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Comite De Jornaleros De **Redondo Beach** v. City
 of **Redondo Beach**
 C.D.Cal.,2006.

United States District Court, C.D. California,
 Western Division.

COMITE DE JORNALEROS DE **REDONDO
 BEACH**, an unincorporated association; National
 Day Laborer Organizing Network, an unincorporated
 association, Plaintiffs,

v.

CITY OF **REDONDO BEACH**, Defendant.
 No. CV 04-9396 CBMPJWX.

April 27, 2006.

Background: Organizations representing interests of day laborers brought action against city, asserting free speech challenge to ordinance prohibiting solicitation of employment on streets and highways. Following issuance of preliminary injunction prohibiting city from enforcing ordinance, organizations and city moved for summary judgment.

Holdings: The District Court, Marshall, J., held that:

- (1) organizations had standing;
- (2) ordinance was content-neutral;
- (3) ordinance was not narrowly tailored to serve city's significant interests; and
- (4) ordinance did not leave day laborers or others with adequate alternative avenues of communication.

Organizations' motion granted; city's motion denied.

West Headnotes

[1] Constitutional Law 92 ↪868

92 Constitutional Law

92VI Enforcement of Constitutional Provisions
 92VI(A) Persons Entitled to Raise Constitu-

tional Questions; Standing

92VI(A)9 Freedom of Speech, Expression, and Press

92k867 Labor and Employment

92k868 k. In General. Most Cited

Cases

(Formerly 92k42.3(1))

Organizations representing interests of day laborers had standing to challenge city ordinance prohibiting solicitation of employment on streets and highways, where organization's legal programs coordinator refuted contentions that one organization had no day laborers as members and that other organization did not actually exist, and, even if day laborers were undocumented, no law prevented them from seeking work so as to exempt them from First Amendment protection. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ↪868

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)9 Freedom of Speech, Expression, and Press

92k867 Labor and Employment

92k868 k. In General. Most Cited

Cases

(Formerly 92k42.3(1))

Even if speech of day laborers was not protected by First Amendment, organizations representing them had standing under overbreadth doctrine to challenge city ordinance prohibiting solicitation of employment on streets and highways, inasmuch as ordinance's sweeping language, penalizing all "persons" who "stand on a street or highway" and engage in solicitation speech directed at motor vehicles, together with asserted harms it was purportedly enacted to redress, allowed for reasonable inference that others, who were not presently before District Court, would be subject to prosecution under its provisions and thereby chilled from engaging in speech. U.S.C.A. Const.Amend. 1.

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[3] Constitutional Law 92 ↪1759

92 Constitutional Law
 92XVIII Freedom of Speech, Expression, and Press
 92XVIII(G) Property and Events
 92XVIII(G)2 Government Property and Events
 92k1759 k. Streets and Highways.
 Most Cited Cases
 (Formerly 92k90.1(4))

Constitutional Law 92 ↪1760

92 Constitutional Law
 92XVIII Freedom of Speech, Expression, and Press
 92XVIII(G) Property and Events
 92XVIII(G)2 Government Property and Events
 92k1760 k. Sidewalks. Most Cited Cases
 (Formerly 92k90.1(4))
 Streets, highways and public sidewalks are traditional public fora in which First Amendment free speech protections are subject to heightened scrutiny. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ↪1735

92 Constitutional Law
 92XVIII Freedom of Speech, Expression, and Press
 92XVIII(G) Property and Events
 92XVIII(G)2 Government Property and Events
 92k1732 Public Forum in General
 92k1735 k. Justification for Exclusion or Limitation. Most Cited Cases
 (Formerly 92k90.1(4))
 Even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that

they leave open ample alternative channels for communication of the information. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ↪1518

92 Constitutional Law
 92XVIII Freedom of Speech, Expression, and Press
 92XVIII(A) In General
 92XVIII(A)1 In General
 92k1516 Content-Based Regulations or Restrictions
 92k1518 k. Strict or Exacting Scrutiny; Compelling Interest Test. Most Cited Cases
 (Formerly 92k90(3))
 If a regulation on speech is content-discriminatory, it is subject to strict scrutiny, such that it will be upheld only if it is: (1) narrowly tailored to promote a compelling government interest, and (2) the least restrictive means available. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ↪1871

92 Constitutional Law
 92XVIII Freedom of Speech, Expression, and Press
 92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising
 92k1871 k. Government Property, Use Of.
 Most Cited Cases
 (Formerly 92k90.1(4))


Municipal Corporations 268 ↪622

268 Municipal Corporations
 268X Police Power and Regulations
 268X(A) Delegation, Extent, and Exercise of Power
 268k622 k. Prohibitory Ordinances. Most Cited Cases
 Assuming that secondary effects doctrine did not apply, city ordinance, prohibiting any person from standing on street or highway and soliciting employment, business, or contributions from occupant

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of any motor vehicle, was content-neutral, for purposes of determining whether it violated free speech guarantees. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law 92  **1871**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising

92k1871 k. Government Property, Use Of. Most Cited Cases

(Formerly 92k90.1(4))

Municipal Corporations 268  **622**

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k622 k. Prohibitory Ordinances. Most Cited Cases

City ordinance, prohibiting any person from standing on street or highway and soliciting employment, business, or contributions from occupant of any motor vehicle, was not content-neutral under secondary effects doctrine, for purposes of determining whether it violated free speech guarantees, in that secondary effects that city wished to eliminate, including traffic problems, vandalism, litter, urinating in public, and occasional fights, were only indirectly related to content of proscribed speech. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law 92  **1871**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising

92k1871 k. Government Property, Use Of. Most Cited Cases

(Formerly 92k90.1(4))

Municipal Corporations 268  **622**

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k622 k. Prohibitory Ordinances. Most Cited Cases

City had significant interest in protecting and promoting traffic flow and safety, crime prevention, and esthetics, for purposes of determining whether ordinance prohibiting solicitation of employment on streets and highways was narrowly tailored to serve significant government interest, so as not to violate free speech guarantees. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92  **1505**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press


92XVIII(A) In General

92XVIII(A)1 In General

92k1505 k. Narrow Tailoring. Most Cited Cases

(Formerly 92k90(3))

In order to be narrowly tailored, a restriction on speech may not burden substantially more speech than is necessary to further the government's legitimate interests. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92  **1504**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1504 k. Exercise of Police Power; Relationship to Governmental Interest or Public Welfare. Most Cited Cases

(Formerly 92k90(3))

While a restriction on speech need not be the least restrictive or least intrusive means of furthering the government's interest, the government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to

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advance its goals. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ↪1871

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising

92k1871 k. Government Property, Use Of. Most Cited Cases

(Formerly 92k90.1(4))

Municipal Corporations 268 ↪622

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k622 k. Prohibitory Ordinances. Most Cited Cases

City ordinance, prohibiting any person from standing on street or highway and soliciting employment, business, or contributions from occupant of any motor vehicle, was not narrowly tailored to serve city's significant interest in promoting traffic and pedestrian safety, so as not to violate free speech guarantees, in that it prohibited individuals from signaling drivers to park legally, it could apply to person hailing cab, and, although city said that ordinance would not be enforced in absence of safety concerns, such fact confirmed that ordinance was overbroad. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ↪1871

