



# COMMONWEALTH of VIRGINIA

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The Honorable William R. DeSteph, Jr.  
Member, House of Delegates  
588 Central Drive  
Virginia Beach, Virginia 23454

Dear Delegate DeSteph:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You inquire whether the City of Virginia Beach has legal authority under its zoning ordinance to ban certain types of advertising on bicycles and bicycle trailers using public streets.

## Response

It is my opinion that Virginia Beach does not have zoning authority to prohibit or otherwise to regulate advertising signs on bicycles or bicycle trailers using public streets. I express no opinion about whether Virginia Beach may impose such regulations under its police powers.

## Background

You relate that Virginia Beach takes the position that advertising signs may not be displayed on bicycles or bicycle trailers being ridden in public streets or on sidewalks because such activity is in violation of the city's zoning ordinance.

The Virginia Beach zoning ordinance prohibits stationary signs placed in any public right-of-way, subject to certain exceptions,<sup>1</sup> and it also applies to signs on motor vehicles, with some of the restrictions varying by location. With respect to motor vehicles, the ordinance provides as follows:

(b) No motor vehicle shall be driven on any street within a residential subdivision for the purpose of displaying advertising, except as required by detour or upon order of a public safety employee of the city or state.

(c) The following types of signs shall be prohibited while the motor vehicle on which they are displayed is operated or parked on a public street or in such locations to be visible from the main traveled way of a public street:

(1) Flashing, pulsating or blinking signs;

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<sup>1</sup> CITY OF VIRGINIA BEACH, VA., CODE OF ORDINANCES, Appendix A - Zoning Ordinance § 212(c).

- (2) Signs in which the message displayed changes more frequently than once every four seconds;
  - (3) Electronic changeable copy signs, including signs containing light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices used to change the advertising displayed by such signs; and
  - (4) Signs that project more than one foot above the portion of the motor vehicle to which they are affixed or that obscure the vision of the driver of the motor vehicle or of other motorists.
- (d) Any sign greater than fifteen square feet in area that is displayed on a motor vehicle for purposes of advertising a business other than that of the owner of the vehicle shall require an annual permit. . . .
- (e) Violations of any provision of this section shall be punishable in accordance with section 104.
- (f) For purposes of this section:
- (1) “*Motor vehicle*” shall be defined in accordance with Section 46.2-100 of the Code of Virginia or any successor statute, and shall also include any trailer or other vehicle drawn by or affixed to a motor vehicle . . . .<sup>[2]</sup>

The zoning administrator is authorized to remove signs that are in violation of this ordinance,<sup>3</sup> and a violation is made punishable initially by fines, and also as a criminal misdemeanor if there are repeated offenses resulting in a fine of \$5,000 or more, or when the illegal sign causes injury to any person.<sup>4</sup>

The statutory definition of “motor vehicle” referred to in the City Code does not include bicycles.<sup>5</sup> Although the City Code includes a chapter dealing with bicycles, that chapter does not contain any sections related to signs on bicycles.<sup>6</sup> To the same effect, the City Code also has a separate chapter dealing with motor vehicles, but it does not contain any sections related to signs on vehicles, be they motor vehicles or bicycles.<sup>7</sup> Thus, Virginia Beach’s claimed authority to regulate signs on bicycles resides solely in its zoning ordinance.<sup>8</sup>

### Applicable Law and Discussion

Local government authority in Virginia is determined by Dillon’s Rule, which provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly

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<sup>2</sup> *Id.*, § 212.2.

<sup>3</sup> *Id.*, § 212.1.

<sup>4</sup> *Id.*, § 104(b).

<sup>5</sup> VA. CODE ANN. § 46.2-100 (Supp. 2014) defines “motor vehicle” as “every vehicle . . . that is self-propelled or designed for self-propulsion . . .,” and it defines “bicycle” as “a device propelled solely by human power . . .”

<sup>6</sup> CITY OF VIRGINIA BEACH, VA., CODE OF ORDINANCES, Chapter 7.

<sup>7</sup> *Id.*, Chapter 21.

<sup>8</sup> Chapter 3 of Virginia Beach’s *Code of Ordinances* deals with commercial signs in public rights of way. It is assumed for the purpose of this Opinion that this Chapter is applicable only to signs at fixed locations, but not to signs on moving vehicles.

implied from expressly granted powers, and those that are essential and indispensable.<sup>9</sup> “If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”<sup>10</sup>

Here, Virginia Beach purports to regulate signs on bicycles through its zoning ordinance. Zoning ordinances, like all other local ordinances, are enacted pursuant to state enabling legislation, and therefore their permissible scope is limited to the extent authorized by statute. Accordingly, the *Code of Virginia* must be reviewed to determine the proper scope and limitations of Virginia Beach’s zoning ordinance.

