



Committee: Joint
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #RoadwaySolicitationSafetyFirst

AGENDA ITEM #8B
April 20, 2021
Introduction

SUBJECT

Bill 15-21, Solicitation of Vehicle Occupants in High-Speed Roadways – Permit Requirement

Lead Sponsor: Councilmember Rice

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

DESCRIPTION/ISSUE

Bill 15-21 would:

- require a permit before a person may stand in a roadway, median divider; or sidewalk to solicit an occupant of a vehicle on a high-speed roadway;
- condition the permit upon adherence to certain safety rules; and
- generally regulate pedestrian safety, including the time, place, and manner of solicitation by pedestrians of occupants of vehicles in travel lanes of streets and roads.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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M E M O R A N D U M

April 15, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 15-21, Solicitation of Vehicle Occupants in High-Speed Roadways – Permit Requirement

PURPOSE: Introduction – no Council votes required

Bill 15-21, Solicitation of Vehicle Occupants in High-Speed Roadways - Permit Requirement, sponsored by Lead Sponsor Rice, is scheduled to be introduced on April 20, 2021.¹ A public hearing is tentatively scheduled for May 11, 2021 at 1:30 p.m.

Bill 15-21 would require a permit before a person may stand in a roadway, median divider or sidewalk to solicit an occupant of a vehicle on a high-speed roadway and would condition the permit upon adherence to certain safety rules.

PURPOSE

The purpose of the bill would be to improve pedestrian safety, and to reduce serious injuries and fatalities, when pedestrians solicit and collect objects from vehicles in certain high-speed roadways.

STATE ENABLING LAW

Maryland law generally preempts the County from regulating the medians and roadways, but the law expressly allows the County to require permits for standing in roadways, medians, or sidewalks to solicit from occupants of vehicles in roadways. Specifically, Section 21-507(g)(3) of the Transportation Article of the Maryland Code states:

- (3) (i) The Montgomery County Council may enact a local law to require a person to obtain a permit before the person may stand in a roadway or median divider or on a sidewalk adjacent to a roadway to solicit and collect money or donations of any kind from the occupant of a vehicle.

(ii) If a permit is required under a local law enacted under subparagraph (i) of this paragraph, except in compliance with a permit obtained in accordance with the local law, a person may not:

1. Stand in a roadway, median divider, or intersection, or on a sidewalk adjacent to a roadway, to solicit or collect money or donations of any kind from the occupant of a vehicle; or

2. Cause, encourage, allow, or petition a person to stand in a roadway, median divider, or intersection, or on a sidewalk adjacent to a roadway, to solicit or collect money or donations of any kind from the occupant of a vehicle.

(iii) A local law enacted under this section may not authorize a permit to be issued to a minor for the purpose of standing in a roadway or median divider to solicit or collect money or donations of any kind from the occupant of a vehicle.

(iv) A permit issued under a local law enacted under this section shall apply to the solicitation and collection of money or donations on roadways, median dividers, and sidewalks adjacent to roadways and may not limit the authorization to fewer than all three of those locations.

FIRST AMENDMENT FRAMEWORK

The State enabling law, in addition to any County law adopted under it, likely would be reviewed under the First Amendment based upon whether the law is deemed “content neutral” and, depending upon the answer to that question, whether the law: (1) furthers a “significant” or “compelling” government interest; and (2) is “narrowly tailored” or the “least restrictive means” to serve the government interest. *See, e.g., Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015). Under these standards, the Maryland Attorney General opined in 2008 that certain aspects of a Gaithersburg City regulation on roadside solicitation likely were content neutral, but not sufficiently narrowly tailored to survive First Amendment scrutiny. (93 Md. Op. Att’y Gen. 31). On the other hand, some roadside solicitation regulations have been viewed by federal courts in the past as being content neutral and narrowly tailored. *See, e.g., Houston Chronicle Publ’g Co. v. City of League City*, 488 F.3d 613 (5th Cir. 2007). The First Amendment inquiries are complex, and the inquiries also might be informed by seemingly shifting Supreme Court jurisprudence on the meaning of “content neutrality” under the First Amendment. *See, e.g., [Opinion analysis: The message determines the right - SCOTUSblog](#)*.

BILL SPECIFICS

Pursuant to the State enabling law, Bill 15-21 would require an individual to obtain a permit from the Department of Health and Human Services (DHHS) in order to:

(1) stand in a roadway, median divider, or sidewalk adjacent to a roadway to solicit from the occupant of a vehicle in a high-speed roadway; or

- (2) cause, encourage, allow, or petition an individual to stand in a roadway, median divider, or sidewalk adjacent to a roadway, to solicit from the occupant of a vehicle in a high-speed roadway.

The permit would be conditioned upon the individual's compliance with certain safety rules, including obeying traffic control signals and soliciting on high-speed roadways only during daylight hours.

Permit applications would be available at homeless shelters as well as cooling and heating centers around the County. The permit applicant would not be required to pay any fee.

This packet contains:

Bill 15-21

Legislative Request Report

Circle #

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Bill No. 15-21
Concerning: Solicitation of Vehicle
Occupants in High-Speed Roadways
– Permit Requirement
Revised: 04/06/2021 Draft No. 4
Introduced: April 20, 2021
Expires: October 20, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice

AN ACT to:

- (1) require a permit before a person may stand in a roadway, median divider; or sidewalk to solicit an occupant of a vehicle on a high-speed roadway;
- (2) condition the permit upon adherence to certain safety rules; and
- (3) generally regulate pedestrian safety, including the time, place, and manner of solicitation by pedestrians of occupants of vehicles in travel lanes of streets and roads.