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising

92k1871 k. Government Property, Use Of. Most Cited Cases

(Formerly 92k90.1(4))

Municipal Corporations 268 ↪622

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k622 k. Prohibitory Ordinances. Most Cited Cases

City ordinance, prohibiting any person from standing on street or highway and soliciting employment, business, or contributions from occupant of any motor vehicle, was not narrowly tailored to serve city's significant interests in crime prevention and maintaining urban esthetics through prevention of public urination and littering, so as not to violate free speech guarantees, notwithstanding citizen complaints regarding day laborers' involvement in petty crimes, where all such harms could be addressed by enforcing existing statutes. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law 92 ↪1871

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(M) Soliciting, Canvassing, Pamphletting, Leafletting, and Fundraising

92k1871 k. Government Property, Use Of. Most Cited Cases

(Formerly 92k90.1(4))

Municipal Corporations 268 ↪622

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k622 k. Prohibitory Ordinances. Most Cited Cases

City ordinance, prohibiting any person from standing on street or highway and soliciting employment, business, or contributions from occupant of any motor vehicle, did not leave day laborers or others with adequate alternative avenues of communication, for purposes of free speech challenge to ordinance, in that parking lots adjacent to streets were not adequate alternatives, solicitation directed

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at pedestrians would not be as effective, and "labor centers" referenced by city were not within city's borders. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ↪1780

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(G) Property and Events

92XVIII(G)4 Private Property

92k1780 k. In General. Most Cited Cases

(Formerly 92k90.1(4))

Parking lots of private businesses are not necessarily treated as public fora for purposes of a free speech challenge. U.S.C.A. Const.Amend. 1.

[15] Municipal Corporations 268 ↪121

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k121 k. Proceedings to Determine Validity of Ordinances. Most Cited Cases

Police officer's description of extent of city's problems with day laborers and complaints received from citizens were relevant to motivation for city's enactment of ordinance prohibiting solicitation of employment on streets and highways, and thus were admissible in free speech challenge to ordinance. U.S.C.A. Const.Amend. 1; Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[16] Evidence 157 ↪267

157 Evidence

157VIII Declarations

157VIII(A) Nature, Form, and Incidents in General

157k267 k. Making of Statement Fact in Issue. Most Cited Cases

To extent that police officer's statements regarding citizens' complaints were offered and considered

only for limited purpose of showing that statements motivated city council members to enact ordinance prohibiting solicitation of employment on streets and highways, statements were admissible non-hearsay in free speech challenge to ordinance. U.S.C.A. Const.Amend. 1.

[17] Municipal Corporations 268 ↪121

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k121 k. Proceedings to Determine Validity of Ordinances. Most Cited Cases

Police officer's description of number and nature of arrests made during day laborer enforcement project were irrelevant, and thus inadmissible in free speech challenge to ordinance prohibiting solicitation of employment on streets and highways, inasmuch as manner in which ordinance was enforced was not needed in facial challenge. U.S.C.A. Const.Amend. 1.

[18] Evidence 157 ↪471(3)

157 Evidence

157XII Opinion Evidence

157XII(A) Conclusions and Opinions of Witnesses in General

157k471 Conclusions and Matters of Opinion or Facts

157k471(3) k. Facts in General. Most Cited Cases

Police officer's statements that individuals in photographs were "day laborers" were inadmissible lay opinion in free speech challenge to city ordinance prohibiting solicitation of employment on streets and highways. U.S.C.A. Const.Amend. 1; Fed.Rules Evid.Rule 701, 28 U.S.C.A.

[19] Evidence 157 ↪383(12)

157 Evidence

157X Documentary Evidence

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157X(D) Production, Authentication, and Effect

157k383 Conclusiveness and Effect
 157k383(12) k. Effect of Introducing Part of Document or Record. Most Cited Cases
 District Court would not compel production of remainder of legislative history file after city introduced legislative documents in organizations' action challenging constitutionality of city ordinance, where organizations had not sought discovery of entire file through normal discovery channels, and organizations failed to explain why remaining documents ought in fairness to be considered contemporaneously with documents introduced by city. Fed.Rules Evid.Rule 106, 28 U.S.C.A.

[20] Witnesses 410 ↪37(2)

410 Witnesses

410II Competency

410II(A) Capacity and Qualifications in General

410k37 Knowledge or Means of Knowledge of Facts

410k37(2) k. Source of Knowledge. Most Cited Cases

City attorney's statements concerning citizen complaints about day laborers' involvement in littering, vandalism, and public urination lacked foundation and thus were inadmissible in free speech challenge to city ordinance prohibiting solicitation of employment on streets and highways, where city attorney obtained his knowledge of citizen complaints only from his review of exhibits submitted in case. U.S.C.A. Const.Amend. 1; Fed.Rules Evid.Rule 602, 28 U.S.C.A.

*955 Belinda Anne Escobosa, John D. Trasvina, Shaheena Ahmad Simons, Mexican American Legal Defense & Education Fund, Los Angeles, CA, Philip Hwang, Robert Rubin, San Francisco Lawyers Committee for Civil Rights, San Francisco, CA, for Plaintiffs.

Denise M. Caprioli, Eugene P. Ramirez, Manning & MarderKass Ellrod Ramirez, Los Angeles, CA, Jerold A. Goddard, Redondo Beach City Attorney,

Michael Webb, City of Redondo Beach, Redondo Beach, CA, for Defendant.

ORDER RE: PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT; PERMANENT INJUNCTION

MARSHALL, District Judge.

The matters before the Court are the parties' cross-motions for summary judgment.

JURISDICTION

The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves a facial First Amendment challenge to Redondo Beach Municipal Code § 3-7.1601 (hereinafter "the Ordinance"), which provides, in full:

(a) It shall be unlawful for any person to stand on a street or highway and solicit, or attempt to solicit, employment, business, or contributions from an occupant of any motor vehicle. For purposes of this section, 'street or highway' shall mean all of that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, medians, alleys, sidewalks, curbs, and public ways.

(b) It shall be unlawful for any person to stop, park or stand a motor vehicle on a street or highway from which any occupant attempts to hire or hires for employment another person or persons.

Redondo Beach Municipal Code § 3-7.1601(a)-(b).

The City of Redondo Beach (hereinafter "the City") enacted the Ordinance into law on May 7, 1987. On February 16, 1989, it was amended to add subdivision (b). Violators have been punished through the imposition of fines, probation or both.

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In October 2004, the City and its affiliated police department began to enforce the Ordinance aggressively at the intersections of Artesia Boulevard and Felton Lane and Manhattan Beach Boulevard and Inglewood Avenue, where individuals seeking temporary employment (i.e., "day laborers") frequently congregate. They dubbed this increased enforcement effort the "Day Labor Enforcement Project." The police force staged undercover sting operations in which officers, dressed in plain clothes and riding in unmarked cars, stopped to offer employment to day laborers, then detained and arrested them.

Plaintiffs, Comite de Jornaleros de Redondo Beach ("Comite") and National Day Laborer Organizing Network ("NDLON"), are unincorporated organizations that represent the interests of day laborers and/or facilitate solidarity among local day laborer groups striving to advance the laborers' human, employment and civil rights. Specifically, Comite identifies itself as "an unincorporated association comprised of day laborers who seek to defend their rights and address the difficulties that they face in seeking lawful employment as day workers." NDLON identifies itself as "a nationwide coalition of day laborers and the agencies that work with day laborers." Its aims include "working for the repeal or invalidation of laws that restrict the right *956 of day laborers to solicit lawful employment."

