

ORDINANCE NO. 16-\_\_\_\_\_

AN ORDINANCE AMENDING SECTION 111 (SOLICITATION PROHIBITED) OF ARTICLE 2 (OFFENSES AFFECTING PUBLIC SAFETY) AND REPEALING SECTION 106 (USE OF MEDIANS OR CENTRAL DIVIDING STRIP) OF PART 1 (GENERAL OFFENSES) OF ARTICLE 6 (OFFENSES AFFECTING PROPERTY) OF CHAPTER 9 (PUBLIC OFFENSES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SOLICITATION AND MEDIANS

WHEREAS, the United States District Court for the District of Colorado issued a ruling on September 30, 2015 in the case of *Browne v. City of Grand Junction*, Civil Action No. 14-cv-00809-CMA-KLM, declaring unconstitutional certain provisions of the Municipal Code of the City of Grand Junction that prohibit panhandling (the "*Browne Decision*"), including prohibitions on panhandling on a public bus and in a public parking garage, parking lot or other parking facility; and

WHEREAS, City Council understands that the Court that issued the *Browne Decision* assumed for purposes of its decision—but did not determine—whether a public bus and a public parking garage, parking lot or other parking facility are traditional public fora; and

WHEREAS, Section 9.2.111 (Solicitation Prohibited) of the Code of the City of Colorado Springs 2001, as amended, contains provisions that are substantially similar to those struck down in the *Browne Decision*; and

WHEREAS, City Council desires to amend Section 9.2.111 (Solicitation Prohibited) of the Code of the City of Colorado Springs 2001, as amended, to bring it into compliance with the *Browne Decision*; and

WHEREAS, by repealing the prohibitions of Section 9.2.111 (Solicitation Prohibited) of the Code of the City of Colorado Springs 2011, as amended, on soliciting in a public transportation vehicle, public transportation facility, bus stop, and parking lot, structure or other parking facility, City Council does not concede that such publicly-owned properties are traditional public fora, does not designate such publicly-owned properties as public fora, and does not open such publicly-owned properties for all forms of expressive activity; and

WHEREAS, City Council finds it is in the best interests of the City of Colorado Springs at this time to repeal the prohibitions of Section 9.2.111 (Solicitation Prohibited) of the Code of the City of Colorado Springs 2011, as amended, on soliciting in a public transportation vehicle, public transportation facility, bus stop, and parking lot, structure or other parking facility, to allow the law to develop on whether such publicly-owned properties are traditional public fora.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 111 (Solicitation Prohibited) of Article 2 (Offenses Affecting Public Safety) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

**9.2.111: SOLICITATION PROHIBITED:**

A. Purpose: The purpose of this section is to protect the health, safety and welfare of all citizens of the City and those who travel through the City by eliminating aggressive solicitation. Aggressive solicitation is disturbing and disruptive to residents and businesses and impacts social harmony and economic viability of the City. It is not the purpose of this section to prohibit lawful solicitation activity, but to regulate behaviors that ~~contribute to the loss of access to and enjoyment of public places and an enhanced sense of fear, intimidation and disorder~~ **are intimidating, threatening, coercive or obscene.**

B. Definitions:

~~AUTOMATED TELLER MACHINE: A device, linked to a financial institution's account record which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries and mortgage and loan payments.~~

~~AUTOMATED TELLER MACHINE FACILITY: The area comprised of one or more automated teller machines and any adjacent space which is made available to banking customers after regular banking hours.~~

\* \* \*

~~SOLICITING: To knowingly approach, accost or stop another person in a public place and to make a request, whether by spoken words, bodily gestures, written signs or other means, for a gift of money or other thing of value. Soliciting includes, but is not limited to, seeking a donation where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the purchase is in substance a donation, or begging or panhandling. Soliciting does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person, other than in response to an inquiry by that person.~~

C. ~~Aggressive Soliciting Prohibited:~~

1. It shall be unlawful for any person to:

1. ~~Engage~~ engage in aggressive soliciting in any public place. "Aggressive solicitation **soliciting**" is defined as:

a. ~~Continuing to solicit from a person after the person has given a negative response to the soliciting;~~

b. \* \* \*

c. \* \* \*

ec. \* \* \*

~~e. Persisting in closely following or approaching the person being solicited and continuing to solicit after the person has informed the solicitor by words or conduct that the person does not want to be solicited or does not want to give money or any thing of value to the solicitor;~~

~~fd. Using profane or abusive language which is likely to provoke an immediate violent reaction from the person being solicited or would cause a reasonable person to be fearful for his or her safety; or~~

~~g. Soliciting money from anyone who is waiting in line for tickets, for entry to a building or for another purpose;~~

~~he. Approaching or following a person for solicitation as part of a group of two (2) or more persons, in a manner and with conduct, words, or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value.~~

2. **It shall be unlawful for any person to engage in soliciting** ~~Solicit~~ on any private or residential property after having been asked to leave, or **after having been asked to** refrain from soliciting, by the owner or other person lawfully in possession of the property. **Displaying a "No Soliciting" sign constitutes a request to refrain from soliciting.**

~~3. Solicit within twenty feet (20') of any automated teller machine. Provided, however, that when an automated teller machine is located within an automated teller machine facility, the distance shall be measured from the entrance or exit of the facility.~~

~~4. Solicit in or upon any public transportation vehicle or public transportation facility within or at any bus stop or in any parking lot, structure or other parking facility.~~

~~5. Solicit within twenty feet (20') of an entrance to a building.~~

~~6. Solicit any person entering or exiting a parked motor vehicle or in a motor vehicle stopped on the street.~~

~~7. Solicit any person located within the patio or sidewalk area of a retail business establishment that serves food and/or drink.~~

~~8. Solicit after dark, which shall mean one half (1/2) hour after sunset until one-half (1/2) hour before sunrise.~~

~~93.~~ \* \* \*

Section 2. Section 106 (Use of Medians or Central Dividing Strip) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reserved.

Section 3. Any person convicted of a violation of Section 111 (Solicitation Prohibited) of Article 2 (Offenses Affecting Public Safety) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, shall be punished as provided in Sections 201 (General Penalty) or 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended.

Section 4. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2016.

**Finally passed:** \_\_\_\_\_  
Council President

Delivered to Mayor on \_\_\_\_\_.

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk