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CLERK, U.S. DISTRICT COURT
APR 27 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF 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 CBM (PJWx)
)
) ORDER RE: PARTIES' CROSS
) MOTIONS FOR SUMMARY
) JUDGMENT; PERMANENT
) INJUNCTION

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.

ENTERED
CLERK, U.S. DISTRICT COURT
APR 28 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

128

1 **FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

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

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

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

27 Plaintiffs, Comite de Jornaleros de Redondo Beach (“Comite”) and National
Day Laborer Organizing Network (“NDLON”), are unincorporated organizations

1 that represent the interests of day laborers and/or facilitate solidarity among local
2 day laborer groups striving to advance the laborers' human, employment and civil
3 rights. Specifically, Comite identifies itself as "an unincorporated association
4 comprised of day laborers who seek to defend their rights and address the
5 difficulties that they face in seeking lawful employment as day workers." NDLO
6 identifies itself as "a nationwide coalition of day laborers and the agencies that
7 work with day laborers." Its aims include "working for the repeal or invalidation
8 of laws that restrict the right of day laborers to solicit lawful employment."

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

15 Both Plaintiffs and the City now move for summary judgment. The City
16 contends it is entitled to judgment as a matter of law because Plaintiffs lack Article
17 III standing and/or because the Ordinance is a valid "time, place and manner"
18 restriction. Plaintiffs maintain that they do have standing under the Constitution
19 (and incident to the Court's previous orders addressing the issue) and that the
20 Ordinance is facially unconstitutional, either as an improper content-based
21 restriction of speech in a traditional public forum or as an overbroad content-
22 neutral regulation.

23 STANDARD OF LAW

24 Summary judgment is appropriate when "the pleadings, depositions,
25 answers to interrogatories, and admissions on file, together with the affidavits, if
26 any, show that there is no genuine issue as to any material fact and that the moving
27

1 party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). A party
2 seeking summary judgment bears the initial burden of informing the court of the
3 basis for its motion and of identifying those portions of the pleadings and
4 discovery responses which demonstrate the absence of a genuine issue of material
5 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the nonmoving
6 party will have the burden of proof at trial, the movant can prevail merely by
7 pointing out that there is an absence of evidence to support the nonmoving party’s
8 case. *See id.* If the moving party meets its initial burden, the nonmoving party
9 must then set forth, by affidavit or as otherwise provided in Rule 56, “specific
10 facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e);
11 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

12 In judging evidence at the summary judgment stage, the Court does not
13 make credibility determinations or weigh conflicting evidence and draws all
14 inferences in the light most favorable to the nonmoving party. *T.W. Elec. Svc.,*
15 *Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The
16 evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e).
17 Conclusory, speculative testimony in affidavits and moving papers is insufficient
18 to raise genuine issues of fact and defeat summary judgment. *See Thornhill Pub.*
19 *Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

20 ANALYSIS

21 I. Standing

22 The City asserts that it is entitled to summary judgment because Plaintiffs
23 do not have individual or associational standing to bring their challenge. This
24 Court has twice analyzed and ruled on the issue of Plaintiffs’ standing to sue.
25 First, in its Findings of Fact and Conclusions of Law in support of its order issuing
26 the preliminary injunction, filed on December 15, 2004, the Court determined that
27

1 Plaintiff organizations have associational Article III and prudential standing to
2 pursue this action on behalf of their largely unidentified day laborer members.
3 Second, in its Order Granting Plaintiffs' Motion for Reconsideration of Magistrate
4 Judge's Order Granting in Part and Denying in Part Plaintiffs' Motion for a
5 Protective Order, filed on October 4, 2005, the Court ruled that Plaintiffs have
6 standing to challenge the Ordinance *regardless* of their members' immigration
7 status or lack of authorization to work in the United States.