Plaintiffs filed this lawsuit on November 16, 2004, seeking declaratory and injunctive relief. On December 15, 2004, the Court issued a preliminary injunction restraining Defendants from enforcing the Ordinance and/or from enforcing or seeking to punish violations of probation imposed based on convictions obtained pursuant thereto. The Ninth Circuit affirmed the issuance of the injunction in an unpublished memorandum disposition on May 11, 2005.

Both Plaintiffs and the City now move for summary judgment. The City contends it is entitled to judgment as a matter of law because Plaintiffs lack Article III standing and/or because the Ordinance is a valid "time, place and manner" restriction.

Plaintiffs maintain that they do have standing under the Constitution (and incident to the Court's previous orders addressing the issue) and that the Ordinance is facially unconstitutional, either as an improper content-based restriction of speech in a traditional public forum or as an overbroad content-neutral regulation.

STANDARD OF LAW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Where the nonmoving party will have the burden of proof at trial, the movant can prevail merely by pointing out that there is an absence of evidence to support the nonmoving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must then set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence and draws all inferences in the light most favorable to the nonmoving party. *T.W. Elec. Svc., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir.1987). The evidence presented by the parties must be admissible. Fed.R.Civ.P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Pub.*

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Co., Inc. v. GTE Corp., 594 F.2d 730, 738 (9th Cir.1979).

held meetings and participated in various events and gatherings. Exhibit GGGG.^{FN1}

ANALYSIS

I. Standing

[1] The City asserts that it is entitled to summary judgment because Plaintiffs do not have individual or associational standing to bring their challenge. This Court has twice analyzed and ruled on the issue of Plaintiffs' standing to sue. First, in its Findings of Fact and Conclusions of Law in support of its order issuing the preliminary injunction, filed on December 15, 2004, the Court determined that Plaintiff organizations have associational Article III and prudential standing to pursue this action on behalf of their largely unidentified day laborer members. Second, in its Order Granting Plaintiffs' Motion for Reconsideration of Magistrate Judge's Order Granting in Part and Denying in Part Plaintiffs' Motion for a Protective Order, *957 filed on October 4, 2005, the Court ruled that Plaintiffs have standing to challenge the Ordinance *regardless* of their members' immigration status or lack of authorization to work in the United States.

The City offers no cogent reason for the Court to depart from its earlier rulings. Although it contends, as it has in the past, that Plaintiff Comite does not actually exist, the previously filed Declaration of Chris Newman (attached as Exhibit 2 to the Perez Declaration accompanying Plaintiffs' present motion) refutes that contention. Newman, the Legal Programs Coordinator of co-Plaintiff NDLON, states that he meets with the Comite three to five times each week. Newman Decl. ¶ 2. His declaration also refutes the City's contention that NDLON has no day laborers as members. *Id.* at ¶ 4. In addition, Plaintiffs point out that Braulio Adalberto Gonzales testified at his deposition, taken on July 7, 2005, that he is both a day laborer seeking work and a member of Comite, and that, commencing in or around November 2004, the organization has

FN1. The City argues that Mr. Gonzalez's statement that he is a member of Comite "does not prove its existence." However, in making this argument, the City is essentially attacking Mr. Gonzalez's credibility, which the Court cannot properly consider in the context of a motion for summary judgment.

The City responds by insisting that Plaintiffs have offered no evidence that Gonzalez and others have a legal right to work in the United States. Thus, the City argues, their solicitation of employment is tantamount to solicitation of the commission of a crime, for which there is no First Amendment protection. However, as discussed above, the Court visited this precise issue in a recent order and explained that "although it is illegal to hire a person not authorized to work in the United States ... there does not appear to be any law that bars undocumented persons from seeking work. Therefore, Plaintiffs' members' speech is not illegal." *See* Order Granting Plaintiffs' Motion for Reconsideration of Magistrate Judge's Order Granting in Part and Denying in Part Plaintiffs' Motion for a Protective Order, October 4, 2005, at 7. In addition, the Court noted that, apart from the suppression of their First Amendment rights, Plaintiffs have alleged other injuries suffered by their members, including arrests, fines and prosecution, incident to the City's enforcement of the Ordinance and that "these types of independent harms can constitute an 'injury-in-fact' under the First Amendment." *Id.* at 8 (citing *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988); *Bigelow v. Virginia*, 421 U.S. 809, 817, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975)); *cf. Jones v. City of Los Angeles*, 444 F.3d 1118, 1131 (9th Cir.2006) ("It is undisputed, however, that Appellants have been and in the future will probably be fined, arrested, imprisoned, and/or prosecuted, as well as suffer the loss of their personal property, for involuntarily

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violating section 41.48(d). These preconviction harms ... suffice to establish standing...."). Thus, the Court concluded, the immigration status of their individual members is irrelevant to Plaintiffs' standing to challenge the Ordinance. *Id.* at 10.

[2] Finally, even assuming arguendo that Plaintiffs' members' speech was exempt from First Amendment protection, the Court recognized that Plaintiffs' retain standing under the overbreadth doctrine, which "functions as an exception to the general prohibition on a litigant's raising another person's legal rights." *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir.2004) (internal quotations omitted); see also *958 *Young v. City of Simi Valley*, 216 F.3d 807, 815 (9th Cir.2000) (overbreadth doctrine "allows those who have suffered some cognizable injury, but whose conduct may not be protected under the First Amendment, to assert the constitutional rights of others."). The City has presented no evidence to persuade the Court that application of the overbreadth doctrine is unjustified in this instance; at the same time, the sweeping language of the Ordinance itself (penalizing all "persons" who "stand on a street or highway" and engage in solicitation speech directed at motor vehicles), together with the asserted harms it was purportedly enacted to redress (see Section II.B.1, *infra*), allows for a reasonable inference that others, who are not presently before the Court, will be subject to prosecution under its provisions and thereby chilled from engaging in speech in the first instance. *Accord Young*, 216 F.3d at 815 ("The overbreadth doctrine is based on the observation that 'the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court.'") (quoting *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)); see also *Gooding v. Wilson*, 405 U.S. 518, 521, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) (overbreadth doctrine a necessary component of First Amendment jurisprudence "because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal

sanctions").^{FN2}

FN2. The Court would note that, to the extent that the speech proscribed by the Ordinance is purely "commercial" speech, application of the overbreadth doctrine may be unwarranted. See *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982); but cf. *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1111-12 (9th Cir.2004) ("[A]n overbreadth challenge to a statute or regulation that reaches beyond purely commercial speech to encompass fully protected speech is appropriate.") (citing *Village of Hoffman Estates*, 455 U.S. at 497, 102 S.Ct. 1186). However, neither party has raised this issue at any time during the course of this litigation.

Accordingly, the Court affirms its prior findings that Plaintiffs have standing to bring this lawsuit.

II. Constitutionality of the Ordinance

[3][4][5] Streets, highways and public sidewalks are "traditional public fora," in which "First Amendment protections are subject to heightened scrutiny." *Board of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 573, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987); see also *Schenck v. Pro-Choice Network*, 519 U.S. 357, 377, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997) (public speech "is at its most protected on public sidewalks, a prototypical example of a traditional public forum"). However, "even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct.

