

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Deputy City Manager *DST*

BY: Maureen Benson, City Clerk *MB*

DATE: March 28, 2012 (CC Meeting of 4/18/12)

SUBJECT: Consider an Ordinance Deleting Section 10.04.320, Prohibition of Solicitation in the Public Right-of-way, of Chapter 10.04, Traffic Code, of Title 10 of the Moorpark Municipal Code

BACKGROUND AND DISCUSSION

The City Attorney is recommending Section 10.04.320, Prohibition of Solicitation in the Public Right-of-way (Attachment A), be deleted from the Moorpark Municipal Code. The Supreme Court declined the City of Redondo Beach's request to reconsider the 9th U.S. District Circuit Court of Appeal's ruling that struck down that city's solicitation ordinance. The Redondo Beach law, which was overturned, made it illegal for any person, while standing on the sidewalk, to request work from motorists. The Circuit Court stated that the law "regulates significantly more speech than is necessary to achieve the city's purpose of improving traffic safety".

The City of Moorpark received a letter from the Mexican American Legal Defense and Educational Fund demanding the repeal of Section 10.04.320 of the Moorpark Municipal Code, declaring it unconstitutional. After reviewing the letter and the court rulings, the City Attorney has advised that the section should be deleted.

Attached is a draft ordinance (Attachment B) showing the deletion of Section 10.04.320. This ordinance has been reviewed and approved by the City Attorney.

FISCAL IMPACT

There is no fiscal impact for deleting Section 10.04.320 other than the printing costs for updating the code, which are budgeted for in the normal course of business.

STAFF RECOMMENDATION

Introduce Ordinance No. ____ for first reading, waive full reading, and schedule second reading and adoption for May 2, 2012.

Attachments: A. Current Section 10.04.320
 B. Draft Ordinance

ATTACHMENT A

**CURRENT MOORPARK MUNICIPAL CODE
SECTION 10.04.320**

10.04.320 Prohibition of solicitation in public right-of-way.

A. It is unlawful for any person, while standing in any portion of the public right-of-way, including, but not limited to, public streets, highways, sidewalks and driveways, to solicit, or attempt to solicit, employment, business or contributions of money or other property from any person traveling in a vehicle along a public right-of-way, including, but not limited to, public streets, highways or driveways.

B. It is unlawful for any person, while the occupant of any vehicle, to solicit, or attempt to solicit, employment, business or contributions of money or other property from a person who is within the public right-of-way, including, but not limited to, a public street, highway, sidewalk or driveway

ATTACHMENT B

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, DELETING SECTION 10.04.320, PROHIBITION OF SOLICITATION IN THE PUBLIC RIGHT-OF-WAY, OF CHAPTER 10.04, TRAFFIC CODE, OF TITLE 10, VEHICLES AND TRAFFIC OF THE MOORPARK MUNICIPAL CODE

WHEREAS, Section 10.04.320 of the Moorpark Municipal Code was adopted by Ordinance 218 to prohibit solicitation in the public right-of-way; and

WHEREAS, the current language of Section 10.04.320 of the Moorpark Municipal Code is not in compliance with a recent U.S. Supreme Court ruling denying an appeal by the City of Redondo Beach of the Ninth Circuit Court of Appeals' ruling that struck down the city's solicitation ordinance; and

WHEREAS, the Ninth Circuit Court of Appeals' ruling stated that the City of Redondo Beach law regulating solicitation in the public-right-way regulated significantly more speech than is necessary to achieve the city's purpose of improving traffic safety; and

WHEREAS, the City Attorney for the City of Moorpark has recommended deleting Section 10.04.302 in its entirety; and

WHEREAS, at the regular meeting of April 18, 2012, the City Council determined to delete Section 10.04.320 from the Moorpark Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. That Moorpark Municipal Code Section 10.04.320, Prohibition of Solicitation in the Public Right-of-way, of Chapter 10.04, Traffic Code, is hereby deleted in its entirety.

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this ____ day of May, 2012.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk