

Town of Windsor

Memorandum

December 8, 2020

TO: The Honorable Mayor and Town Council

FROM: William G. Saunders, IV, Town Manager *WGS IV*

SUBJECT: VDOT Agent Sign Enforcement Agreement and Resolution

In order for Town of Windsor staff members to enforce sign regulations within the Virginia Department of Transportation's (VDOT) rights-of-way, an agreement and resolution need to be adopted.

Background

As the Town of Windsor has a population under 3,500, the public street rights-of-way are under the jurisdiction of the Commonwealth of Virginia and maintained by VDOT. In order to supplement VDOT's resources, localities can undertake the enforcement of illegal signage and advertising as agents of VDOT. In order to do this, an agreement must be entered into by both parties and a resolution must be passed by the locality's elected officials.

Enclosures

- Agreement
- Resolution
- VDOT Instructional and Informational Memoranda

Recommended Action

- Adopt the resolution authorizing the execution of the Agreement.

Resolution

A Resolution To Approve An Agreement With The Virginia Department of Transportation For Local Enforcement Of Laws Regarding Illegal Signs And Advertising Within The Limits Of The Highway.

BE IT RESOLVED by the Council of the Town of Windsor, Virginia as follows:

WHEREAS, the Council of the Town of Windsor, has an interest in protecting the public health, safety, and welfare, and in protecting the appearance of the Town, in general; and

WHEREAS, the Council has found the proliferation of signs and advertising in the rights-of-way of highways in the Town of Windsor threatens the public safety and the welfare of the Town, and has a negative effect on the appearance of highways; and

WHEREAS, the Council desires for administrative staff of the Town of Windsor to act as agents of the Virginia Department of Transportation in enforcing the provisions of § 33.2-1224 of the *Code of Virginia* (1950), as amended, in the collection of penalties and costs provided therein and in the removal of signs and advertising from the VDOT-maintained rights-of-way in the Town of Windsor; and

WHEREAS, the Commissioner of Highways desires the Council’s assistance in the removal of signs and advertising from said rights-of-ways.

NOW, THEREFORE, BE IT RESOLVED for and in consideration of the mutual benefits derived from this Agreement, the Council hereby authorizes the execution of the Agreement for local enforcement of laws regarding illegal signs and advertising within the limits of the highway.

Adopted: December 8, 2020

TESTE:

Town Clerk

VIRGINIA DEPARTMENT OF TRANSPORTATION

OFFICE OF LAND USE

INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM

GENERAL SUBJECT: Outdoor Advertising Control	NUMBER: IIM-LU-400
SPECIFIC SUBJECT: Removal of Illegal Signs on Right-of-Way	DATE: June 29, 2020
	SUPERSEDES: N/A
APPROVED: Robert W. Hofrichter Director, Office of Land Use Approved <u>June 29, 2020</u>	

EFFECTIVE DATE

This memorandum applies to all actions dealing with the control of illegal signs on highway right-of-way on or after July 1, 2020.

PURPOSE/SCOPE/REQUIREMENTS

Federal requirements based upon the Highway Beautification Act and §33.2-1224 of the Code of Virginia prohibit the placement of advertising on highway right-of-way. Enforcement of this prohibition should be conducted as set out below.

While these procedures allow Resident Engineers/Residency Administrators some discretion with regards to activities based upon manpower availability, especially with levying civil penalties, it is imperative that all actions taken to enforce the prohibition on advertising within the right-of-way be applied fairly and consistently.

If assistance is needed in interpreting the requirements and procedures, please contact the regional outdoor advertising control agent of the Office of Land Use's Outdoor Advertising Control Section in whose territory the illegal advertisement is found.

PROCEDURES

1. Removing illegal signs in the right of way

- Non-permitted signs within the right of way are illegal and considered a public and private nuisance.
- When a sign is found within the right of way it may be removed without giving written notice to the sign owner.
- Signs that pose a safety hazard shall be removed immediately.
- The right of way should be verified prior to sign removal.
- If a sign owner becomes confrontational with a VDOT employee, the State Police or local law enforcement should be contacted.
- Storage of the signs is not required under the statute but may be permitted by the Resident Engineer/Residency Administrator for up to 30 days.