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2746, 105 L.Ed.2d 661 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)).FN3

FN3. This test is generally recognized as involving "intermediate" scrutiny. If a regulation is content-discriminatory, it is subject to "strict" scrutiny, such that it will be upheld only if it is (1) narrowly tailored to promote a compelling government interest; and (2) the least restrictive means available. *See, e.g., United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000) ("If a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest. If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative.") (internal citations omitted).

*959 In the instant case, the parties dispute whether the Ordinance meets each of the three elements of this test, namely whether it is (1) content-neutral; (2) narrowly tailored to serve the City's proffered interests in traffic safety, crime prevention and esthetics; and (3) leaves open adequate alternative channels for day laborers and others to solicit the employment, business and contributions they desire.

A. Whether the Ordinance is Content-Neutral

1. General Test

"The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward*, 491 U.S. at 791, 109 S.Ct. 2746 (internal citations omitted); *see also Glendale Assocs., Ltd. v. NLRB*, 347 F.3d 1145, 1155 (9th Cir.2003)

("California courts and the United States Supreme Court ... hold that speech-regulating rules are content-neutral when the rule is not related to the subject or topic of the speech.") (internal citations omitted). However, as the Supreme Court has repeatedly recognized, "[d]eciding whether a particular regulation is content based or content neutral is not always a simple task ..." *Bartnicki v. Vopper*, 532 U.S. 514, 526, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642-643, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994)). This case appears to be no exception.

[6] Plaintiffs argue that the Ordinance is content-discriminatory on its face because it bans only "solicitation" speech, such that law enforcement officials can only determine if a particular individual's speech is violative of its provisions by "looking to the content of the speaker's message." *See, e.g., Glendale Assocs.*, 347 F.3d at 1155 ("A rule is defined as a content-based restriction on speech when the regulating party must examine the speech to determine if it is acceptable."); *see also S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1145 (9th Cir.1998).FN4 The City counters by arguing that the Ordinance is virtually identical to that at issue in the Ninth Circuit's opinion in *ACORN v. City of Phoenix*, 798 F.2d 1260 (9th Cir.1986), which the Court explicitly held to be content-neutral.

FN4. Plaintiffs are correct in that solicitation speech cannot be distinguished from other speech by traditionally content-neutral criteria such as volume, appearance of the speaker, or accompanying non-verbal conduct such as gestures.

The Phoenix ordinance at issue in *ACORN* provided as follows: "No person shall stand on a street or highway and solicit, or attempt to solicit, employment, business or contributions from the occupants of any vehicle." *ACORN*, 798 F.2d at 1262. In considering its content-neutrality, the Court noted:

On its face, the Phoenix ordinance does not single

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out any group or the content of any speech. The ordinance applies even-handedly to every organization or individual, regardless of viewpoint, which would desire to solicit contributions, business or employment from the occupants of vehicles traveling on Phoenix streets. Any argument that this ordinance was passed to suppress the particular political views expressed by ACORN is contradicted by the parties' own stipulation in the pretrial order that the ordinance was adopted to promote the city's interest in "public peace, *960 health and safety." The ordinance is thus "content neutral."

Id. at 1267.

Plaintiffs insist that the *ACORN* Court improperly conflated the concept of content-neutrality with the narrower concept of "viewpoint" neutrality and/or that its analysis has been superceded by subsequent Supreme Court and Ninth Circuit decisions. In particular, Plaintiffs reference the Supreme Court's subsequent decision in *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993), in which the Court struck down a municipal regulation prohibiting the distribution of commercial publications through sidewalk newsracks, but permitting the distribution of newspapers via the same means. The Court determined that, because it effected a ban only on "commercial" publications, the regulation was content-based. 507 U.S. at 429, 113 S.Ct. 1505 ("Under the city's newsrack policy, whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the ban in this case is 'content-based.'").

Plaintiffs suggest that there is no difference between the Ordinance in this case and the regulation at issue in *Discovery Network*, as the Ordinance inflicts a similar ban on all speech within a clearly delineated subcategory-i.e., "solicitation" speech. However, the Court concludes that Plaintiffs' reading of *Discovery Network* is overly simplistic. In addition to noting that the regulation

drew an obvious distinction between commercial and non-commercial publications, the Court explained that the *justification* for this distinction could not possibly be content-neutral. The Court noted that the only interests the city advanced in support of the ban were interests in safety and esthetics. *Id.* The Court explained that these interests could not possibly be advanced by a ban on solely "commercial" publications:

The city has asserted an interest in esthetics, but respondent publishers' newsracks are no greater an eyesore than the newsracks permitted to remain on the Cincinnati's sidewalks. Each newsrack, whether containing "newspapers" or "commercial handbills," is equally unattractive. While there was some testimony in the District Court that commercial publications are distinct from noncommercial publications in their capacity to proliferate, the evidence of such was exceedingly weak, the Court of Appeals discounted it, and Cincinnati does not reassert that particular argument in this Court. As we have explained, the city's primary concern, as argued to us, is with the aggregate number of newsracks on its streets. On that score, however, all newsracks, regardless of whether they contain commercial or noncommercial publications are equally at fault. In fact, the newspapers are arguably the greater culprit.

Id. at 425-46, 113 S.Ct. 1505. Because the ban on commercial versus non-commercial publications could not be "*justified* without reference to the content of the regulated speech," *Ward*, 491 U.S. at 791, 109 S.Ct. 2746 (internal citations omitted), it was clearly a content-based regulation.^{FN5}

FN5. Other Supreme Court and Ninth Circuit cases that post-date *Discovery Network* have also emphasized the language in *Ward* that refers to a regulation's justification or purpose. *See, e.g., Bartnicki*, 532 U.S. at 526, 121 S.Ct. 1753 ("In determining whether a regulation is content based or content neutral, we look to the purpose behind the regulation; typically,

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'government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech.' ") (quoting *Ward*, 491 U.S. at 791, 109 S.Ct. 2746) (emphasis in original); see also *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064 (9th Cir.2006) ("Our primary concern is determining whether a regulation of speech was adopted out of disagreement with a message sought to be conveyed. The government's purpose is the controlling consideration.").