8 The City offers no cogent reason for the Court to depart from its earlier
9 rulings. Although it contends, as it has in the past, that Plaintiff Comite does not
10 actually exist, the previously filed Declaration of Chris Newman (attached as
11 Exhibit 2 to the Perez Declaration accompanying Plaintiffs' present motion)
12 refutes that contention. Newman, the Legal Programs Coordinator of co-Plaintiff
13 NDLO, states that he meets with the Comite three to five times each week.
14 Newman Decl. ¶ 2. His declaration also refutes the City's contention that NDLO
15 has no day laborers as members. *Id.* at ¶ 4. In addition, Plaintiffs point out that
16 Braulio Adalberto Gonzales testified at his deposition, taken on July 7, 2005, that
17 he is both a day laborer seeking work and a member of Comite, and that,
18 commencing in or around November 2004, the organization has held meetings and
19 participated in various events and gatherings. Exhibit GGGG.¹

20 The City responds by insisting that Plaintiffs have offered no evidence that
21 Gonzalez and others have a legal right to work in the United States. Thus, the City
22 argues, their solicitation of employment is tantamount to solicitation of the
23

24
25 ¹ The City argues that Mr. Gonzalez's statement that he is a member of Comite
26 "does not prove its existence." However, in making this argument, the City is essentially
27 attacking Mr. Gonzalez's credibility, which the Court cannot properly consider in the context of a
motion for summary judgment.

1 commission of a crime, for which there is no First Amendment protection.
2 However, as discussed above, the Court visited this precise issue in a recent order
3 and explained that “although it is illegal to hire a person not authorized to work in
4 the United States . . . there does not appear to be any law that bars undocumented
5 persons from seeking work. Therefore, Plaintiffs’ members’ speech is not illegal.”
6 *See Order Granting Plaintiffs’ Motion for Reconsideration of Magistrate Judge’s*
7 *Order Granting in Part and Denying in Part Plaintiffs’ Motion for a Protective*
8 *Order, October 4, 2005, at 7.* In addition, the Court noted that, apart from the
9 suppression of their First Amendment rights, Plaintiffs have alleged other injuries
10 suffered by their members, including arrests, fines and prosecution, incident to the
11 City’s enforcement of the Ordinance and that “these types of independent harms
12 can constitute an “injury-in-fact” under the First Amendment.” *Id.* at 8 (citing
13 *Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 392, 108 S. Ct. 636, 98 L.
14 Ed. 2d 782 (1988); *Bigelow v. Virginia*, 421 U.S. 809, 817, 95 S. Ct. 2222, 44 L.
15 Ed. 2d 600 (1975)); *c.f. Jones v. City of Los Angeles*, ___ F.3d ___, 2006 U.S. App.
16 LEXIS 9306 at * 34 (9th Cir. Apr. 14, 2006) (“It is undisputed, however, that
17 Appellants have been and in the future will probably be fined, arrested,
18 imprisoned, and/or prosecuted, as well as suffer the loss of their personal property,
19 for involuntarily violating section 41.48(d). These preconviction harms . . . suffice
20 to establish standing. . . .”). Thus, the Court concluded, the immigration status of
21 their individual members is irrelevant to Plaintiffs’ standing to challenge the
22 Ordinance. *Id.* at 10.

23 Finally, even assuming arguendo that Plaintiffs’ members’ speech was
24 exempt from First Amendment protection, the Court recognized that Plaintiffs’
25 retain standing under the overbreadth doctrine, which “functions as an exception
26 to the general prohibition on a litigant’s raising another person’s legal rights.”
27

1 *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004) (internal
2 quotations omitted); *see also Young v. City of Simi Valley*, 216 F.3d 807, 815 (9th
3 Cir. 2000) (overbreadth doctrine “allows those who have suffered some
4 cognizable injury, but whose conduct may not be protected under the First
5 Amendment, to assert the constitutional rights of others.”). The City has presented
6 no evidence to persuade the Court that application of the overbreadth doctrine is
7 unjustified in this instance; at the same time, the sweeping language of the
8 Ordinance itself (penalizing all “persons” who “stand on a street or highway” and
9 engage in solicitation speech directed at motor vehicles), together with the
10 asserted harms it was purportedly enacted to redress (*see* Section II.B.1, *infra*),
11 allows for a reasonable inference that others, who are not presently before the
12 Court, will be subject to prosecution under its provisions and thereby chilled from
13 engaging in speech in the first instance. *Accord Young*, 216 F.3d at 815 (“The
14 overbreadth doctrine is based on the observation that ‘the very existence of some
15 broadly written laws has the potential to chill the expressive activity of others not
16 before the court.’”) (quoting *Forsyth County v. Nationalist Movement*, 505 U.S.
17 123, 129, 120 L. Ed. 2d 101, 112 S. Ct. 2395 (1992)); *see also Gooding v. Wilson*,
18 405 U.S. 518, 521, 92 S. Ct. 1103; 31 L. Ed. 2d 408 (1972) (overbreadth doctrine
19 a necessary component of First Amendment jurisprudence “because persons
20 whose expression is constitutionally protected may well refrain from exercising
21 their rights for fear of criminal sanctions . . .”).²

