

Law Enforcement Transparency and Advisory Commission (LETAC)

Colorado Springs, Colorado

Recommendation to Colorado Springs City Council regarding Promoting First Amendment Rights and Permitting Changes in Colorado Springs

Proposed: May 6, 2024

Voted on: June 3, 2024

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EXECUTIVE SUMMARY

This memorandum addresses the imperative of promoting First Amendment rights, changing permitting processes, and reviewing current ordinances in conjunction with best civic and legal practices for growing cities. It emphasizes the significance of civic education, transparent engagement, and legal compliance to uphold constitutional principles. These issues are paramount to 21st-century policing. Colorado Springs has seen a plethora of demonstrations, protests, events, parades, and other expressions of First Amendment rights since its inception. Many of these events have been peaceful. There have been, however, several events that have led to increased resident and law enforcement interaction resulting in greater use of force instances. These uses of force often lead to the dehumanizing of residents demonstrating First Amendment rights. Acts of violence toward the police also dehumanize officers seeking to protect community members' rights. The Law Enforcement Transparency and Advisory Commission (LETAC) believes improved communication and information sharing by the City of Colorado Springs will improve future interactions between Colorado Springs Police Department (CSPD) officers tasked to protect resident rights and those Colorado Springs residents exercising rights. These changes will benefit the preparedness of the City of Colorado Springs as it becomes Colorado's largest projected city.

Recommendations:

- 1) **Civic Education:** Expand the Civic Superhero page on the City's website to include comprehensive civic education, providing residents with pertinent local information, links, and services to enhance awareness and engagement with their constitutional rights.
- 2) **Changes to the Permitting Process:** Conduct changes through comparisons with other cities, not limited to those proposed, to ensure residents seeking permits for events, parades, demonstrations, protests and other lawful acts of peaceable assembly are accessible, timely, monetarily proportionate, standardized, objective, and clear.
- 3) **Legal Review of Ordinances:** Conduct a legal review of Colorado Springs City Ordinance 9.2.104 "Obstructing Passage or Assembly" and Colorado Springs City Ordinance 9.3.101 "Resisting, Interference with Public Official" to identify and rectify any potential First Amendment obstructions, ensuring alignment with constitutional standards.

Goals:

Enhanced Civic Engagement: The expansion of civic education aims to empower residents with the knowledge and resources necessary to actively participate in civic affairs, fostering a more engaged and informed citizenry.

Clear Communication and Conflict Resolution: Through an improved permitting process and legal review of ordinances, the recommendations seek to establish clear guidelines and procedures, reducing ambiguity and potential conflicts between demonstrators, city officials, and law enforcement.

Upholding Constitutional Principles: Ultimately, the goals of these recommendations are to uphold

the core principles of the First Amendment and ensure that the City of Colorado Springs remains a beacon of democratic values and constitutional integrity. This is standard for a growing city. It will ensure residents' rights are better served while safeguarding the public safety of all residents.

These recommendations do not direct a specific manner or timeframe for completion.

Recommendation 3 does not include budgetary requests as it assumes the City of Colorado Springs legal team can perform such a review.

FULL REPORT: Recommendation to Colorado Springs City Council regarding Promoting First Amendment Rights and Permitting Changes in Colorado Springs

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Goals and Justification:

Civic Education and First Amendment Rights: The Supreme Court, in *Board of Education v. Pico* (1982), recognized the fundamental importance of education in promoting democratic values and citizenship. Moreover, in *Keyishian v. Board of Regents* (1967), the Court emphasized the significance of ensuring citizens understand their rights to effectively participate in democratic processes.

Conflict Resolution and Legal Compliance: Clear information on First Amendment rights not only aids in conflict resolution but also mitigates potential legal issues. In *Tinker v. Des Moines Independent Community School District* (1969), the Court affirmed that students' First Amendment rights are not shed at the schoolhouse gate. The same holds during demonstrations or other events. Similarly, in *Ward v. Rock Against Racism* (1989), the Court emphasized the government's obligation to regulate speech in a content-neutral manner to avoid First Amendment violations. To this point, LETAC does not recommend specific language, rather than the vague language used in Ordinance 9.2.104, be codified around demonstrations, protests, or First Amendment-protected actions within the Colorado Springs City Charter. *Grayned v. City of Rockford* (1972), *Reed et al. v. Town of Gilbert* (2015), *McCullen v. Coakley* (2014), *Snyder v. Phelps* (2011), among other cases, that sought to codify specific language around protests, even if in good faith, were ultimately stuck down as unconstitutional.

Transparency and Community Engagement: Providing resources on First Amendment rights demonstrates transparency and a commitment to constitutional principles. This aligns with legal precedents such as *Edwards v. South Carolina* (1963), which underscored the importance of protecting peaceable assembly. This applies to local government and the important task of civic education and protecting resident rights.

Legal and Practical Analysis of Proposed Actions: As the City of Colorado Springs becomes the largest city in Colorado, by geography and populace, LETAC believes it is in the best interest of the City of Colorado Springs and CSPD to continue to be critical and proactive around planning and addressing public safety concerns of large protests, common in cities across the US, while maintaining residents rights. LETAC Commissioners express appreciation to CSPD for proactively teaching, above and beyond POST

requirements and in and out of CSPD Academy settings, the importance of constitutional policing while acknowledging areas for growth. The burden of civic education is not on a city's police department.

Providing a Civic Engagement Information Page: The establishment of a Civic Engagement Information Page on the City website aligns with legal precedent and serves the public interest. The Supreme Court, in *Reno v. American Civil Liberties Union* (1997), recognized the internet as a unique platform for the dissemination of information and protected speech. Providing a dedicated place where the City of Colorado Springs educates residents on civic engagement is vital to reduce miscommunication that can and does impact how the City of Colorado Springs engages its residents. LETAC recommends the City of Colorado Springs expand its Civic Superhero page, or relevant page, to include Civic education on the constitutional rights of residents with pertinent local information, links, and services, to better serve, educate, and engage residents. For example, creating a more streamlined application process for events, demonstrations, or other First Amendment-protected actions that reduces confusion, minimizes undue burdens on residents, allows for timely approval, and clearly articulates ways in which First Amendment rights may no longer be considered lawful (i.e., blocking a roadway without a permit or defacing public property). These are small changes that can provide better communication and expectations for residents.

Changes to the Permitting Process: The rights of peaceable assembly, protected under the U.S. Constitution, must be preserved while maintaining public order and safety. The permitting process is an effective tool to ensure a balance of individual rights and public safety. Permitting processes excluding keywords, like "protest" or "demonstration", limit access through time restraints or monetarily unproportionate fees, and lack clear and objective criteria for the acceptance or rejection of permits create unnecessary conflict and limit applicant rights. The law is clear regarding permitting processes that allow city officials unbridled discretion to deny permits for First Amendment activities is unconstitutional (*Shuttlesworth v. City of Birmingham* (1969)). *Forsyth County v. Nationalist Movement* (1992) and *Cox v. New Hampshire* (1941) also highlight the legal requirement for content-neutral and non-discriminatory application of permits and permit fees. It is important to note while creating standard criteria for permits that City ordinances do not always have the legal authority to deny submitted permits, but First Amendment expression is subject to reasonable time, place, and manner restrictions (*Hague v. Committee for Industrial Organization* (1939), *Clark v. Community for Creative Non-Violence* (1984)). It is in the best interest of the City of Colorado Springs, its residents, and its police department, to initiate changes to the existing permitting process that standardizes fees and criteria, offers expedited processing, improves public communication, ensures the online permit portal is easily accessible, i.e., included as a link in civic education page and GoCOS App, and allows for regular reviews and pertinent updates.

Review of City Ordinance 9.2.104 "OBSTRUCTING PASSAGE OR ASSEMBLY" and 9.3.101 "RESISTING, INTERFERENCE WITH PUBLIC OFFICIAL (Items B/C)": Legal review of Colorado Springs City Ordinance 9.2.104 "Obstructing Passage or Assembly" and Colorado Springs City Ordinance 9.3.101 "RESISTING, INTERFERENCE WITH PUBLIC OFFICIAL", items B/C, for potential Constitutional 1st Amendment obstructions. We recommend this be done by a lawyer or law firm who is a member of The First Amendment Lawyers Association (FALA), or a similar association.

Promoting civic education and ensuring a more accessible and unbiased permitting process in Colorado Springs are commendable initiatives that align with established legal principles. By fostering awareness of constitutional rights and the permitting process, with relevant exceptions, the city can enhance community engagement, mitigate conflicts, and uphold the democratic values of residents, regardless of civic, religious, political, or other First Amendment-protected expressions. The police department will benefit from clearer suggested guidelines, processes, and information for residents seeking to express civic rights.

Best Practices for Permitting Processes

Accessibility and Timeliness:

- Ensure that the permitting process is accessible both physically and electronically.
- Provide clear timelines for application review and decision-making to avoid unnecessary delays.
- Example: New York City requires that permit applications for parades and public demonstrations be submitted at least 45 days in advance but also provides for expedited processing in certain situations (<https://www.nyc.gov/site/nypd/services/law-enforcement/permits-licenses-permits.page>).

Monetary Proportionality:

- Fees should be reasonable and proportionate to the administrative costs incurred by the city in processing the permit.
- Example: San Francisco has a fee schedule that reflects the size and nature of the event, ensuring smaller events are not overburdened with high fees (<https://www.sfmta.com/permits/special-event-street-closures>).

Objective and Clear Criteria:

- Develop and publish clear, objective criteria for permit approval or denial to prevent arbitrary decision-making.
- Example: Chicago outlines specific, objective criteria for permit applications, such as traffic considerations, public safety, and conflict with other scheduled events (<https://www.chicago.gov/content/dam/city/depts/dps/ContractAdministration/StandardFormsAgreements/BidProtestRules12302013.pdf>).

Transparency and Communication:

- Maintain transparent communication with applicants throughout the process, including reasons for any delays or denials. This expectation must be clearly written on the City's website page.
- Example: Los Angeles provides a detailed guide on their website explaining the permitting process, criteria, and expected timelines (<https://www.ladbs.org/services/core-services/plan-check-permit/types-of-plan-checks-permits/special-event-permit>).

Content-Neutral Regulations:

- Ensure that all regulations and decisions are content-neutral, focusing on time, place, and manner rather than the content of the speech, type of event, or content of the permit submission.
- Example: Washington, D.C. explicitly states in its regulations that permit decisions cannot be based on the content of the proposed speech (<https://www.nps.gov/nama/planyourvisit/demonstrations.htm> ; <https://mpdc.dc.gov/service/get-permit-special-event>).

Additional Examples of Cities with Effective Permitting Processes

Seattle, Washington (<https://www.seattle.gov/special-events-office/handbook/free-speech-events-and-activity>):

- Seattle's Special Events Office provides a comprehensive online portal for permit applications, clear guidelines, and a tiered fee structure based on event size and complexity.
- The city ensures timely responses and provides resources for event organizers to comply with public safety requirements.

Portland, Oregon (<https://www.portland.gov/transportation/permitting/portland-streets/apply-special-event-permit>):

- Portland offers a streamlined process for permits, with an online application system and clear instructions.
- The city emphasizes minimal fees for small or nonprofit events and offers assistance in navigating the permitting process.

Austin, Texas (<https://www.austintexas.gov/department/sidewalk-protests-and-demonstrations>):

- Austin's Special Events Ordinance is designed to be transparent and user-friendly, with clear criteria and a focus on ensuring public safety without impeding First Amendment rights.
- The city provides a detailed event planning guide and maintains open lines of communication with event organizers. There is also an informational page for non-permitted activities.

Legal Citations

1. Board of Education v. Pico, 457 U.S. 853 (1982).
2. Keyishian v. Board of Regents, 385 U.S. 589 (1967).
3. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
4. Ward v. Rock Against Racism, 491 U.S. 781 (1989).
5. Grayned v. City of Rockford, 408 U.S. 104 (1972).
6. Reed at al. v. Town of Gilbert, 576 U.S. 155 (2015).
7. McCullen v. Coakley, 573 U.S. 464 (2014).
8. Snyder v. Phelps, 562 U.S. 443 (2011).
9. Edwards v. South Carolina, 372 U.S. 229 (1963).
10. Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
11. Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969).
12. Forsyth County v. Nationalist Movement, 505 U.S. 123 (1992).
13. Cox v. New Hampshire, 312 U.S. 569 (1941).
14. Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939).
15. Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984).

Accepted Definitions May 6, 2024

Trust: A community's perception of law enforcement's trustworthiness, comprised of three dimensions: benevolence (I believe you have my best interest in mind), integrity (I believe your words match your actions), and competence (I believe you are capable).

Source: Adapted from Commissioner Andrew Hoskin's PhD work.

Transparency: Refers to a process by which reliable, timely information about existing conditions, decisions, and actions relating to the activities of the Colorado Springs City Council and any of its boards, commissions, or affiliates and the Colorado Springs City administration and any of its departments, or affiliates, is made accessible, visible, and understandable to the public. Source: Adapted from the United Nation's definition of transparency.

Conduit: A metaphor representing persons or groups that facilitates communication between two or more people or groups to achieve the vision, mission, and goals of those diverse groups.

Data-driven: Determined by or dependent on the collection and/or analysis of data.

Source: Adapted from the Oxford definition of data-driven

Presentation Requests made by LETAC:

Purpose: Comprehensive Update on CSPD Initiatives

Ongoing PERF Training Update:

- Current progress and key takeaways from ongoing Police Executive Research Forum (PERF) training.
- What are the tentative plans for scheduling a community meeting to engage stakeholders on the ongoing PERF training?

Transparency Matters Report Implementation:

- Overview of planned actions to implement recommendations from the Transparency Matters Report or changes in planned action items. (LETAC has reviewed CSPD's website updates on TM UOF Report)
- Specific updates on the progress of implementing the action plan of the Use of Force Study post-August 2023. Are there plans to continue updating the UOF report page?
- Please provide specific ongoing updates to Item 6, "*Continue to enhance supervision, accountability & oversight related to use of force*"; Action Item 6.1, and Item 8 "*Continue to work internally and externally to continually monitor and reduce racial/ethnic*", Action Items 8.1-8.4.

CSPD Recruitment/Retention Update:

- Insights into current recruitment and retention strategies within CSPD.
- Update on the progress of CSPD retention and recruitment.
- Are there any plans to increase CSPD's authorized number of sworn staff in the 2024-2025 budget?

CSPD and CRT Program:

- Could you clarify the Chief's position on expanding the Community Response Team, considering the LETAC budget recommendation to expand, and outline the future direction of CRT for CSPD Officers given plans for no further expansion?
- What plans does CSPD have to replace CRT sworn positions if/when grant funding for these positions goes away?

ART Update in Conjunction with CSFD (CSFD will be doing its separate presentation on ART on the June 3 meeting as well)

- Evaluation of the effectiveness of the Alternative Response Team (ART) in collaboration with the Colorado Springs Fire Department (CSFD).
- Can you discuss the effectiveness of the Alternative Response Team, particularly in alleviating officers from low-acuity calls (trespass calls or welfare check calls)? CSFD has some numbers and LETAC would like CSPD input.

Data Hub Status and Planned Improvements:

- What is the status of the data hub, and are there any planned improvements, including the potential inclusion of "show of force" data, specifically pointing of a firearm?

CSPD's Involvement in Training Facility Discussions:

- Overview of CSPD's role and participation in discussions regarding the establishment of a training facility.
- What role does CSPD play in discussions on establishing a training facility, and is there an expected timeline for execution?

Policy Adjustments on Ankle Cuffs and Policy on Prone Restraint:

- Can you provide insights into any recent adjustments made to CSPD's policy on ankle cuffs and explain the rationale behind these changes?

Answer: "CSPD policies on leg restraints are available publicly, and were not changed recently. GO 1009 Prisoner Processing. It was last updated 3/16/2021. GO 120 Treatment of the Public. It was last updated 9/15/2022."

- Can you share how legislative changes around prone restraint will impact CSPD policy, reporting, and officer implementation?

This presentation aims to provide LETAC with a comprehensive update on various initiatives undertaken by CSPD, addressing key areas of concern and inquiry. LETAC also would like to highlight areas in which CSPD is excelling and where the community, and media, should pay extra attention. LETAC still maintains that there is a lack of positive media reporting regarding what CSPD, and individual officers, are doing well that deserves community attention.