*961 Bans on in-person solicitation speech, in contrast, are more readily justified without reference to their essential content-i.e., the invitation for an exchange of money or promises. As the Court in *ACORN* recognized, there is "a distinction between the purely communicative aspect of oral advocacy on the one hand, and the solicitation of contributions on the other hand, which can prove more disruptive of order and crowd flow." *ACORN*, 798 F.2d at 1268; see also *Doucette v. City of Santa Monica*, 955 F.Supp. 1192, 1204 (C.D.Cal.1997) ("A restriction on solicitation may be content-neutral even if it regulates solicitation while leaving other speech untouched, because the regulation focuses on the inherently disruptive nature of the solicitation itself, and not on the content of the speech."). Indeed, as the City points out, several other circuits as well as the California Supreme Court have all reached the conclusion that bans on solicitation speech similar to the ban at issue in *ACORN* are content-neutral. See, e.g., *ACORN v. St. Louis County*, 930 F.2d 591, 594 (8th Cir.1991); *International Society for Krishna Consciousness of New Orleans (ISKCON) v. City of Baton Rouge*, 876 F.2d 494 (5th Cir.1989); *Los Angeles Alliance for Survival v. City of Los Angeles*, 22 Cal.4th 352, 93 Cal.Rptr.2d 1, 993 P.2d 334 (2000); cf., *ISKCON of Potomac, Inc. v. Kennedy*, 61 F.3d 949, 954 (D.C.Cir.1995). Finally, the Supreme Court, via its decision in *United States v. Kokinda*, 497 U.S. 720, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990),

has suggested, albeit in dicta, that bans on solicitation speech are necessarily content-neutral. 497 U.S. at 730, 110 S.Ct. 3115 ("It is the inherent nature of solicitation itself, a content-neutral ground, that the [Postal] Service justifiably relies upon when it concludes that solicitation is disruptive of its business.... Clearly, the regulation does not discriminate on the basis of content or viewpoint.").

Accordingly, while recognizing the various conflicts that have arisen in this area of First Amendment jurisprudence in recent years, the Court finds that it is obligated to follow *ACORN* and other "solicitation" cases and conclude that the Ordinance at issue here is in fact content-neutral.

2. Secondary Effects Doctrine

[7] Even assuming arguendo that Ordinance is content-based on its face, it may nonetheless be analyzed as a content-neutral regulation under the "secondary effects" doctrine. See, e.g., *Crawford v. Lungren*, 96 F.3d 380, 385 (9th Cir.1996) ("Some regulations which are seemingly content-based are analyzed as content-neutral regulations if the government shows that they are justified by a desire to eliminate a 'secondary effect'-an undesirable effect only indirectly related to the content or communicative impact of the speech.") (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47-49, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986)). See also *Tollis, Inc. v. San Bernardino County*, 827 F.2d 1329, 1332 (9th Cir.1987) ("If ... the predominant purpose of the ordinance is the amelioration of secondary effects in the surrounding community, the ordinance is content-neutral") (internal citations omitted); *Colacurcio v. City of Kent*, 163 F.3d 545, 551-53 (9th Cir.1998), cert. denied, 529 U.S. 1053, 120 S.Ct. 1553, 146 L.Ed.2d 459 (2000) (finding that an ordinance which required nude dancers to perform at least ten feet away from patrons was content-neutral because it targeted "secondary effects" of "prostitution, drug dealing, and other criminal activity").

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*962 In *Colacurcio*, the Ninth Circuit examined various “objective indicators of intent” to determine whether the purpose of the ordinance at issue was to suppress speech or ameliorate secondary effects. These indicators included the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment, the stated purpose, and the record of proceedings. *Id.* at 552. Applying these factors to the present case, the Court concludes that the Ordinance is justified by a desire to eliminate “secondary effects” which are only indirectly related to the content or communicative impact of the proscribed speech.

The City states that the Ordinance was enacted in response to “citizen complaints arising from events at [the intersections of Artesia Boulevard and Felton Lane and Manhattan Beach Boulevard and Inglewood Avenue] includ[ing] interruption of and congestion of traffic on these traffic arteries—primarily during the morning rush hour—vandalism, litter, urinating in public, and occasional fights.” The face of the Ordinance does not indicate that its purpose is to suppress speech, rather than to curtail these problems.

At the same time, the City presents evidence regarding the history of the enactment of the Ordinance, to which Plaintiffs do not object, that supports the existence of a non-speech related purpose. First, a memo dated March 17, 1987 from the City Attorney to the Mayor and City Council, proposing the Ordinance's initial enactment, states that the City has had “extreme difficulties with persons soliciting employment from the sidewalks along the Artesia corridor over the last several years” and that “[t]here can be little question that traffic and safety hazards occur by this practice.” Exhibit R.^{FN6} The City also submits a letter from the Redondo Beach Business Association to the Mayor (albeit dated February 18, 1988, *after* the Ordinance was enacted). The letter notes that the “problem” of “the gathering of day laborers lining Artesia Blvd. hoping to obtain work” resurfaces without constant re-enforcement of the Ordinance. Exhibit S. The City

submits a second memorandum, dated January 3, 1989, proposing the amendment to the Ordinance to add subsection (b). That memorandum states that the Ordinance “was designed to alleviate sidewalk congestion and traffic hazards which occurred when large numbers of persons congregated on the sidewalks during the rush hours to obtain temporary employment.” Exhibit T.

FN6. The memo also compares the proposed ordinance to other laws, stating that the proposed ordinance is “identical to one recently approved by the 9th circuit court of appeals [in *ACORN*]” except for the additional sentence defining “street” to include “sidewalks.”

The City also offers “testimonial” evidence concerning the statute's purportedly non-speech related purpose, in the form of a declaration from Officer Rody A. Contreras, who has been employed as a police officer in Redondo Beach since 1986. Officer Contreras declares that the City has, for the past 15 years, experienced “numerous traffic problems with day laborers who solicit employment at the intersection of Artesia Boulevard and Felton Lane, and at the intersection of Manhattan Beach Boulevard and Inglewood Avenue.” Officer Contreras also asserts that citizen complaints have grown along with the size of the groups and that these complaints pertain to interruption of traffic flow as well as acts of vandalism, litter, and urination near businesses.^{FN7}

FN7. Plaintiffs object to this portion of Mr. Contreras' declaration on the grounds that it consists of unsubstantiated factual conclusions and constitutes inadmissible hearsay, to the extent that it recounts “unsubstantiated constituent complaints.” However, in his capacity as an active police officer, Mr. Contreras would have personal knowledge of the presence of day laborers at the specific intersections and any concomitant traffic problems. With respect to his statements concerning the cit-

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izen complaints, the Court finds they are not hearsay because they are not being offered for the truth of the matters asserted therein, but rather for their effect on city officials and their decision to enact the Ordinance. *See* Section III.B., *infra*.

*963 Finally, with regard to the effect of the statute, Plaintiffs have submitted evidence that it primarily affects day laborers. The City does not disagree, to the extent that it recognizes that its October 2004 enforcement efforts were known as "The Day Labor Enforcement Project" and that "mass" arrests of day laborers occurred on particular dates. Def. Opp. to Statement of Uncontroverted Facts at 5, 8. The existence of these facts does not, however, indicate that the Ordinance is aimed at the content or communicative impact of speech.

Plaintiffs assert that even if the City has provided sufficient evidence that the Ordinance was designed to ameliorate specific "secondary effects," it cannot resort to the doctrine in this case because the doctrine's application has not been expanded beyond the context of regulation of the adult industry (i.e., theaters, bookstores, etc.) and/or other forms "less protected" speech. Plaintiffs' assertion is not correct. Although the doctrine originated in the Supreme Court's seminal decision in *City of Renton v. Playtime Theatres, Inc.*, *supra*, only two years later, in *Boos v. Barry*, 485 U.S. 312, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988), a plurality of the justices framed the holding in *Renton* in broad terms: "So long as the justifications for regulation have nothing to do with content ... a regulation [is] properly analyzed as content-neutral." 485 U.S. at 320, 108 S.Ct. 1157.

