside solicitation is banned in Prince George's, Howard, Anne Arundel, and Frederick Counties.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Under Ethics Law



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Employee Solicitation Waiver	Executive Order No. 277-07	Subject Suffix
Originating Department Fire and Rescue Service	Department No.	Effective Date 8/23/07

SOLICITATION OF GIFTS - MUSCULAR DYSTROPHY ASSOCIATION

Pursuant to § 19A-16(b)(3) of the Montgomery County Public Ethics Law, the County Executive authorizes the Fire Chief to designate employees assigned to Montgomery County Fire and Rescue Service to solicit gifts for the benefit of the Muscular Dystrophy Association (MDA) as part of its "Pass The Boot" campaign, in accordance with the requirements established by this Executive Order.

Employees authorized to solicit gifts

Any employee designated by the Fire Chief may contact potential donors directly.

Purpose of the Gifts

The purpose of the gifts is to support MDA, a 501(c)(3) tax exempt charitable organization dedicated to conquering neuromuscular diseases that affect more than a million Americans.

Manner of Solicitation

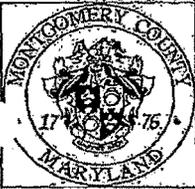
The Fire Chief, or the Fire Chief's designee, must authorize all solicitations. A public employee authorized to solicit a gift under this Order may participate in presentations, conduct general solicitations through mailings, participate in media activities, or meet personally with potential donors. An authorized public employee may solicit gifts during official work hours, while identifiable as a public employee, but must not solicit any individual or entity that has a contract with Montgomery County Fire and Rescue Service or any other County agency with which the employee is affiliated.

Source of Gifts

Designated employees may solicit gifts from any individual or entity, including associations, businesses, corporations, foundations, service organizations, chambers of commerce, community groups, religious organizations, and other government agencies.

Types of Gifts

Gifts may include monetary contributions, goods and services, technical assistance, training space, furniture or equipment cost.



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Employee Solicitation Waiver	Executive Order No. 277-07	Subject Suffix
Originating Department Fire and Rescue Service	Department No.	Effective Date 8/23/07

Manner of Acceptance of Gifts

Unless the donor makes a written request that there be no public acknowledgement of the gift, the Fire Chief may publicly acknowledge each gift by placing a notice in the Montgomery County Register indicating the gift donated, the identity of the donor, the identity of the recipient of the gift, and the purpose for which the gift will be used. The Fire Chief may issue a press release, if desired.

The Fire Chief must notify the Office of the County Executive of the funds collected for the MDA Fill the Boot Campaign. The Fire Chief may fulfill this requirement by submitting a request for placement of a notice in the Montgomery County Register as outlined above.

This Executive Order is issued under the Authority of § 19A-16(b)(3) of the Montgomery County Public Ethics Law and Ethics Commission waiver dated April, 6, 1990.

Approved:

Isiah Leggett, County Executive

8/23/07
Date

Recommended by:

Thomas Carr, Fire Chief
Montgomery County Fire and Rescue Service

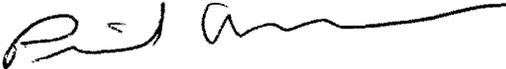
8/21/07
Date

APPROVED AS TO FORM AND LEGALITY
OFFICE OF COUNTY ATTORNEY
BY
DATE 8/21/07

March 31, 2011

MEMORANDUM

TO: Councilmembers

FROM: Councilmember Phil Andrews 

SUBJECT: Prohibiting roadway solicitation by County employees on County time

Bill 12-11, drafted at my request, and co-sponsored by Council President Ervin and Councilmember Rice, would amend the County's Ethics Code to prohibit County employees from soliciting donations in roadways while on County time. This measure would stop County employees from endangering themselves and drivers, pedestrians and bicyclists while on County time.

It is inherently and needlessly dangerous for individuals to enter highways to solicit contributions from drivers. In Sante Fe Springs, California in 2010, and in Waxahacie, Texas in 2009, firefighters conducting "Fill the Boot" campaigns were struck by vehicles (see attached articles). As a result, the local fire chief in Texas suspended the roadway campaign. Allowing County employees to solicit in roadways on County time -- as is done now -- is not only dangerous; it undermines the County's efforts and credibility in promoting pedestrian and traffic safety. If County employees continue to solicit in roadways, it is only a matter of time before an employee is injured or killed by a vehicle. This bill is what the Council can do at this time to reduce the chances of that happening. Until the Council obtains authority from the General Assembly to prohibit roadway solicitation altogether, the Council cannot prohibit County employees from soliciting in roadways on their own time.

Except with regard to roadways, the bill would not change the current law that allows the County Executive or the County Council to authorize County employees to solicit for charity on County time.

