

**Snow Removal**  
**Fairfax County Board of Supervisors' Legislative Committee**  
**November 27, 2018**

**Background**

- Throughout the County, there is an increasing dependence on walkways to support multi-modal transportation, and an increasing expectation to use these facilities throughout the year. The availability of walkways helps encourage commuters to use transit as an alternative to driving alone.
- However, pedestrians and transit users have experienced difficulty using these facilities during and following snow events. Additionally, some County businesses have raised the concern that failure to shovel sidewalks during snow events may negatively affect growth and development in the County's urban areas.
- Most sidewalks and trails along roads in the County are maintained by the Virginia Department of Transportation (VDOT), but VDOT does not clear snow from these sidewalks or trails.
- The Code of Virginia provides the four counties within Planning District 8 (Arlington, Fairfax, Loudoun, and Prince William) the ability to enact an ordinance requiring property owners to remove snow from sidewalks, with certain restrictions. The Fairfax County Board of Supervisors has discussed this option in the past, but has not pursued such an ordinance.
- Even absent such a requirement, many businesses, homeowners' associations, and residents already clear sidewalks on a voluntary basis.
- Some businesses remain concerned about potential liability should a pedestrian be injured on a sidewalk in the VDOT right-of-way after it was cleared by the landowner, or in other similar circumstances.

**Existing State Law**

- Existing state law provides civil immunity or liability protection for private individuals under certain circumstances. For example, Virginia Code provides a "Good Samaritan" protection from liability for ordinary negligence for an individual who acts in good faith to administer epinephrine in an emergency situation; a similar protection exists for an individual who operates an automated external defibrillator (AED) in an emergency.
- However, Virginia Code § 33.2-244 specifically provides that individuals or entities "employed" to remove snow from public highways are liable for civil damages resulting from the snow removal activity; this provision applies to sidewalks as well.
- If a private individual or entity enters into an agreement with VDOT to remove snow from VDOT's sidewalks, a court may rule that VDOT has "employed" that person or entity, even if no compensation was given.
- By contrast, someone who shovels VDOT's sidewalks without any legal duty or agreement with VDOT to do so can only be held liable for an injury if he or she does something to increase the danger, for example by making the sidewalks more slippery, or by inducing someone to believe that the sidewalk is safe. Mere failure to remove snow, or removing it less than thoroughly, will not subject the "volunteer" to liability.

## **Legislation**

- Legislation providing liability limitations typically receives significant scrutiny in the General Assembly. It should also be noted that the Commonwealth/VDOT does not enjoy immunity in clearing snow from its own facilities, but only in carrying out activities considered “legislative functions,” such as road design.
- In Fall 2015, as part of the development of the County’s 2016 Legislative Program, the Legislative Committee discussed the issue of liability protection for private landowners who clear snow from sidewalks in state rights-of-way.
  - Language regarding snow removal was added to the Pedestrian and Transit Safety position in the Legislative Program.
- Fairfax County Department of Transportation staff met with stakeholders in spring 2016 to further discuss this issue and explained that “Good Samaritan” snow removal legislation would need to be pursued by the business community.
- Staff have monitored for the introduction of related bills to bring bills to Legislative Committee for consideration, but no such legislation has been introduced. Staff will continue to monitor and bring any related, future legislation to the Legislative Committee for consideration.

## **Potential Snow Removal Pilot**

- In 2016, the Fairfax County Board Transportation Committee (BTC) was briefed on the Trail Lighting, Maintenance and Snow Removal Project. The Board directed staff to identify trails providing access to Metrorail stations throughout the County, not just in Tysons, for inclusion in a pilot project.
- In 2017, the Board directed staff to pursue a pilot to add lights to certain trails providing access to Metrorail stations, but snow removal was not discussed.
- During the December 11, 2018, BTC meeting, staff is scheduled to discuss a potential snow removal pilot for certain trails providing access to Metrorail stations.