Contrary to Plaintiffs' assertions, the Ninth Circuit's recent decision in *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir.2005) does not purport to clarify *Boos* in any way or otherwise hold that the secondary effects doctrine is limited to "sexual or pornographic speech." Rather, *Gammoh* is another example of the Court applying the "secondary effects" doctrine to the facts of the case before it. In-

deed, the fact that the Court has affirmatively stated the secondary effects doctrine applies to pornographic speech does not mean it does not apply to speech in other categories.

Accordingly, the Court finds that the Ordinance is content-neutral and turns its attention to the question of whether it is an otherwise valid "time, place and manner" restriction.

B. Whether the Ordinance is Narrowly Tailored to Serve a Significant Government Interest

1. Significance of The City's Asserted Interests

[8] The City contends that the Ordinance was enacted to protect and promote the following interests: (1) traffic flow and safety; (2) crime prevention; (3) esthetics. If it finds that any one of these interests is "significant," the Court must address the question of whether the Ordinance is in fact "narrowly tailored" to further that interest. *See, e.g., Edwards v. City of Santa Barbara*, 150 F.3d 1213, 1216 (9th Cir.1998) ("A single legitimate government interest may be sufficient to sustain a content-neutral regulation.") (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 650 n. 13, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)). For the reasons discussed below, the Court so finds.

*964 First, it is virtually axiomatic that the City has a "significant" interest in traffic flow and safety. *Accord Heffron*, 452 U.S. at 650, 101 S.Ct. 2559 ("As a general matter, it is clear that a State's interest in protecting the 'safety and convenience' of persons using a public forum is a valid governmental objective"); *see also ACORN*, 798 F.2d at 1268 (recognizing "the substantial risk of disruption in crowd or traffic control that may be presented by solicitation of contributions, as compared to other forms of expression."). The City's interest in crime prevention is similarly, intrinsically significant. *See Martin v. Struthers*, 319 U.S. 141, 144, 63 S.Ct. 862, 87 L.Ed. 1313 (1943). Finally, numerous

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courts have recognized that cities and municipalities have a significant interest in maintaining the esthetic appearance of their public fora (often in tandem with an interest in traffic safety). *Accord Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-508, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981) (“Nor can there be substantial doubt that the twin goals that the ordinance seeks to further—traffic safety and the appearance of the city—are substantial governmental goals”); *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064 (9th Cir.2006) (“Against the backdrop of numerous decisions of the Supreme Court and this court, we do not doubt that Lake Oswego's interests in its appearance and the safety of the public are significant and well established.”).

2. Tailoring

[9][10] In order to be narrowly tailored, a restriction on speech may not “burden substantially more speech than is necessary to further the government's legitimate interests.” *Ward*, 491 U.S. at 799, 109 S.Ct. 2746. While the restriction need not be “the least restrictive or least intrusive means” of furthering the government's interest, the government “may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.” *Id.*; see also *Galvin v. Hay*, 374 F.3d 739, 753 (9th Cir.2004) (“[A]lthough the regulation need not be minimally restrictive, the availability of several obvious less-restrictive alternatives is pertinent in deciding whether the regulation burdens substantially more speech than necessary to achieve its purposes.”). With these principles in mind, the City's asserted interests are analyzed in turn.

a. Traffic and Pedestrian Safety

[11] The City maintains that the Court must find that the Ordinance is narrowly tailored to promote “traffic flow and safety” because it “was based specifically on the Phoenix ordinance” at issue in

ACORN, *supra*. Mot. at 17. However, *ACORN* involved an essentially “as-applied” challenge to the Phoenix ordinance on behalf of a political activist organization (“ACORN”) that engaged in highly specific tactics to attract the attention of passing motorists. These tactics, known as “tagging,” involved an activist “stepping into the street and approaching an automobile when it is stopped at a red traffic light.” *ACORN*, 798 F.2d at 1262. That same individual would then proceed to “ask[] the occupants of the vehicle for a contribution to ACORN and distribute[] a slip of paper, or ‘tag,’ providing information about ACORN and its activities.” *Id.* Also, the *ACORN* Court specifically noted that the Phoenix ordinance did not clearly target individuals soliciting from a sidewalk and/or from locations not “in direct proximity to the street.” *Id.* at 1269, n. 9.

Thus, by its very terms, the Ordinance at issue here sweeps in a much larger amount of “solicitation” speech and speech-related conduct than the ordinance at issue in *ACORN*. First, the Ordinance unequivocally applies to individuals who *965 stand on the sidewalk. These individuals may or may not attempt to stop the flow of traffic; although a given day laborer may signal a given vehicle and its occupants to “stop” and confer, he or she may just as readily signal for that individual to pull into an adjacent parking lot. Indeed, the various photographs submitted by the City show that the sidewalks that run along the relevant streets and intersections go back several feet, such that the Ordinance would reach an individual standing well away from the flow of traffic and who merely holds up a sign inviting the occupants of vehicles to drive to a private location to confer. Exhibits A-Q. Such activity is a far cry from the “tagging” tactics employed by the political activists in *ACORN*. Compare *ACORN*, 798 F.2d at 1272 (“[T]he district court concluded there was no evidence to suggest that the Phoenix ordinance curtailed any activity other than solicitation from vehicles at an intersection. We agree.”), with *Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) v. Burke*, 2000 WL 1481467 *6, 2000 U.S. Dist. LEXIS 16520 *18 (C.D.Cal.2000)

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(striking down city ordinance banning solicitation of motor vehicles by day laborers where the ordinance reached “even a solicitor who stands on the sidewalk, away from the curb, and unobtrusively attempts to make known to the occupants of the vehicle his availability for work.”). Second, because the Ordinance does not define the terms “solicit,” or “business,” it may plausibly apply to an individual attempting to hail a cab or a bus or any of a number of other activities that do not interrupt the general flow of traffic and that were left entirely unanalyzed by the *ACORN* decision.^{FN8} Moreover, as this Court has already noted, “the risk of drivers being ‘distracted’ appears to be significantly less where the drivers are actively seeking the services of day laborers instead of being suddenly and unwillingly approached by strangers.” Findings of Fact and Conclusions of Law, December 15, 2005, at 9.

FN8. In fact, the Ordinance would technically apply to children selling lemonade on the sidewalk in front of their home, as well as to Girl Scouts selling cookies on the sidewalk outside of their school.

The ordinance is similarly overbroad with respect to the prohibition on motorists. The City makes much of the fact that “there is no place along Artesia Boulevard or Manhattan Beach Boulevard, where the day laborers congregate, where parking is legal.” However, as it is written, the Ordinance in fact applies to solicitation of employment from occupants of *lawfully* parked vehicles or vehicles stopped on residential streets on which there may or may not be significant traffic. Indeed, by its plain terms, the Ordinance would apply to a motorist who stops, on a residential street, to inquire whether a neighbor's teen-age daughter or son would be interested in performing yard work or babysitting. The City's response to such an argument is that the Ordinance has never been and would not be enforced in such a situation, viz., where no actual safety issues are presented. *See* Defs. Mot. at 19; Reply at 9-10. However, the fact that the City admits that it

will enforce the Ordinance only when the activity at issue actually implicates traffic safety (and/or only when day laborers are involved) confirms that the Ordinance is overbroad, and raises serious equal protection concerns. *See, e.g.,* Kenneth Karst, *Equality as a Central Principle in the First Amendment*, 43 Chi.L.Rev. 20, 38 (1975-76) (“One of the evils of an overly broad statute is its potential for selective enforcement. Police who look charitably on a postgame victory celebration in the streets of a college town may not feel the same way about anti-war demonstrations.”*966). Also, as Plaintiffs point out, predicating an individual's criminal liability under the Ordinance on whether the solicited driver actually “stops” his or her vehicle would allow “residents who are hostile to day laborers” to “catalyze an arrest or citation” simply by so stopping. This would improperly “confer broad powers of censorship, in the form of a ‘heckler's veto,’ ” on these individual residents. *Reno v. ACLU*, 521 U.S. 844, 880, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997).

