



September 28, 2015

**SENT VIA EMAIL: [msilverstein@aclu-co.org](mailto:msilverstein@aclu-co.org)**

Mark Silverstein  
Legal Director, ACLU of Colorado  
303 E. 17<sup>th</sup> Avenue, Suite 350  
Denver, CO 80203

Dear Mr. Silverstein:

I write in response to your letter dated September 14, 2015 concerning the City's enforcement, prosecution and adjudication of Municipal Court cases filed under Colorado Springs City Code Sections 9.2.111 and 10.18.112. At the outset, I want to thank you for bringing to our attention the ACLU's concerns regarding the handling of these matters. It always is the City's goal to apply its ordinances constitutionally, and I hope we can continue to work together to better ensure that the goal is achieved.

As the City indicated in its statement issued on September 15, 2015, the City had no knowledge of any improper application of its solicitation ordinances. After receiving your letter, the City scrutinized the language of the ordinances and concluded that it is possible that their scope regarding passive solicitation, particularly at or near streets and highways, has been misunderstood. Accordingly, the City has taken the following actions:

1. Police Bulletin. On September 18, 2015, the Colorado Springs Police Department ("CSPD") issued to all of its officers the enclosed Bulletin. CSPD directed all of its officers to suspend enforcement of Code Section 10.18.112 immediately until further notice. It also reiterated that "solicitation" as defined under 9.2.111 does not include passive solicitation, and expressly stated that "it is not against any City Ordinance to stand or sit in a public area passively with a sign soliciting donations." Finally, the Bulletin instructed officers to suspend citation under a number of subsections of Code Section 9.2.111 immediately, in light of the United States Supreme Court's recent ruling in *Reed v. Town of Gilbert* (issued on June 18, 2015).

2. Preparation Of Instructional Video. The CSPD training academy is preparing a roll-call video highlighting changes in enforcement relating to Code Sections 9.2.111 and 10.18.112 as announced in the Bulletin. The roll-call video will be shown to all officers prior to the beginning of their shifts. All officers will initial a sign-in sheet indicating they have viewed the video. CSPD supervisors will answer any officer's questions generated by the Bulletin or the video. CSPD anticipates the roll-call video will be ready for presentation to the division lineups by October 5, 2015, with officers viewing the video in the first few weeks of October.

3. Review of Open Actions. The City currently is conducting a careful review of cases containing charges under Sections 9.2.111 and 10.18.112, including those cited in your letter. It

is a time-consuming process, but the City already has dismissed a number of actions. The review is ongoing.

4. Amendment of City Code: In light of the United States Supreme Court's recent ruling in *Reed v. Town of Gilbert*, as well as the possibility that the City's current ordinances create confusion concerning the lawfulness of passive solicitation, the City Attorney's Office will be drafting amendments to the City's solicitation ordinances for consideration by City Council.

The City takes the ACLU's concerns very seriously. We propose to update you again on our progress by October 30, 2015. In the meantime, please feel free to contact me with any questions or concerns.

Very truly yours,

A handwritten signature in blue ink that reads "Wynetta Massey". The signature is written in a cursive style with a large, looping "W" and "M".

Wynetta Massey  
City Attorney

Enclosure



# COLORADO SPRINGS POLICE DEPARTMENT BULLETIN



<b>ORIGINATED BY:</b> SENIOR ATTORNEY FREDERIC STEIN	<b>APPROVED BY:</b> DC VINCE NISKI	<b>DATE ISSUED:</b> 09-14-15	<b>GENERAL TOPIC:</b> SOLICITATION V/N	<b>SERIAL NO:</b> 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.