By adding

Montgomery County Code
Chapter 24, Health and Sanitation
Section 24-8E

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:

1 **Sec. 1. Section 24-8E is added as follows:**

2 **24-8E. Solicitation in High-Speed Roadways.**

3 (a) Legislative findings. The Council finds that:

4 (1) higher vehicle speeds are strongly associated with a greater
5 likelihood of pedestrian crash occurrence and more serious
6 resulting pedestrian injury;

7 (2) according to the National Highway Traffic Safety
8 Administration, approximately 40 percent of pedestrians die
9 when struck by a vehicle traveling at 30 miles per hour, and
10 approximately 80 percent of pedestrians die when struck by a
11 vehicle traveling at 40 miles per hour;

12 (3) according to Data Montgomery, approximately 400 pedestrians
13 in the County have been seriously injured or killed by vehicle
14 collisions between 2015 and 2020, and over half of those
15 individuals were killed or seriously injured during nighttime
16 conditions; and

17 (4) the County's Vision Zero action plan, which seeks to eliminate
18 traffic fatalities and severe injuries by 2030, requires greater
19 safety measures related to the dangerous activity of pedestrians
20 soliciting and collecting items from the occupants of vehicles in
21 roadways.

22 (b) Authority. This Section is enacted under Section 21-507(g) of the
23 Transportation Article of the Maryland Code.

24 (c) Definitions. In this Section:

25 Applicant means a person who submits an application under subsection
26 (g).

Daylight hours means the time between sunrise and sunset for any particular day, as determined by the United States Naval Observatory.

Department means the Department of Health and Human Services.

Director means the Director of the Department, or the Director's designee.

High-speed roadway means a roadway with a speed limit that exceeds 25 miles per hour.

Intersection has the same meaning as that term is defined under the Maryland Vehicle Law.

Roadway has the same meaning as that term is defined under the Maryland Vehicle Law.

Sidewalk has the same meaning as that term is defined under the Maryland Vehicle Law.

Solicit, soliciting, or solicitation means to ask for and collect money, items, or donations of any kind from an occupant of a vehicle in a roadway while standing in a roadway, median divider, or sidewalk adjacent to a roadway.

(d) Permit required. Except in compliance with a permit obtained under subsection (g), including the safety requirements under subsection (f), a person must not:

(1) stand in a roadway, median divider, or sidewalk adjacent to a roadway to solicit from the occupant of a vehicle in a high-speed roadway; or

(2) cause, encourage, allow, or petition an individual to stand in a roadway, median divider, or sidewalk adjacent to a roadway, to solicit from the occupant of a vehicle in a high-speed roadway.

(e) Application process.

(1) A person must file an application for a permit with the Department on a form established by the Director.

(2) The Department must provide to an applicant the application form. The application form:

(A) may request, but must not require, the applicant to provide the name and address of the individual seeking a permit;

(B) must not charge any fee to the applicant;

(C) must require the individual seeking the permit to comply with the safety rules imposed under subsection (f).

(D) must include educational materials that identify the risks of roadside solicitation; and

(E) must include information on available County resources as alternatives to roadside solicitation.

(3) The Director must distribute application forms to homeless shelters, cooling centers, and heating centers within the County.

(f) Safety rules. As a condition of obtaining a permit under subsection (g), an individual must comply with the following safety rules when soliciting from an occupant of a vehicle in a high-speed roadway:

(1) the individual must not enter the high-speed roadway to solicit, except when the traffic control signal indicates that all vehicles in the roadway must not enter the intersection;

(2) the individual must leave the high-speed roadway, and must not solicit from an occupant in a vehicle in the high-speed roadway, when the traffic control signal indicates that a vehicle in any travel lane of the roadway may enter the intersection; and

(3) the individual must not solicit from an occupant of a vehicle in a high-speed roadway except during daylight hours.

(g) Issuance and contents of a permit. The Director must issue a permit to an applicant immediately upon the applicant's filing of a complete application form. The permit must contain:

(1) the permit number;

(2) the expiration date of the permit, which must be 12 months from the issuance of the permit;

(3) the safety rules under subsection (f);

(4) a notice that the permit will be revoked for failure to comply with the safety rules under subsection (f);

(5) a statement that a permit is not required to solicit from occupants of vehicles in roadways that are not high-speed roadways; and

(6) a complete list of high-speed roadways in the County.

(h) Minors. A permit under subsection (g) must not be issued to an individual under the age of 18.

(i) Enforcement.

(1) The Department must revoke a permit, for a period of 30 days, from a person who violates a safety requirement under subsection (f).

(2) An officer of the Montgomery County Police Department may instruct a person who is soliciting from an occupant of a vehicle on a high-speed roadway that the person must obtain a permit under this Section.

LEGISLATIVE REQUEST REPORT

Bill 15-21

Solicitation of Vehicle Occupants in High-Speed Roadways - Permit Requirement

DESCRIPTION:	Bill 15-21 would: <ul style="list-style-type: none">• require a permit before a person may stand in a roadway, median divider; or sidewalk to solicit an occupant of a vehicle on a high-speed roadway;• condition the permit upon adherence to certain safety rules; and• generally regulate pedestrian safety, including the time, place, and manner of solicitation by pedestrians of occupants of vehicles in travel lanes of streets and roads.
PROBLEM:	Pedestrian injuries and fatalities
GOALS AND OBJECTIVES:	
COORDINATION:	DHHS / DOT
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Yes.
PENALTIES:	N/A