

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

**TO CONSIDER AN AMENDMENT TO CHAPTER 32 (TRAFFIC AND VEHICLES),
ARTICLE V (STOPPING, STANDING AND PARKING), OF THE LEESBURG TOWN
CODE AND ENACT DIVISION 5 (SOLICITATION ON HIGHWAYS), SECTION 32-272
(SOLICITATION ON HIGHWAYS PROHIBITED)**

Pursuant to Code of Virginia of 1950, as amended, § 15.2-1427 and § 46.2-931, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, JULY 23, 2013, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to amend Chapter 32 (Traffic and Vehicles), Article V (Stopping, Standing and Parking), to add Division 5 (Solicitation on Highways), Section 32-272 of the Town Code of Leesburg to prohibit solicitation on highways, public roadways and medians within the Town. The following amendment will be proposed:

Division 5 (Solicitation on Highways)

Section 32-272. Solicitation on highways prohibited.

(a) Definition

As used in this section:

“Median” shall mean a strip of land of varying width separating the lanes of opposing traffic of a divided highway or public roadway.

- (b) No person shall solicit contributions, of any nature, from the occupants of motor vehicles on highways located within the town or on public roadways and medians. Any person who violates the provisions of this section shall be guilty of a traffic infraction.

A copy of the proposed ordinance is available from the Town Clerk, located in Town Hall. Additional information regarding these proposed amendments is available in the Executive Department, located on the first floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling Lee Ann Green, Clerk, at 703-731-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

7/18/13



Date of Council Meeting: July 23, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Should the Town Council adopt an ordinance prohibiting the solicitation of donations from motor vehicles on town streets?

Staff Contact: Jeanette Irby, Town Attorney

Recommendation: The Town Council should adopt an ordinance prohibiting the solicitation of donations from motor vehicles on town streets.

Issue: Should the Town Council adopt an ordinance prohibiting individuals or groups from soliciting donations in town streets and medians?

Fiscal Impact: None.

Background: In March of this year, the Loudoun County Board of Supervisors enacted an ordinance banning persons from soliciting contributions while in the county highways and medians. The new Loudoun County Ordinance 440.04 states in pertinent part:

(b) No person shall solicit contributions, of any nature, from the occupants of motor vehicles on highways within the boundaries of the County, or on public roadways or medians. Any person who violates the provisions of this Ordinance shall be guilty of a traffic infraction.

Code of Virginia of 1950, as amended, § 46.4-931, entitled, “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”, is the enabling statute which authorizes localities to adopt ordinances like the ordinance recently enacted by Loudoun County. Several other localities have enacted a similar provision such as the City of Richmond as well as the Town of Herndon. The state code does not make an exception for non-profit groups or charities.

Even though the state enabling statute is clear, Herndon was contacted by the ACLU with a request to repeal its ordinance on the grounds that the ordinance targets Hispanics. Similarly, the City of Charlottesville has recently been sued by the ACLU for its ordinance prohibiting solicitation on the Charlottesville Mall. Ordinances restricting solicitation from public areas may be unconstitutional in that they restrict individuals’ First Amendment right to free speech. The U.S. Supreme Court has held that the solicitation of charitable contributions is protected speech. Town streets, sidewalks and public areas are “traditional public forums” which enjoy the full protection of the First Amendment. However, even though solicitation is a protected right, it still may be limited, so long as any law limiting the same is narrowly tailored.

Adoption of Solicitation Ordinance

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The state code section which enables localities to enact ordinances prohibiting solicitation in public roadways or medians is grounded in motor vehicle and pedestrian safety and makes no distinction between the types of individuals or groups that are prohibited from soliciting donations. For this reason, the state code statute appears to be constitutional. The proposed ordinance is content neutral and should withstand any constitutional challenge.

Respectfully submitted,

Jeanette Irby, Town Attorney

Attachments: Proposed Ordinance

PRESENTED: July 23, 2013

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: TO AMEND AND REORDAIN CHAPTER 32 (TRAFFIC AND VEHICLES), ARTICLE V (STOPPING, STANDING AND PARKING), AND ADD DIVISION 5 (SOLICITATION ON HIGHWAYS), SECTION 32-272 (SOLICITATION ON HIGHWAYS PROHIBITED)

WHEREAS, Code of Virginia of 1950, as amended, § 46.2-931 authorizes localities to prohibit the solicitation by individuals and/or groups from operators of vehicles on town highways and streets; and

WHEREAS, this practice of solicitation from vehicles in town right of way is a detriment to the health, safety and welfare of town residents; and

THEREFORE, ORDAINED by the Council of the Town of Leesburg in Virginia as follows:

SECTION I. That Chapter 32, Article V, be and the same is hereby amended to read as follows:

Division 5 (Solicitation on Highways)

Section 32-272. Solicitation on highways prohibited.

(a) Definition

As used in this section:

“Median” shall mean a strip of land of varying width separating the lanes of opposing traffic of a divided highway or public roadway.

(b) No person shall solicit contributions, of any nature, from the occupants of motor vehicles on highways located within the town or on public roadways and medians. Any person who violates the provisions of this section shall be guilty of a traffic infraction.

SECTION II. All prior ordinances in conflict herewith are hereby repealed.

AN ORDINANCE: TO AMEND AND REORDAIN CHAPTER 32 (TRAFFIC AND VEHICLES), ARTICLE V (STOPPING, STANDING AND PARKING), AND ADD DIVISION 5 (SOLICITATION ON HIGHWAYS), SECTION 32-272 (SOLICITATION ON HIGHWAYS PROHIBITED)

SECTION III. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

SECTION IV. This ordinance shall be effective upon its adoption.

PASSED this _____ day of _____, 2013.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council