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November 10, 2025

SENT VIA EMAIL

David Frankel, City Attorney
City of Westminster, Colorado
4800 W. 92nd Ave.
Westminster, CO 80031
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Re: Solicitation Ordinance, W.M.C. 9-4-1

Dear Mr. Frankel:

The ACLU of Colorado has learned that Westminster police officers are relying on a likely unconstitutional city ordinance to harass people experiencing poverty and homelessness who are seeking assistance from others through monetary solicitation. This issue was brought to our attention by a Westminster resident who, while soliciting, was stopped by two Westminster police officers. One officer told him that the City of Westminster had banned solicitation by any street or roadway, while the other officer told him Westminster had banned solicitation completely. At a minimum, these Westminster police officers overstated the scope of the law and need to be re-trained on what the ordinance prohibits, but more importantly, the City needs to review and repeal the potentially unconstitutional provisions of the City's solicitation ordinance.

The ordinance in question appears to be W.M.C. 9-4-1 which is constitutionally infirm following the Tenth Circuit's decision in *Brewer v. City of Albuquerque*, 18 F.4th 1205 (10th Cir. 2021). In *Brewer*, the Tenth Circuit held that a city ordinance remarkably similar to W.M.C. 9-4-1 was unconstitutional on First Amendment grounds. Albuquerque's ordinance prohibited pedestrians from "(1) congregating within six feet of a highway entrance or exit ramp, (2) occupying any median deemed unsuitable for pedestrian use, and (3) engaging in any kind of exchange with occupants of a vehicle in a travel lane." *Brewer*, 18 F.4th at 1209. The Tenth Circuit held the Albuquerque ordinance was invalid as it was not narrowly tailored to survive intermediate First Amendment scrutiny. *Id.* The Tenth Circuit found that Albuquerque's ordinance "swe[pt] broadly and substantially burden[ed] private speech, prohibiting *all* expressive activity in a wide variety of spaces where [the city's] residents have historically exercised their First Amendment rights." *Id.* at 1238 (cleaned up, emphasis in original).

The Westminster ordinance is far broader than many of the anti-soliciting regulations that courts have struck down in recent years and would be constitutionally unenforceable for the same reasons. *See, e.g., Brewer*, 18 F.4th 1205; *McCraw*, 973 F.3d, 1057; *Browne v. City of Grand Junction*,

Colo., 136 F.Supp.3d 1276 (D. Colo. 2015). The ordinance prohibits peaceful, passive, non-intrusive, and non-aggressive requests for assistance, and it applies on any street with a median, everywhere in the city. For example, section (B)(2) of the Westminster ordinance prohibits solicitation “upon any median area.” This provision is even less likely than the Albuquerque ordinance to survive constitutional scrutiny because it makes no attempt at narrow tailoring to address the alleged problem of pedestrian safety, as it applies to *all* medians in the city, while the Albuquerque ordinance was invalid despite being limited to medians less than six feet wide and/or unpaved or un-landscaped medians. *See Brewer*, 18 F.4th at 1242. Thus, the Albuquerque ordinance was still invalid despite being *more* narrowly tailored than W.M.C. 9-4-1.

The provision of the Albuquerque ordinance that banned soliciting near highways was also found to be unconstitutional and is broader than section (C) of the Westminster ordinance which prohibits solicitation “from the occupant of any vehicle on any highway included in the interstate highway system, including any entrance to or exit from such highway.” W.M.C. 9-4-1(C). The Albuquerque ordinance was invalid despite only applying to certain locations and intersections, *see Brewer*, 18 F.4th at 1210 (Albuquerque ordinance prohibited soliciting “within six feet of a travel lane of an entrance to exit ramp to Interstate 25, Interstate 40” and other specific roadways), but Westminster’s ordinance broadly applies to “any highway . . . including any entrance to or exit from such highway.” W.M.C. 9-4-1(C). The Albuquerque ordinance was more limited than W.M.C. 9-4-1 yet was still unconstitutional.

Finally, section (B)(1) of the Westminster ordinance – which bans the “person performing the [solicitation] to enter onto the traveled portion of a street or highway” – is likely also invalid as it is unconstitutionally overbroad. In *Brewer*, the Tenth Circuit invalidated provisions of the Albuquerque ordinance that prohibited “physical interaction or exchange” with drivers or passengers. Thus, if a person were soliciting contributions while standing on the sidewalk or in a median, then briefly approached a willing driver who offered a donation, that conduct would be illegal in Westminster and the enforcement of that provision would run afoul of *Brewer*.

I write to ask you to take immediate steps to ensure that this ordinance is reviewed and that any unconstitutional provisions are repealed. And while the review process is unfolding, I ask that you also ensure Westminster police officers immediately stop enforcing or relying on this ordinance (including by threatening enforcement against people exercising their constitutional rights).

Please reply to this letter by November 21 to let me know 1) that Westminster will take immediate steps to review and repeal any unconstitutional provisions of W.M.C. 9-4-1; and 2) that during the time the ordinance remains on the books, that the Westminster police will immediately refrain from relying on W.M.C. 9-4-1 to make arrests, issue tickets, or to issue “move on” orders.

Sincerely,

Scott Medlock
Senior Staff Attorney, ACLU of Colorado