



# CITY OF CONCORD

## REPORT TO MAYOR AND THE CITY COUNCIL

**FROM:** James W. Kennedy, City Solicitor

**DATE:** October 30, 2018

**SUBJECT:** Repeal Code of Ordinances, Title II, Traffic Code; Chapter 17, Vehicles and Traffic, Article 17-7, Rights and Duties of Pedestrians, Section 17-7-3, The Passing of Items to or from the Occupant of a Motor Vehicle on a Roadway

### **Recommendation:**

Accept this report and set the attached ordinance for a public hearing on December 10, 2018.

### **Discussion:**

In 2015, the Concord City Council worked collaboratively with the ACLU-NH and NH Legal Assistance in drafting the attached ordinance to help make Concord's roadways safe. Since that time, the legal landscape has significantly changed with respect to regulating persons holding signs and/or panhandling in the roadway.

By way of background, on June 19, 2014, the First Circuit Court of Appeals found that the City of Worcester's aggressive panhandling ordinance was constitutional. *Thayer v. City of Worcester*, 755 F.3d 60 (1st Cir. 2014) (*Thayer I*). However, the First Circuit Court of Appeals subsequently vacated its decision in 2015. *Thayer v. City of Worcester*, 144 F.Supp.3d 218 (1st Cir. 2015) (*Thayer II*). The decision to vacate was based on the United States Supreme Court's holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015) that a municipality's sign ordinance in Arizona was unconstitutional because it impermissibly regulated the content of the speech.

In the recent years following *Reed*, a number of courts have found panhandling ordinances unconstitutional. See *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015); *McLaughlin v. City of Lowell*, 140 F.Supp.3d 177 (D. Mass. 2015); *Petrello v. City of Manchester*, 2017 WL 3972477 (D.N.H. 2017). In *Cutting*, the First Circuit Court of Appeals held that the City of Portland Maine's ordinance that prohibited standing, sitting, staying, driving or parking on medium strips was unconstitutional. In *Petrello*, the United States District Court for the District of New Hampshire declared the City of Manchester's ordinance as unconstitutional. The ordinance in Manchester is identical to Concord's current ordinance, Article 17-7-3, the Passing of Items to or from the Occupant of a Motor Vehicle on a Roadway.

In accordance with the foregoing rulings, the City Solicitor's Office recommends that the City Council repeal the above ordinance in its entirety. Attached please find the ordinance as repealed.