




County of Fairfax, Virginia

MEMORANDUM

DATE: April 8, 2022
TO: Board of Supervisors
FROM: Bryan Hill, County Executive 
SUBJECT: Panhandling

Members of the Board have expressed concerns about panhandling in the County several times, most recently in the attached memorandum from Supervisor Alcorn dated March 4, 2022.

A 2016 memorandum outlining the legal issues surrounding panhandling regulations is also attached. Although the memorandum was addressed to former Supervisor Cook, it was subsequently distributed to the rest of the Board in advance of a closed session later that year. This 2016 memorandum sets forth the First Amendment concerns about a proposed panhandling ordinance. In recent years, courts have found anti-panhandling ordinances to be impermissible content-based restrictions on speech, impermissibly overbroad, or both, even when such ordinances are styled as public safety measures.

Since the date of the 2016 memorandum, courts have continued to issue rulings unfavorable to such regulations on First Amendment grounds. *See, e.g., Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 WL 4162882 (M.D. Florida, 2016); *Blitch v. City of Slidell*, 260 F.Supp.3d 656 (E.D. Louisiana, 2017); *Norton v. City of Springfield*, 324 F.Supp.3d 994 (C.D. Illinois, 2018); *Leatherman v. Watson*, 2019 WL 827633 (N.D. California, 2019); *Rodgers v. Stachey*, 2019 WL 1447497 (W.D. Arkansas, 2019); *Brown v. District of Columbia*, 2019 WL 2437546 (D. District of Columbia, 2019); *Gralazeh v. City of Dallas*, 2019 WL 2616668 (N.D. Texas, 2019); *Rodgers v. Bryant*, 942 F.3d 451, 460 (8th Cir. 2019); *Martin v. City of Albuquerque*, 396 F. Supp. 3d 1008 (D.N.M. 2019), *aff'd sub nom. Brewer v. City of Albuquerque*, 18 F.4th 1205 (10th Cir. 2021); *Fernandez v. St. Louis County, Missouri*, 2020 WL 2526557 (E.D. Missouri, 2020); *McCraw v. City of Oklahoma City*, 973 F.3d 1057 (10th Cir. 2020), *cert. denied sub nom. City of Oklahoma City, Oklahoma v. McCraw*, 141 S. Ct. 1738 (2021); *Vigue v. Shoar*, 494 F. Supp. 3d 1204 (M.D. Fla. 2020); *Indiana Civil Liberties Union Found., Inc. v. Superintendent, Indiana State Police*, 470 F. Supp. 3d 888 (S.D. Ind. 2020); *Messina v. City of Fort Lauderdale, Florida*, 546 F. Supp. 3d 1227 (S.D. Fla. 2021); and *Jonathan Singleton et al. v. Hal Taylor et al.*, 2021 WL 3780806 (M.D. Ala., 2021).

A federal appeals court upheld a prohibition on sitting or standing in any median that is unpaved or less than 36 inches wide. *Evans v. Sandy City*, 944 F.3d 847 (10th Cir. 2019). However, the Tenth Circuit subsequently limited this decision to its facts. *See Brewer*, 18 F.4th at 1240-1255. *Evans* is also inconsistent with current Fourth Circuit precedent.

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As discussed in the 2016 memorandum, and further amplified by several of the court decisions listed above, local ordinances regulating activities on medians for public safety reasons must be backed by some sort of empirical evidence documenting the public safety problems, such as traffic studies and accident statistics, and be limited in scope to those areas where the problems exist. Local and state governments have experienced great difficulty meeting these burdens in court. Although panhandling may appear to be dangerous to pedestrians and motorists, actual traffic data does not necessarily support that view.

With this overview, here are responses to the specific questions asked in Supervisor Alcorn's March 4, 2022 memorandum addressed to Deputy County Executive Tom Arnold:

- 1. Our current policy is that asking for money in public spaces is protected speech under the First Amendment. Additionally, while it is not illegal to stand in medians to request money, it may be unsafe. What is the Fairfax County policy towards panhandling in public spaces where safety is a consideration (e.g., in the medians at busy intersections), and has it changed or evolved in recent years?**

Response:

The County's policy treating panhandling as protected speech is based on current First Amendment law. Courts have consistently determined that panhandling is protected speech. See, e.g., *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) ("[t]here is no question that panhandling and solicitation of charitable contributions are protected speech") (internal cite omitted).

Courts encourage local governments to use existing traffic safety laws to address any public safety problems stemming from panhandling. See *Clatterbuck v. City of Charlottesville*, 92 F. Supp. 3d 478 (W.D. Va., 2015); *Reynolds*, 779 F.3d 222. While the County has followed this guidance, police officers have had limited success in prosecuting traffic violations. In recent years, the County has elected to pursue education and awareness more than police engagement.

- 2. Are there laws on the books that FCPD used historically to discourage panhandling at intersections and elsewhere on public right of way where there is a potential safety issue?**

Response:

County police officers have historically used several traffic laws to discourage unsafe panhandling practices. These include Virginia Code §§ [46.2-818](#) (prohibiting stopping the vehicle of another for the purpose of impeding its progress), [46.2-888](#) (prohibiting stopping a vehicle "in such a manner as to impede or render dangerous the use of the highway by others"), and [46.2-924](#) (prohibiting pedestrians from entering or crossing an intersection in disregard of approaching traffic and requiring drivers to yield the right-of-way to pedestrians at crosswalks).