22
23 ² The Court would note that, to the extent that the speech proscribed by the
24 Ordinance is purely “commercial” speech, application of the overbreadth doctrine may be
25 unwarranted. *See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489,
26 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982); *but c.f. Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d
27 1099, 1111-1112 (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). However, neither party has raised this
issue at any time during the course of this litigation.

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

3 **II. Constitutionality of the Ordinance**

4 Streets, highways and public sidewalks are “traditional public fora,” in
5 which “First Amendment protections are subject to heightened scrutiny.” *Board of*
6 *Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 573, 107 S. Ct. 2568, 96 L.
7 Ed. 2d 500 (1987); *see also Schneck v. Pro-Choice Network*, 519 U.S. 357, 377
8 (1997) (public speech “is at its most protected on public sidewalks, a prototypical
9 example of a traditional public forum”). However, “even in a public forum the
10 government may impose reasonable restrictions on the time, place, or manner of
11 protected speech, provided the restrictions are justified without reference to the
12 content of the regulated speech, that they are narrowly tailored to serve a
13 significant governmental interest, and that they leave open ample alternative
14 channels for communication of the information.” *Ward v. Rock Against Racism*,
15 491 U.S. 781, 791, 109 S. Ct. 274, 105 L. Ed. 2d 661 (1989) (quoting *Clark v.*
16 *Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S. Ct. 3065, 82 L.
17 Ed. 2d 221 (1984)).³

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

23 ³ This test is generally recognized as involving “intermediate” scrutiny. If a
24 regulation is content-discriminatory, it is subject to “strict” scrutiny, such that it will be upheld
25 only if it is (1) narrowly tailored to promote a compelling government interest; and (2) the least
26 restrictive means available. *See, e.g. United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803,
27 813 (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).

1 desire.

2 **A. Whether the Ordinance is Content-Neutral**

3 **1. General Test**

4 “The principal inquiry in determining content neutrality, in speech cases
5 generally and in time, place, or manner cases in particular, is whether the
6 government has adopted a regulation of speech because of disagreement with the
7 message it conveys.” *Ward*, 491 U.S. at 791 (internal citations omitted); *see also*
8 *Glendale Assocs., Ltd. v. NLRB*, 347 F.3d 1145, 1155 (9th Cir. 2003) (“California
9 courts and the United States Supreme Court . . . hold that speech-regulating rules
10 are content-neutral when the rule is not related to the subject or topic of the
11 speech.”) (internal citations omitted). However, as the Supreme Court has
12 repeatedly recognized, “[d]eciding whether a particular regulation is content based
13 or content neutral is not always a simple task” *Bartnicki v. Vopper*, 532 U.S.
14 514, 526, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001) (quoting *Turner*
15 *Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642-643, 129 L. Ed. 2d 497, 114
16 S. Ct. 2445 (1994)). This case appears to be no exception.

17 Plaintiffs argue that the Ordinance is content-discriminatory on its face
18 because it bans only “solicitation” speech, such that law enforcement officials can
19 only determine if a particular individual’s speech is violative of its provisions by
20 “looking to the *content* of the speaker’s message.” *See, e.g., Glendale Assocs.*,
21 347 F. 3d at 1155 (“A rule is defined as a content-based restriction on speech
22 when the regulating party must examine the speech to determine if it is
23 acceptable.”); *see also S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1145 (9th
24 Cir. 1998).⁴ The City counters by arguing that the Ordinance is virtually identical

25
26 ⁴ Plaintiffs are correct in that solicitation speech cannot be distinguished from other
27 speech by traditionally content-neutral criteria such as volume, appearance of the speaker, or
accompanying non-verbal conduct such as gestures.

