



## Legislation Text

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**File #:** 16-0019, **Version:** 2

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Ordinance No. 16-15 repealing Section 112 (Solicitation On or Near Street or Highway) of Article 18 (Pedestrians' Rights and Duties, Drivers to Exercise Due Care) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended

**Presenter:**

Anne Turner, Senior Attorney

**Summary:**

Draft ordinance pertaining to the repealing of the Solicitation on or Near Street or Highway 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 amendment to a City Code section pertaining to solicitation to bring the City Code into compliance with prevailing law.

**Recommendation:** Repeal City Code § 10.18.112 - Solicitation on or Near Street or Highway.

City Code § 10.18.112 makes it unlawful for any person to solicit or attempt to solicit from the occupant of any vehicle traveling upon any street or highway when the solicitation:

1. Causes the person performing the activity to enter onto the traveled portion of a street or highway; or
2. Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions; or
3. The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.

Because § 10.18.112 applies to solicitation and not other speech, it suffers from the same content based speech restrictions which were disapproved in the Reed and Browne decisions. City Code § 10.18.111 - Obstruction or Interference with Traffic - still would prohibit obstruction or interference with the movement of traffic.

The City Attorney's Office recommends repeal of City Code § 10.8.112.

**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 repealing Section 112 (Solicitation On or Near Street or Highway) of Article 18 (Pedestrians' Rights and Duties, Drivers to Exercise Due Care) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended.

Ordinance pertaining to the repealing of the Solicitation on or Near Street or Highway City Code section.