2. Sign Removal Prioritization

- First Priority: signs that pose or contribute to a safety hazard
- Second Priority: signs that obstruct mowing operations or other VDOT work
- Third Priority: signs in areas where complaints have been received
- Fourth Priority: other signs

3. Political campaign signs

- A letter shall be sent to all political campaigns informing candidates of §33.2-1224 of the Code of Virginia. The Office of Land Use in Central Office will be responsible for notifying national, gubernatorial and senatorial election campaigns. The district will notify all congressional, state, and local election campaigns (Attachment A).
- Political candidates' mailing addresses should be obtained from the Virginia Board of Elections website. <https://www.elections.virginia.gov/casting-a-ballot/candidate-list/>
- Campaign signs are subject to removal if they are in the right of way. If a campaign sign is removed, all illegal signs along that route within the right of way shall also be removed.

4. Levying Civil Penalty for signs on the right of way

- The decision on whether to levy fines shall be up to the resident engineer/residency administrator. When levying fines, the process must be applied consistently.
- When a sign is identified, it shall be photographed on the right of way. The photo should include date and time stamp to show evidence of a violation. The person removing the sign shall document the location from which the sign was removed. Each sign on the right of way is a separate \$100 civil penalty.
- Once a sign is removed, it should be photographed in VDOT possession. Multiple signs for the same business should be included in one photo. The photo should include date & time stamp for billing purposes.
- A fiscal form (Attachment B) shall be completed to include locations of sign violations, the number of signs removed, and the advertiser and mailing address. If a person is caught placing signs on the right of way, their contact information should be obtained along with their license plate number. This information should be included on the fiscal form as they will be billed for the civil penalty. If no one is observed placing the sign on the right of way, the advertiser is billed for the civil penalty.
- The fiscal form should be signed by the employee removing the signs and shall be signed by the Residency Administrator or designee. The fiscal form shall then be sent to the District Fiscal Section along with all photo documentation.
- Fiscal will generate a bill and send a letter informing the party of the civil penalty.
- All penalties collected shall be paid to the Highway Maintenance and Operating Fund.
- The removed signs should be destroyed after sending all documentation to Fiscal Division.
- No civil penalty shall be assessed for signs removed by Adopt-A-Highway participants.
- No civil penalty shall be assessed for signs removed by mowing contractors preparing for mowing operations.
- Local governments may remove illegal signs and levy civil penalties only after securing an agreement from the Commissioner to act as an agent of VDOT for enforcing the provisions of §33.2-1224 of the Code of Virginia.
- The district may track personnel and equipment costs incurred during sign collection; however, such costs should only be billed for repeat violators. Collection costs are difficult to assign when multiple violators' signs are being removed.
- A person, firm, or corporation may appeal to the District Administrator for VDOT-levied civil penalties and/or collection costs. The appellant must provide evidence that they were improperly assessed the civil penalty or the collection costs were improperly calculated. Stating they were not aware of the law is not sufficient grounds to reverse the civil penalty.

5. Agreements with Local Governments

- Local governments may enter into agreements with the Commissioner to enforce the provisions of §33.2-1224 of the Code of Virginia.
- The local government shall pass a resolution requesting the authority to enforce §33.2-1224 of the Code of Virginia.
- The Office of Land Use in Central Office has an approved draft agreement (Attachment C) that shall be used.
- The locality-executed agreement shall be sent to the Office of Land Use in Central Office for VDOT execution. The Office of Land Use shall return the fully executed original agreement to the residency, which shall then forward it to the local government.
- Upon final execution, this agreement will allow the local government to act as an agent for the Commissioner in removing signs within the right of way, including the ability to levy penalties.

6. Adopt-a-Highway groups

- Local Adopt-a-Highway groups may be authorized to remove signs on the rights-of-way as part of their cleanup efforts.
- The adopting group cannot single out signs for removal. They must clean up all trash along their adopted route. Singling out specific signs may result in the Commissioner rescinding authorization to remove illegal signs or expulsion from the Adopt-a-Highway program.
- The Commissioner, through Maintenance Division, will provide the adopting group with a letter authorizing them to remove signs as part of their Adopt-a-Highway work (Attachment D).

NOTES

- Information on the Outdoor Advertising Control Program can be found on VDOT's external website on the [Outdoor Advertising page](#).
- Section [33.2-1224](#) of the Code of Virginia, provides the legal basis for the removal of advertising in the right-of-way.
- The [Maintenance Manual](#) contains instructions for the maintenance of the right-of-way.

(Attachment C Agreement)

AGREEMENT BETWEEN
THE VIRGINIA DEPARTMENT OF TRANSPORTATION
AND
THE BOARD OF SUPERVISORS
OF
_____ COUNTY, VIRGINIA
FOR ENFORCEMENT OF LAWS REGARDING ILLEGAL SIGNS AND ADVERTISING WITHIN THE LIMITS OF
THE HIGHWAY

THIS AGREEMENT is made this ____ day of _____, 20__, between the Commissioner of Highways of the Commonwealth of Virginia (Commissioner), and the County of _____, Virginia, acting by and through its Board of Supervisors (Board).

WITNESSETH:

WHEREAS, pursuant to Title 33.2, Chapter 12, Article 1 of the *Code of Virginia* (1950), as amended (*Code*), the Commissioner, as the chief executive officer of the Virginia Department of Transportation (VDOT), enforces the prohibition on the placement of signs and advertising within the limits of highways in the Commonwealth; and

WHEREAS, the Board, as the governing body of _____ County, has an interest in protecting the public health, safety, and welfare, and in protecting the appearance of the County, in general; and

WHEREAS, the Board has found that the proliferation of signs and advertising in the rights-of-way of highways in _____ County threatens the public safety and the welfare of the County, and has a negative effect on the appearance of highways; and

WHEREAS, by an appropriate resolution adopted by the Board at its meeting on _____, and attached hereto as Exhibit A, the Board expressed its desire and agreement to enter into an agreement with the Commissioner to enforce the provisions of § 33.2-1224 of the *Code of Virginia* (1950), as amended, and to collect the penalties and costs provided therein and has authorized execution of said agreement by a County representative; and

WHEREAS, the Commissioner desires the Board's assistance in removing signs and advertising from the VDOT-maintained highways in _____ County.

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

1. The Commissioner hereby authorizes the Board to act as the Commissioner's agent for the purposes of removing any signs or advertising located within the VDOT-maintained rights-of-way, in violation of §33.2-1224 of the *Code*; and

2. The Commissioner further authorizes the Board to act as the Commissioner's agent for the purposes of collecting the penalties and costs from the person, firm, or corporation responsible for signs or advertising located within the VDOT-maintained rights-of-way in violation of and as provided for in §33.2-1224 of the *Code*; and
3. The Board may authorize local law-enforcement agencies or other local governmental entities ("hereinafter designee(s)") to act as agents of the Commissioner for the purpose of fulfilling the terms of this Agreement; and
4. The Board shall be entitled to retain, in full, all sums lawfully collected by the Board or its designees as penalties and costs for removal of signs and advertising and enforcement of §33.2-1224 pursuant to this Agreement; and
5. The Board, or its designee, when collecting the penalties and costs referenced in Paragraph 2, above, shall:
 - a. Issue an invoice to the person, firm, or corporation being advertised for collection of any and all penalties and costs, as provided in §33.2-1224 of the *Code*, which shall provide that within thirty (30) days, Thirty-three (33) days if the invoice is sent by mail, the person, firm, or corporation being advertised shall either (a) remit payment of the invoice to the Board, or its designee, or (b) notify the Board or its designee in writing that the matter and/or the penalties and costs are disputed.
 - b. In the event that a person, firm or corporation disputes the matter and/or penalties and costs provided in such invoice, the Board shall be responsible for resolving the dispute in accord with all applicable laws.
6. The Board shall require local government employees and others who are authorized to act or perform services pursuant to this agreement to comply with the provisions of this Agreement and all applicable laws; and
7. This Agreement shall remain in full force and effect unless sooner terminated upon thirty (30) days' written notice by either party to the other party; and
8. This Agreement may be amended at any time by the written agreement of the parties.

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives:

VIRGINIA DEPARTMENT OF TRANSPORTATION

_____ COUNTY, VIRGINIA

BY: _____
Commissioner's Name
Commissioner of Highways or his designee

BY: _____
Printed Name: _____
County Administrator of _____

(Attachment D - Adopt a Highway Popsicle Signs Removal)

Date

To Whom It May Concern:

The Virginia Department of Transportation (VDOT) operates the Adopt-a-Highway Program and wholeheartedly supports its volunteers in conducting their litter pickups. By law, and as a matter of VDOT policy, the Adopt-a-Highway volunteers are authorized to clear the highway right-of-way of all prohibited signage, including what are commonly known as "Popsicle Signs."

Section 33.2-1224 of the *Highway Laws of Virginia* states, in part, that, "Advertisements placed within the limits of the highway are hereby declared a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commonwealth Transportation Commissioner or his representatives without notice."

Adopt-a-Highway volunteers who remove such advertisements are acting as Commonwealth Transportation Commissioner's representatives, and as such receive the Department's full support. Any disputes or questions about this policy should be referred to VDOT personnel. You can contact the statewide Adopt-a-Highway coordinator by calling 1-800-PRIDE-VA (1-800-774-3382).

Sincerely,

Commissioner's Name
Commonwealth Transportation Commissioner