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Notably, the *Clatterbuck* court pointed to these specific provisions as the preferred means of enforcing traffic safety. *Clatterbuck*, 92 F. Supp. 3d at 490; see also *Reynolds*, 779 F.3d at 231 (“[t]he County simply presented no evidence showing that it ever tried to use the available alternatives to address its safety concerns ... there is no evidence that the County ever tried to improve safety by prosecuting any roadway solicitors who actually obstructed traffic”) (emphasis in original).

Officers may also use County Code Section [82-9-5](#) (a) in some instances when panhandlers enter travel lanes.

When County police officers issue citations for violations of existing traffic laws, they are doing exactly what courts recommend. However, as noted above, traffic court judges rarely impose penalties for these violations and frequently dismiss cases brought under these state and local code sections. Even if a judge does convict a panhandler for a traffic violation, the associated penalties rarely have a deterrent effect. Furthermore, many panhandlers are familiar with current First Amendment law and are careful to comply with relevant traffic laws and avoid attracting law enforcement attention. Officers are now more likely to provide education about relevant County programs and services when responding to calls for service or otherwise intervening in panhandling situations.

3. What is the policy or procedure when school age children are alongside presumptive parents who are panhandling?

Response:

County police officers do not encounter this situation frequently enough to warrant a specific policy or procedure. Neither Fairfax Public Schools nor the Department of Family Services (DFS) keep records detailed enough to determine the extent to which children or presumptive parents are subject to legal action or other intervention as a result of panhandling.

Panhandling with children is not presumptively abuse or neglect, although specific circumstances could lead to such a determination. If it received a report of suspected abuse or neglect based on this situation, DFS would investigate as it does with any such report and pursue legal action if warranted. A finding of abuse or neglect, or a determination that a child is in need of services, would only happen after DFS completes a comprehensive investigation and obtains a court ruling to that effect.

If anyone thinks that they have witnessed child abuse or neglect, the person should immediately call the Child Protective Services hotline at 703-324-7400.

4. How does the policy extend to panhandlers who follow members of the public outside their vehicle and/or onto private property? In other words, does our current policy distinguish between passive panhandling where there is soliciting without threat or menace, and aggressive panhandling which involves actual or implied threats or menacing actions?

Response:

Panhandling on private property, whether passive or aggressive, is an entirely different matter than the analysis detailed in response to the previous questions. Private businesses can ban individuals from their property. If the individuals fail to observe the ban, they are subject to prosecution for trespassing under Virginia Code § [18.2-119](#).

Several jurisdictions have attempted to prohibit “aggressive panhandling”, typically defined as panhandling in an intimidating manner, continued requests for money after an initial refusal, and/or panhandling in certain areas such as near ATM machines. Courts have found these types of ordinances to be impermissibly content-based restrictions on speech, more restrictive than necessary and/or unnecessarily duplicative of existing criminal laws. See, e.g. *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 192-95 (D. Mass. 2015); *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 235–37 (D. Mass. 2015); *Rodgers v. Bryant*, 301 F. Supp. 3d 928, 935-36 (E.D. Ark. 2017), *aff'd*, 942 F.3d 451 (8th Cir. 2019); and *Messina*, 546 F. Supp. 3d at 1245.

County police officers have existing laws available to punish actual criminal conduct. If the panhandler demands money and uses force or if a person feels a threat of violence on the part of a panhandler for a failure to give money, then the police may be able to pursue a robbery charge under Va. Code § [18.2-58](#). If the panhandler touches a person, then the police may be able to prosecute for assault and battery under Va. Code § [18.2-57](#). Finally, in some cases, a panhandler obstructing the free passage of others may be subject to prosecution under Va. Code § [18.2-404](#).

5. Are there other strategies besides criminalizing various forms of panhandling that have been used in other jurisdictions that might be worth reviewing?

Response:

Education and awareness is the primary approach besides law enforcement. Campaigns to educate potential donors about more effective ways to help the disadvantaged and to discourage contributions are the best strategies to reduce panhandling. The County also continues to educate panhandlers on available County services. These services can reduce the need to seek immediate cash donations. The Office to Prevent and End Homelessness has a webpage dedicated to panhandling in Fairfax County [What You Need to Know About Panhandling in Fairfax County | Homelessness, Office to Prevent and End](#). When notified of panhandling, County staff respond to reported locations to offer services.

In addition to the County webpage dedicated to panhandling, the County could seek VDOT approval to place signage discouraging donations and directing community members to notify the County about panhandling. Similar to our current strategy, upon notification, County staff could investigate the reported locations and offer education and resources that may be available to panhandlers they encounter. This initiative would have a fiscal impact due to signage costs and the allocation of human capital to intake calls from the community and then respond to reported locations. Further, signage would most likely increase community expectation to remove panhandlers, but there is no guarantee this would do so. Outreach staff report that often panhandlers are aware of services, and in many cases using said services, yet not giving up their efforts to panhandle.

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