1 to that at issue in the Ninth Circuit's opinion in *ACORN v. City of Phoenix*, 798
2 F.2d 1260 (9th Cir. 1986), which the Court explicitly held to be content-neutral.

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

7 On its face, the Phoenix ordinance does not single out any group
8 or the content of any speech. The ordinance applies even-
9 handedly to every organization or individual, regardless of
10 viewpoint, which would desire to solicit contributions, business
11 or employment from the occupants of vehicles traveling on
12 Phoenix streets. Any argument that this ordinance was passed to
13 suppress the particular political views expressed by ACORN is
14 contradicted by the parties' own stipulation in the pretrial order
that the ordinance was adopted to promote the city's interest in
"public peace, health and safety." The ordinance is thus "content
neutral."

15 *Id.* at 1267.

16 Plaintiffs insist that the *ACORN* Court improperly conflated the concept of
17 content-neutrality with the narrower concept of "viewpoint" neutrality and/or that
18 its analysis has been superceded by subsequent Supreme Court and Ninth Circuit
19 decisions. In particular, Plaintiffs reference the Supreme Court's subsequent
20 decision in *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 113 S.
21 Ct. 1505, 123 L. Ed. 2d 99 (1993), in which the Court struck down a municipal
22 regulation prohibiting the distribution of commercial publications through
23 sidewalk newsracks, but permitting the distribution of newspapers via the same
24 means. The Court determined that, because it effected a ban only on
25 "commercial" publications, the regulation was content-based. 507 U.S. at 429
26 ("Under the city's newsrack policy, whether any particular newsrack falls within
27

1 the ban is determined by the content of the publication resting inside that
2 newsrack. Thus, by any commonsense understanding of the term, the ban in this
3 case is “content-based.”).

4 Plaintiffs suggest that there is no difference between the Ordinance in this
5 case and the regulation at issue in *Discovery Network*, as the Ordinance inflicts a
6 similar ban on all speech within a clearly delineated subcategory—i.e.,
7 “solicitation” speech. However, the Court concludes that Plaintiffs’ reading of
8 *Discovery Network* is overly simplistic. In addition to noting that the regulation
9 drew an obvious distinction between commercial and non-commercial
10 publications, the Court explained that the *justification* for this distinction could
11 not possibly be content-neutral. The Court noted that the only interests the city
12 advanced in support of the ban were interests in safety and esthetics. *Id.* The
13 Court explained that these interests could not possibly be advanced by a ban on
14 solely “commercial” publications:

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

26 *Id.* at 425-46. Because the ban on commercial versus non-commercial
27 publications could not be “*justified* without reference to the content of the

1 regulated speech,” *Ward*, 491 U.S. at 791 (internal citations omitted), it was
2 clearly a content-based regulation.⁵

3 Bans on in-person solicitation speech, in contrast, are more readily justified
4 without reference to their essential content—i.e., the invitation for an exchange of
5 money or promises. As the Court in *ACORN* recognized, there is “a distinction
6 between the purely communicative aspect of oral advocacy on the one hand, and
7 the solicitation of contributions on the other hand, which can prove more
8 disruptive of order and crowd flow.” *ACORN*, 798 F.3d at 1268; *see also Doucette*
9 *v. City of Santa Monica*, 955 F.Supp. 1192, 1204 (C.D. Cal. 1997) (“A restriction
10 on solicitation may be content-neutral even if it regulates solicitation while
11 leaving other speech untouched, because the regulation focuses on the inherently
12 disruptive nature of the solicitation itself, and not on the content of the speech.”).
13 Indeed, as the City points out, several other circuits as well as the California
14 Supreme Court have all reached the conclusion that bans on solicitation speech
15 similar to the ban at issue in *ACORN* are content-neutral. *See, e.g., ACORN v. St.*
16 *Louis County*, 930 F.2d 591, 594 (8th Cir. 1991); *International Society for*
17 *Krishna Conciousness of New Orleans (ISKCON) v. City of Baton Rouge*, 876
18 F.2d 494 (5th Cir. 1989); *Los Angeles Alliance for Survival v. City of Los Angeles*,
19 22 Cal. 4th 352 (2000); *cf., Iskcon of Potomac, Inc. v. Kennedy*, 61 F.3d 949, 954
20 (D.C. Cir. 1995). Finally, the Supreme Court, via its decision in *United States v.*
21 *Kokinda*, 497 U.S. 720, 110 S. Ct. 3115, 111 L. Ed. 2d 571 (1990), has suggested,

