



COLORADO SPRINGS POLICE DEPARTMENT BULLETIN



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| ORIGINATED BY: SENIOR ATTORNEY FREDERIC STEIN | APPROVED BY: DC VINCE NISKI | DATE ISSUED: 09-14-15 | GENERAL TOPIC: SOLICITATION V/N | SERIAL NO: 1022-15 (P) |
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It has come to our attention that there may be some concerns with the Colorado Springs Police Department continuing to issue summonses for City Ordinance § 10.18.112: Solicitation on or Near Street or Highway. After consulting with the City Attorney’s Office, we have decided, for the time being, to discontinue issuing summonses for Solicitation on or Near Street or Highway.

With that, I want to ensure everyone is aware of the current definition of soliciting which is located in City Ordinance § 9.2.111 titled Solicitation Prohibited. The definition of soliciting states:

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.

The above wording has been interpreted to mean the person passively soliciting, regardless of location, with a sign has to make a verbal request or some other type of affirmative action (i.e. physically approaching or stopping an individual, pointing at specific people, walking up to specific vehicles). In addition, per the definition cited above, solicitation cannot be charged if the passive solicitor approaches a person or vehicle in response to an inquiry by that person. The fact that a person who is passively soliciting has received money is not enough to provide probable cause that active solicitation has occurred. Please be aware it is not against any City Ordinance to stand or sit in a public area passively with a sign soliciting donations.

If officers observe individuals who are soliciting at streets or highways in such a manner as to obstruct or interfere with the movement or traffic than the officer should consider whether probable cause exists to cite the person for a violation under § 10.18.111: Obstruction or Interference with Traffic. The narrative portion of the citation or case report should include specific observations supporting the obstruction or interference of the movement of traffic caused by the individual’s actions.

Additionally a recent U.S. Supreme Court case, *Reed v. Town of Gilbert Arizona* (June 18, 2015), has caused the City Attorney’s Office to review and reinterpret several of the charging sections under § 9.2.111: Solicitation Prohibited. Based upon that review officers should **NO** longer write summons citing the following provisions:

§ 9.2.111(C)(1)(g): Soliciting money from anyone who is waiting in line for tickets, for entry to a building or for another purpose;

§ 9.2.111(C)(3): Soliciting within twenty feet (20') of any automated teller machine;

§ 9.2.111(C)(4): 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;

§ 9.2.111(C)(5): Soliciting within twenty feet (20') of an entrance to a building;

§ 9.2.111(C)(6): Soliciting any person entering or exiting a parked motor vehicle or in a motor vehicle stopped on the street;

§ 9.2.111(C)(7): Soliciting any person located within the patio or sidewalk area of a retail business establishment that serves food and/or drink; and

§ 9.2.111(C)(8): Soliciting after dark, which shall mean one-half ($\frac{1}{2}$) hour after sunset until one-half ($\frac{1}{2}$) hour before sunrise.

All of the remaining charging sections under § 9.2.111 may still be charged if the probable cause exists to show that the solicitor is engaged in Aggressive or Active solicitation.

Aggressive solicitation continues to be prohibited in all public places throughout the City at all times. It is unlawful when soliciting to:

- ✓ Continue to solicit after being told "no"
- ✓ Make unwanted physical contact
- ✓ Follow or obstruct pedestrians
- ✓ Use profane or abusive language, exhibit violent behavior or make threats
- ✓ Approach in a group of two or more.

Active solicitation now only includes:

- ✓ Soliciting on private property that displays a "No Soliciting" sign*

*Seeking a *donation* from someone displaying a "No Soliciting" sign is unlawful. Seeking to *sell* something (Girl Scout cookies, popcorn, etc.) to someone displaying a "No Soliciting" sign does not violate the solicitation ordinance. Other charges may apply (trespass, for example), but a charge under Code § 9.2.111 is inappropriate against a person *selling* something on private property displaying a "No Soliciting" sign.

When issue a summons for a violation of § 9.2.111 be sure to specify in the narrative section of your report the **Aggressive** or **Active** (not **Passive**) solicitation conduct that the solicitor was engaging in. Passive solicitation is lawful everywhere in the City. Unless a passive solicitor is violating some other law, a passive solicitor may not be forced to move from a public place or warned or ticketed for violating § 9.2.111.