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Staff Report for a City of San Leandro City Council Ordinance Repealing San Leandro Municipal Code Title 4, Chapter 4-1, Article 9 Pertaining to Intimidating Solicitation

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council introduce an Ordinance repealing Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code Pertaining to Intimidating Solicitation.

BACKGROUND

In 2004, the City Council adopted an ordinance pertaining to intimidating solicitation, codified as Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code ("Intimidating Solicitation Ordinance"). The ordinance makes it unlawful for any person to engage in intimidating solicitation behavior in any public place and unlawful to solicit, ask or beg in certain public places. In 2018, the City Council provided direction to staff and the City Attorney's Office to review the City's Intimidating Solicitation Ordinance.

Analysis

Consistent with the City Council's direction, staff and the City Attorney's Office reviewed the City's Intimidating Solicitation Ordinance, which included an analysis of the legal landscape regarding intimidating solicitation regulations. Under United States Supreme Court precedent, solicitation (including panhandling) is protected by the First Amendment. Since the City's Intimidating Solicitation Ordinance was adopted in 2004, First Amendment case law has evolved. Under current jurisprudence, any law or regulation affecting intimidating solicitation must be viewed under a strict scrutiny analysis. Strict scrutiny is the highest standard of review a court will use to evaluate the constitutionality of government regulations; it is a very difficult standard to meet.

Due to these changes in First Amendment protections, many cities are facing legal challenges over their intimidating solicitation ordinances. For example, the City of Sacramento's aggressive solicitation ordinance was recently challenged by the ACLU. The United States District Court preliminarily ruled that Sacramento's ordinance violated the First Amendment and Sacramento repealed its entire ordinance.

On July 11, 2019, the City Council Rules Committee reviewed the City's Intimidating Solicitation Ordinance. Due to the changing legal landscape regarding intimidating solicitation regulations, the Rules Committee unanimously recommended the City Council repeal the Intimidating Solicitation Ordinance.

If the Intimidating Solicitation Ordinance is repealed, the City will still have tools to prevent aggressive solicitation behavior, including laws regarding disorderly conduct, battery, trespassing, loitering, and obstructing sidewalks. In addition, the City Attorney's Office is working with staff to prepare a new ordinance, consistent with Federal and State laws that would prohibit individuals from standing on certain street medians, where such behavior raises traffic or safety issues.

Current Agency Policies

Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code ("Intimidating Solicitation Ordinance")

Previous Actions

In 2004, the City Council adopted Title 4, Chapter 4-1, Article 9 of the San Leandro Municipal Code - "Intimidating Solicitation Ordinance."

Committee Review and Actions

On July 11, 2019, the City Council Rules Committee reviewed the City's Intimidating Solicitation Ordinance. The Rules Committee unanimously recommended the City Council repeal the Intimidating Solicitation Ordinance and return to the Rules Committee with a new ordinance that is legally compliant.

PREPARED BY: Richard D. Pio Roda, City Attorney
Elizabeth D. Warmerdam, Assistant City Manager