Section 15.2-2280 of the *Code of Virginia* authorizes the enactment of zoning ordinances for the purpose of regulating various aspects of land use. It specifically provides that

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purpose of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

- (1) The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
- (2) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
- (3) The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
- (4) The excavation of mining of soil or other natural resources.

Section 15.2-2286 further establishes provisions that are permitted in zoning ordinances. The provisions are primarily procedural, but it is clear from the context that they all involve land use and the rights of real property owners. Nothing in this section reasonably can be interpreted as applying to the regulation of bicycles, motor vehicles, or traffic on public streets as such.<sup>11</sup> Various fines, but not incarceration, are authorized for enforcing violations of zoning ordinances.<sup>12</sup>

State enabling legislation for zoning ordinances makes clear that zoning power extends only to land use, not to traffic or vehicle regulation.<sup>13</sup> The physical appearance of bicycles and signage on

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<sup>9</sup> Lamar Co. v. City of Richmond, 287 Va. 348, 352, 756 S.E.2d 444, 446 (2014).

<sup>10</sup> Bd. of Supvrs. v. Reed’s Landing Corp., 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995).

<sup>11</sup> The effect on traffic of a particular land use is one factor that may be considered in determining the land use, but that is not the same as purporting to regulate traffic *per se*, independent of any land use. *See, e.g.*, VA. CODE ANN. § 15.2-2242(A)(4)(a) (Supp. 2014) (authorizing traffic studies as a condition of subdivision approval).

<sup>12</sup> *See* § 15.2-2209 (2012) (\$200 civil penalty for first violation, \$500 for subsequent violations, cap of \$5,000 for civil penalties, violation that causes personal injury or has fines in excess of \$5,000 may be a criminal violation); *see also* § 15.2-2286 (Supp. 2014) (misdemeanor punishable by fines).

<sup>13</sup> The “Zoning and Planning” title in Volume 21 of *Michie’s Jurisprudence* begins by saying, at page 403, “This title deals with the subject of *the regulation of land use* through zoning, planning, and the control of the subdivision and development of land.” (emphasis added).

bicycles as they are ridden in public rights of way is not land use. Therefore, I must conclude that Virginia Beach lacks authority to regulate signs on bicycles through its zoning ordinance.<sup>14</sup>

I additionally must note that the Virginia Beach City Charter does not grant Virginia Beach any additional powers that are relevant to this analysis, above and beyond those powers already granted by statutes of general application.

I do note that Virginia Beach has general authority to adopt ordinances

which are necessary or desirable to secure and promote the general welfare of the inhabitants . . . and the safety, health, peace, good order, comfort, [and] convenience . . . of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power.<sup>15]</sup>

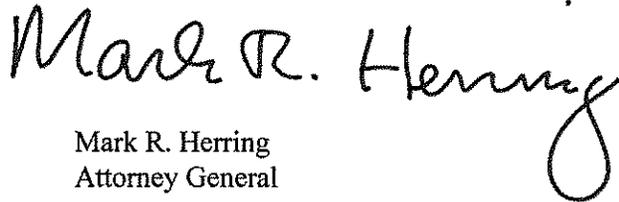
These powers are commonly referred to as “police powers.”<sup>16</sup> While it is my opinion that, for the reasons discussed above, Virginia Beach does not have authority to regulate signs on bicycles through its zoning ordinance, I express no opinion about whether it may impose such regulations through its police power.

### Conclusion

For the foregoing reasons, it is my opinion that Virginia Beach does not have authority under its zoning ordinance to prohibit or otherwise to regulate advertising signs on bicycles or bicycle trailers using public streets. I express no opinion about whether Virginia Beach may impose such regulations under its police powers.

With kindest regards I am

Very truly yours,

  
Mark R. Herring  
Attorney General

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<sup>14</sup> This Opinion addresses only the question of whether signs on bicycles that are being ridden in public streets can be regulated through zoning. No opinion is expressed or implied about the ability of Virginia Beach to regulate signs on bicycles or other vehicles that are parked on private property, nor is any opinion expressed or implied about the ability of Virginia Beach to regulate the parking or storage of any type of vehicle, trailer, or boat on private property or on public streets.

<sup>15</sup> Section 15.2-1102 (2012). *See also* CITY OF VIRGINIA BEACH, VA., CHARTER, § 2.01 (“General grant of powers”).

<sup>16</sup> “Police power” is generally described as the sovereign power to enact laws to promote the health, peace, morals, education, and good order of the people. *See* *Elizabeth River Crossings v. Weeks*, 286 Va. 286, 321, 749 S.E.2d 176, 194 (2013). A local governing body must necessarily enjoy broad discretionary powers to protect the public health and general welfare of its residents. *McMahon v. City of Va. Beach*, 221 Va. 102, 267 S.E.2d 130, *cert. denied* 449 U.S. 954 (1980).