05/07/2010

Calif. firefighter struck, injured by car during fundraiser

The 53-year-old firefighter was listed in serious but stable condition

By Bethania Palma Markus
The Whittier Daily News

SANTA FE SPRINGS, Calif. — A firefighter was injured while collecting money for a nonprofit organization Thursday morning.

The firefighter was at Valley View Avenue and Alondra Boulevard collecting money from passing drivers for the department's annual "Fill the Boot" fundraiser for the Muscular Dystrophy Association when he crossed lanes and was struck by a small pickup truck at about 9:45 a.m., said Whittier police Officer Mike Dekowski.

Dekowski said the 53-year-old firefighter was taken by ambulance to UCI Medical Center and was listed in serious but stable condition.

"He's conscious and talking," Dekowski said.

Fire Department officials wouldn't release his name, citing medical privacy laws.

Santa Fe Springs firefighters were at that intersection and Telegraph and Carmenita roads Tuesday and Thursday from 8 a.m. to 12 p.m. and 2:30 p.m. to 5:30 p.m. for the yearly fundraiser, officials said.

The department has been participating in the yearly drive for seven years, said Janet Ortiz, department spokeswoman.

"We're going to work with the Whittier police and look at the results of the investigation and we'll re-evaluate how or if we'll do it in the future," Ortiz said.

The firefighter was struck while walking in an eastbound lane of Alondra Boulevard, Dekowski said. The light had just turned green and he was trying to get to the sidewalk.

The driver stopped after the collision and the incident is being considered an accident, Dekowski said.

"Technically (the driver) had the right of way. He was not at fault," Dekowski said. "Chances are (the firefighter) didn't see the truck and the truck never saw him coming."

East and westbound lanes on Alondra Boulevard were closed following the accident, Dekowski said. The eastbound side was closed for about four hours.

Carroll Wills, communications director for the California Professional Firefighters Association, said firefighters nationwide ask drivers and pedestrians yearly to fill their boots and donate the collected money to the MDA or burn foundations, he said.

The International Association of Firefighters sponsors the Muscular Dystrophy Association and firefighters have been participating in "Fill the Boot" for about a half century, he said.

"In my memory this is the first time I've seen a situation where someone was injured while conducting a 'Fill the Boot' drive," he said. "They're typically conducted extremely safely."

Waxahacie FF Struck by Vehicle During Fill the Boot : Chief Suspends Campaign

Posted By [Fookie](#) On April 24, 2009 @ 19:37 In [Metroplex](#) | [No Comments](#)

A passing vehicle struck a Waxahachie firefighter near the intersection of Marvin and Ferris avenues at about 3:27 p.m. Thursday. The firefighter was working with three others during the department's annual Fill the Boot campaign benefiting the Muscular Dystrophy Association. The fireman, Marcus L. Brown, 32, was transported by ground ambulance to Baylor University Medical Center in Dallas, where he was treated and released.

According to the accident report, a 2006 Lincoln Mark LT pickup driven by Charlie L. Smith, 49, of Waxahachie was turning left from Cow Path Alley. Smith told police that, as he turned left, another vehicle stopped in front of him, causing him to turn into the inside lane.

Smith told police Brown was standing in the roadway and stepped in front of him as he completed his turn, according to the report, which indicates several witnesses to the accident.

The fire department had just started its three-day benefit fundraiser campaign at 10 a.m. Thursday. Fill the Boot has been held in the city for more than 20 years. During last year's campaign, members raised a little more than \$14,000 from public contributions and had a goal of \$15,000 for this year's drive.

Crews of three to four firefighters had rotated throughout the day at the intersections of Marvin and Ferris avenues and at Indian Drive and U.S. Highway 77, collecting donations in a large boot.

"Typically, this has been a fundraiser that firefighters from around the country have done to benefit MDA," said campaign coordinator Capt. Don Alexander in an interview with the Daily Light prior to the accident. "The public has been really generous in the past and so far this year - and that is what really surprises a lot of the young guys who do this because they don't expect it."

Responding to the accident scene were additional personnel from the Waxahachie Fire Department along with the Waxahachie Police Department and East Texas EMS.

Fire Chief David Hudgins said that, due to the accident, the Fill the Boot campaign is suspended until further review for safety considerations.

"We have done this drive for years and never have had a problem or an accident until today," he said. "Now, with traffic the way it is, we will have to re-evaluate it."

"We will be contacting several businesses in the area to do the campaign in front of their stores in the future," he said. "We will no longer work on the streets."

By ANDREW BRANCA

[Daily Light staff writer](#) ^[1]

Article printed from Texas-Fire.com: <http://www.texas-fire.com>

URL to article: <http://www.texas-fire.com/2009/04/waxahacie-ff-struck-by-vehicle-during-fill-the-boot-chief-suspends-campaign/>

Photos of Montgomery County Firefighters
Fill the Boot, September 2010

