



Legislation Text

File #: 16-00016, **Version:** 2

Ordinance No. 16-14 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

Presenter:

Anne Turner, Senior Attorney

Summary:

Draft ordinance pertaining to the amending of the Solicitation Prohibited City Code section and the repealing of the Use of Medians or Central Dividing Strip City Code section.

Previous Council Action:

N/A

Background:

Two judicial opinions issued in 2015 changed the law with respect to the regulation of solicitation. In *Reed v. Town of Gilbert*, the United States Supreme Court clarified how courts determine whether an ordinance is content neutral or content based on its face, which is the first step in analyzing the constitutionality of an ordinance (such as the City's solicitation code provisions) under the First Amendment. The content neutrality determination dictates the level of "scrutiny" the court will apply. *Reed* expanded prior Supreme Court decisions and held that an ordinance is content based if it applies to particular speech because of the subject matter or the idea or message expressed. Content-based restrictions on speech are subject to the most stringent standard of judicial review - "strict scrutiny," meaning that to be constitutional, the prohibition must be necessary to serve a compelling government interest. In *Browne v. City of Grand Junction*, Judge Arguello of the United States District Court for the District of Colorado invalidated a number of provisions of Grand Junction's solicitation ordinances based on *Reed*, finding that the city's prohibitions on panhandling were not necessary to advance public safety. Colorado Springs' solicitation ordinances contain provisions substantially similar to those struck down by Judge Arguello in the *Browne* case. Based on *Reed* and *Browne*, the City's police officers were instructed in the Fall of 2015 to cease enforcement of a number of City Code provisions regulating solicitation. The CAO recommends the following amendments to City Code sections pertaining to solicitation to bring the City Code into compliance with prevailing law.

Recommendation #1: Amend City Code § 9.2.111 - Solicitation Prohibited.

The proposed ordinance amends City Code § 9.2.111 to revise the purpose of the ordinance, to

revise the definition of solicitation, and to repeal portions of the ordinance that are in conflict with the decisions in *Reed* and *Browne*.

The purpose section now states that the ordinance only prohibits solicitation activities which are intimidating, threatening, coercive, or obscene in nature. The definition of solicitation has been simplified to refer to any knowing request for a gift or donation-whether actively or passively communicated. Finally the proposed amendment removes several types of soliciting behavior which may no longer be restricted because of the recent court decisions. The current prohibitions against the following types of solicitation will no longer be unlawful:

1. Continuing to solicit from a person after the person has given a negative response to the soliciting;
2. 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 anything of value to the solicitor;
3. Soliciting money from anyone who is waiting in line for tickets, for entry to a building or for another purpose;
4. Soliciting within twenty feet of any automated teller machine;
5. Soliciting 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;
6. Soliciting within twenty feet of an entrance to a building;
7. Soliciting a person entering or exiting a parked motor vehicle or in a motor vehicle stopped on the street;
8. Soliciting of a person located within the patio or sidewalk area of a retail business establishment that serves food and/or drink;
9. Soliciting after dark.

Solicitation which is intimidating, threatening, coercive or obscene in nature will continue to be unlawful. The ordinance revises the prohibition on approaching or following a person for solicitation in an intimidating manner to delete the requirement that the solicitor approach or follow in a group of two or more, because the conduct threatens public safety regardless of the number of individuals. Specifically, the new § 9.2.111 defines and prohibits the following “aggressive soliciting”:

1. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting;
2. Intentionally blocking, obstructing or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting;
3. Using violent or threatening conduct toward a person solicited which would cause a reasonable person to be fearful for his or her safety;
4. 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;
5. Approaching or following a person for solicitation 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.

In addition, soliciting 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 also will continue to be unlawful. The ordinance amends City Code § 9.2.111 to clarify that displaying a “No Soliciting” sign constitutes a request to refrain from soliciting.

The City Attorney’s Office recommends these amendments to § 9.2.111 to comply with the changes in the law concerning content based restrictions of soliciting activities.

Recommendation #2: Repeal City Code § 9.6.106 - Use of Medians or Central Dividing Strip.

City Code § 9.6.106 generally prohibits the use of a median or central dividing strip of any street or highway for any purpose other than crossing or maintaining it. Although the ordinance does not expressly restrict expressive conduct-such as panhandling, protesting or campaigning-on a median, it has the effect of banning virtually all expressive activity on all of the City’s medians.

Two federal appellate courts recently have found that ordinances similar to § 9.6.106 violate the First Amendment of the United States Constitution, because the prohibitions are not narrowly tailored to serve the government’s interest in safety. Medians are traditional public forums for expression, and, therefore, any law restricting expressive conduct on a median cannot burden substantially more speech than is necessary to further the government’s safety interest. In other words, the City may not prohibit protected speech on medians where it generally would be safe to engage in the expressive conduct.

Courts look for traffic engineering studies, accident data, median width, and/or speed limit data to support a restriction on expressive conduct on medians. According to the courts that have addressed the issue, the government’s general interest in protecting people in the streets and in protecting people on medians is insufficient to justify a ban on expressive conduct on all medians throughout the City.

The City Attorney’s Office recommends repeal of City Code § 9.6.106.

Financial Implications:

The Police Department does not anticipate any significant additional costs for enforcement of this proposed ordinance, as enforcement would be a part of the regular law enforcement activities that Police Department personnel currently perform.

Board/Commission Recommendation:

N/A

Stakeholder Process:

During the drafting process input was gathered from various City Departments including CSPD, the Prosecution Division of the City Attorney’s Office, and the Municipal Court.

Alternatives:

City Council may choose to approve, deny, or modify the attached draft ordinance.

Proposed Motion:

Motion to approve 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.

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