Finally, there are a myriad of less restrictive means by which the City may address the underlying interest of traffic safety. These means include enforcement of existing traffic laws, issuance of parking citations, and enforcement of loitering laws. *See, e.g.,* Redondo Beach Municipal Code § 3-7.12 (“Appropriate signs or marks indicating that the stopping, standing or parking of vehicles is there unlawful shall be installed at places and points specified in this article whenever the City Manager shall have determined, with references to any particular location, that vehicles not in motion would tend to create traffic congestion or to increase traffic hazard.”); *see also* Cal.Penal Code § 647(e) (loitering prohibited); Cal. Vehicle Code §§ 22500, 22651 (obstruction of traffic).

Accordingly, the Court finds that the City has failed to meet its burden of demonstrating that the Ordinance is narrowly tailored to promote the interests of traffic flow and safety.

b. Crime Prevention and Esthetics

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[12] There is also minimal convergence between the Ordinance's prohibition on solicitation speech and the City's alleged interest in preventing petty crimes, such as vandalism and "fighting," and in maintaining urban esthetics through the prevention of public urination and littering. The fact that the City has received some citizen complaints regarding day laborers' involvement in these activities is insufficient to justify preventing all laborers or other solicitors from engaging in speech. *See, e.g., CHIRLA*, 2000 WL 1481467 at *9, 2000 U.S. Dist. LEXIS 16520 at *30 ("While it may be true that every individual solicitor is a potential harasser, trespasser, and public urinator, courts are rightly reluctant to allow the government to target a category of speech based on the risk that some speakers may engage in harmful activity.") (citing *Krantz v. City of Fort Smith*, 160 F.3d 1214, 1219-22 (8th Cir.1998)). In addition, *all* of these harms can be readily addressed through enforcement of existing statutes. *See id.* (citing Cal.Penal Code § 374.4 (littering); § 415 (fighting, noise, and offensive words); § 602(n) (trespassing); § 647 (disorderly conduct); § 647c (willful and malicious obstruction of right-of-way)); *see also* Redondo Beach Municipal Code § 4-9.201 (littering unlawful).

Accordingly, the Court finds that the City has failed to meet its burden of demonstrating that the Ordinance is narrowly tailored to promote the interests of crime prevention and esthetics.

3. Alternative Avenues for Communication

[13] It is the City's burden to prove that the Ordinance leaves day laborers (and others) with adequate alternative avenues of communication. *Lim v. City of Long Beach*, 217 F.3d 1050, 1054 (9th Cir.2000). The City may meet this burden through the introduction of evidence showing that the day laborers may communicate their message and obtain the same advantages therefrom (i.e., employment) through other means than standing on the sidewalk and soliciting motor vehicles. *See, e.g., *967Members of City Council v. Taxpayers for Vincent*, 466

U.S. 789, 812, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984). The City argues that such a showing may be readily made because the Ordinance, as plainly written, leaves day laborers with the option of congregating in the parking lots of adjacent businesses and soliciting drivers from *that* vantage point. Nevertheless, it has presented no evidence that any of the local businesses whose parking lots abut the public sidewalks would allow this practice.

[14] Indeed, as the Court has already recognized, parking lots of private businesses are not necessarily treated as public fora. As it did in its Opposition to the Court's Order to Show Cause Re: Preliminary Injunction, the City relies on *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980) and *Glendale Assocs., supra*, as well as *Kuba v. I-A Agric. Ass'n*, 387 F.3d 850 (9th Cir.2004) and *Carreras v. City of Anaheim*, 768 F.2d 1039, 1042 (9th Cir.1985). Each of those cases involved major private shopping centers or stadiums which attracted thousands of patrons per day and/or encompassed numerous businesses; the Courts held that these features rendered the location the functional equivalent of a traditional public forum. However, California courts have eschewed the application *PruneYard* to smaller spaces, such as the parking lots of large grocery stores. *See, e.g., Albertson's Inc. v. Young*, 107 Cal.App.4th 106, 121, 131 Cal.Rptr.2d 721 (Cal.Ct.App.2003) ("[T]he smaller the business, the more weight the owners' rights will have."); *Trader Joe's Co. v. Progressive Campaigns, Inc.*, 73 Cal.App.4th 425, 433, 86 Cal.Rptr.2d 442 (Cal.Ct.App.1999). In the instant case, the photographs submitted by the City reveal that the businesses that abut the sidewalks on Artesia Boulevard and Manhattan Beach Boulevard consist of even smaller, individual proprietor-type operations, such as a doughnut shop, gas stations, restaurants and a "7-Eleven." Exhibits A-Q. Thus, their parking lots would be unlikely to be regarded by state or federal courts as the equivalent of public fora for First Amendment purposes.

Moreover, as this Court previously noted:

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The Supreme Court based its holding in *PruneYard* on the fact that the shopping center “may restrict expressive activity by adopting time place and manner regulations that will minimize interference with its commercial function”.... Since shopping centers may restrict expressive activities on their property, their parking lots do not constitute an adequate alternative forum for the solicitation of employment, business or contributions. While the shopping centers in Redondo Beach may not have such time, place and manner regulations at the present time, they may very well implement them if day laborers moved there.^{FN9} Day laborers who did not abide by such restrictions would risk being charged with trespass.

FN9. Indeed, it is reasonable to infer that the businesses whose parking lots front the sidewalks *will* attempt to restrict solicitors, as these are the very same businesses that lodged the complaints about the day laborers' presence that prompted the City to pass the Ordinance in the first instance.

Findings of Fact and Conclusions of Law, December 15, 2004, at 12 (quoting *PruneYard*, 447 U.S. at 83, 100 S.Ct. 2035). *Accord CHIRLA*, 2000 WL 1481467, *13, 2000 U.S. Dist. LEXIS 16520 at *41 (“Trespass is not an ‘ample alternative avenue’ to speaking in a public forum.”). Thus, the Court finds that the City has failed to present evidence that the adjacent parking lots are adequate alternative avenues of communication for Plaintiffs' members.

*968 Nor do there exist other adequate means by which the day laborers may solicit employment. While solicitation of pedestrians is not expressly precluded under the Ordinance, there is no evidence that such solicitation would be as effective as motor vehicle solicitation and, in fact, it is counterintuitive to assume so, as most individuals who set out seeking to hire day laborers do so in their cars. In addition, it is unlikely that any laborers would attempt such solicitation; rather, they would likely be “chilled” from doing so for fear of being prosecuted

under the Ordinance. While it is true that the Ordinance only proscribes speech directed at motor vehicles, speech (signs, shouting) or speech-related conduct (gestures) directed at pedestrians may be inadvertently construed by law enforcement officers to be directed at passing cars as well. *See id.* at 2000 WL 1481467, *8, 2000 U.S. Dist. LEXIS 16520, *22-23 (“Although the County argues that the Ordinance permits speakers to solicit pedestrians and the occupants of legally parked cars, it is difficult to see how a solicitor could direct his speech at these listeners in the vicinity of a public street or driveway without experiencing a reasonable and chilling fear that he would be prosecuted under the Ordinance.”).

Finally, the mere existence of various “labor centers” or “hiring halls” in the greater Los Angeles metropolitan area is insufficient to support a finding that there exist “adequate alternative channels” for Plaintiffs' members' speech.^{FN10} While it is true that Plaintiffs have not disclosed the names and addresses of their members such that the Court might determine their relative proximity to a “labor center,” the fact remains that none of the centers referenced by the City are located *within* its borders. Nor has the City endeavored to create such a center or designate other public property as a place for facilitating exchanges between day laborers and potential employers. *Compare Xiloj-Itzep v. City of Agoura Hills*, 24 Cal.App.4th 620, 645, 29 Cal.Rptr.2d 879 (Cal.Ct.App.1994) (city-sponsored “telephone hiring exchange” constituted ample alternative channel for communication.).

FN10. The City has produced no actual evidence attesting to the existence of these centers; it simply refers to them by reference to a list contained on Plaintiff ND-LON's website.

Accordingly, the Court finds that the City has failed to establish the existence of ample alternative avenues of communication and, concomitantly, has failed to demonstrate that the Ordinance is a valid time, place and manner restriction more generally.

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III. Evidentiary Objections

A. The City's Objection to the Declaration of Pablo Alvarado

The City has objected to paragraph 6 of the Declaration of Pablo Alvarado, which Plaintiffs submitted with their Opposition to the City's motion. Alvarado is the National Coordinator of Plaintiff ND-LON, and paragraph 6 of his declaration concerns resources ND-LON has had to expend in response to the ordinance at issue in this case. The amount of resources expended goes only to the issue of ND-LON's standing, which the Court has ruled on twice already. For this reason, the Court has no need to consider Mr. Alvarado's declaration in the first instance and, accordingly, does not need to rule on the City's objection thereto.

B. Plaintiffs' Objections to the Declaration of Rody A. Contreras

Plaintiffs have objected to portions of the Declaration of Rody A. Contreras, a police officer with the Redondo Beach Police Department. Contreras describes the City's 15-year history of traffic problems *969 associated with day laborers congregating at certain intersections to solicit work (§ 2); numerous complaints the police department has received from both business owners and local residents regarding the day laborers, including their purported contributions to traffic congestion, vandalism, littering, and public urination (§ 3); and the purpose and results of the two-phase sting operation known as the Day Laborer Enforcement Project (§§ 4-13). Contreras also authenticates a number of photographs of local day laborers and the areas in which they congregate. (§§ 15-24).

[15][16] The portions of the Contreras declaration which describe the extent of the City's problems with day laborers and the complaints are relevant to establish the motivation for the Ordinance's enactment. To the extent that Contreras' statements regarding the citizens' complaints are offered and

considered only for the limited purpose of showing the effect they had on the City Council-i.e., that they motivated the council members to enact the Ordinance-they are admissible non-hearsay. *See L.A. News Serv. v. CBS Broad., Inc.*, 305 F.3d 924, 936 (9th Cir.2002) ("Out-of-court declarations introduced to show the effect on the listener are not hearsay."). Moreover, as a patrol field sergeant who has been with the Redondo Beach Police Department since 1986, Mr. Contreras has sufficient personal knowledge of these facts. Accordingly, the Court OVERRULES Plaintiffs' objections to these portions of his declaration.

[17] The Court SUSTAINS Plaintiffs' objections to those portions of the Contreras declaration describing the number and nature of arrests made during the two phases of the Day Laborer Enforcement Project (§§ 4-13), on relevance grounds. Because this is a facial challenge to the Ordinance, evidence of the manner in which it has been enforced is not needed.

[18] Plaintiffs do not object to the photographs submitted with the Contreras declaration; instead, they have objected to certain comments made by Contreras in the course of authenticating the photographs, namely that certain individuals pictured therein are in fact "day laborers." The Court SUSTAINS these objections, as the statements regarding the individuals' identities constitute improper lay opinion. *See Fed.R.Evid.* 701. The balance of the Plaintiffs' objections are OVERRULED.

C. Plaintiffs' Objections to the Declaration of W. Michael Webb

Plaintiffs also object to portions of the Declaration of W. Michael Webb, the current City Attorney for the City of Redondo Beach. Webb describes the history and precise nature of the complaints the City has received regarding congregating day laborers since 1981 and mentions that the City tried, without success, to address the complaints using existing laws. (§§ 3-4.) He then describes, based

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on his review of the legislative history, the City's enactment of each section of the ordinance. (¶¶ 5-6.) Finally, he authenticates and describes the contents of three documents from the legislative history "file" of the Ordinance. (¶¶ 7-9.)

[19] While Plaintiffs do not object to the contents of legislative history documents attached to the Webb declaration, they do make a demand that the City produce the remainder of the legislative history "file." As support for this demand, they cite to Fed.R.Evid. 106, which states: "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Fed.R.Evid. 106. However, there is no indication in the papers*970 that Plaintiffs have ever sought discovery of the entire legislative history file through normal discovery channels. Nor do Plaintiffs explain why the remaining legislative history documents "ought in fairness to be considered contemporaneously with" the three documents attached to the Webb declaration. Accordingly, the Court DENIES Plaintiffs' demand for production and introduction of the legislative history file. However, the Court SUSTAINS the objections to Webb's summaries of the contents of those documents which are attached (Exhibits R-T), although it considers the documents themselves as admissible non-hearsay, to the extent that the citizens' complaints recounted therein are offered (and considered by the Court) only for the limited purpose of showing the motivation of the City Council in enacting the Ordinance.

[20] With respect to Webb's statements concerning citizen complaints about day laborers' involvement in littering, vandalism, and public urination more generally, and the City's efforts to curtail these problems prior to its enactment of the Ordinance (¶¶ 3-6), Plaintiffs object that they lack foundation. As Webb has obtained his knowledge of the complaints only from his review of Exhibits R-T, his

statements are in fact so lacking. *See* Fed.R.Evid. 602. Accordingly, the Court SUSTAINS the objection and does not consider these statements.

CONCLUSION

For all of the foregoing reasons, the Court GRANTS Plaintiffs' motion for summary judgment and DENIES the City's motion. Although it is content-neutral, the Ordinance is not narrowly tailored to address the City's asserted interests, nor does it leave open ample alternative channels for the speech it proscribes.

It is hereby ORDERED that:

(1) The City of Redondo Beach, as well as its officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them, are enjoined in perpetuity from enforcing Redondo Beach Municipal Code § 3-7.1601. The City shall be responsible for providing notice of this Order to its officers, agents, servants, employees, and attorneys and those persons in active concert of participation with them; and

(2) Any and all fines, penalties, or records of infractions of Redondo Beach Municipal Code § 3-7.1601 shall be rescinded or removed and restitution provided.

IT IS SO ORDERED.

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