22 ⁵ Other Supreme Court and Ninth Circuit cases that post-date *Discovery Network*
23 have also emphasized the language in *Ward* that refers to a regulation’s justification or purpose.
24 *See, e.g., Bartnicki*, 532 U.S. at 526 (“In determining whether a regulation is content based or
25 content neutral, we look to the purpose behind the regulation; typically, ‘government regulation
26 of expressive activity is content neutral so long as it is *justified* without reference to the content
27 of the regulated speech.”) (quoting *Ward*, 491 U.S. at 791) (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.”).

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

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

10 2. Secondary Effects Doctrine

11 Even assuming arguendo that Ordinance is content-based on its face, it may
12 nonetheless be analyzed as a content-neutral regulation under the “secondary
13 effects” doctrine. *See, e.g., Crawford v. Lungren*, 96 F.3d 380, 385 (9th Cir. 1996)
14 (“Some regulations which are seemingly content-based are analyzed as content-
15 neutral regulations if the government shows that they are justified by a desire to
16 eliminate a ‘secondary effect’ – an undesirable effect only indirectly related to the
17 content or communicative impact of the speech.”) (citing *City of Renton v.*
18 *Playtime Theaters, Inc.*, 475 U.S. 41, 47- 49, 106 S. Ct. 925, 89 L. Ed. 2d 29
19 (1986)). *See also Tollis, Inc. v. San Bernardino County*, 827 F.2d 1329, 1332 (9th
20 Cir. 1988) (“If . . . the predominant purpose of the ordinance is the amelioration of
21 secondary effects in the surrounding community, the ordinance is content-
22 neutral”) (internal citations omitted); *Colacurcio v. City of Kent*, 163 F.3d 545,
23 551-53 (9th Cir. 1998), *cert. denied*, 529 U.S. 1053, 146 L .Ed. 2d 459, 120 S. Ct.
24 1553 (2000) (finding that an ordinance which required nude dancers to perform at
25 least ten feet away from patrons was content-neutral because it targeted
26 “secondary effects” of “prostitution, drug dealing, and other criminal activity”).
27

1 In *Colacurcio*, the Ninth Circuit examined various “objective indicators of
2 intent” to determine whether the purpose of the ordinance at issue was to suppress
3 speech or ameliorate secondary effects. These indicators included the face of the
4 statute, the effect of the statute, comparison to prior law, facts surrounding
5 enactment, the stated purpose, and the record of proceedings. *Id.* at 552.

6 Applying these factors to the present case, the Court concludes that the Ordinance
7 is justified by a desire to eliminate “secondary effects” which are only indirectly
8 related to the content or communicative impact of the proscribed speech.

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

16 At the same time, the City presents evidence regarding the history of the
17 enactment of the Ordinance, to which Plaintiffs do not object, that supports the
18 existence of a non-speech related purpose. First, a memo dated March 17, 1987
19 from the City Attorney to the Mayor and City Council, proposing the Ordinance’s
20 initial enactment, states that the City has had “extreme difficulties with persons
21 soliciting employment from the sidewalks along the Artesia corridor over the last
22 several years” and that “[t]here can be little question that traffic and safety hazards
23 occur by this practice.” Exhibit R.⁶ The City also submits a letter from the
24 Redondo Beach Business Association to the Mayor (albeit dated February 18,

25
26 ⁶ The memo also compares the proposed ordinance to other laws, stating that the
27 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.”

1 1988, *after* the Ordinance was enacted). The letter notes that the “problem” of
2 “the gathering of day laborers lining Artesia Blvd. hoping to obtain work”
3 resurfaces without constant re-enforcement of the Ordinance. Exhibit S. The
4 City submits a second memorandum, dated January 3, 1989, proposing the
5 amendment to the Ordinance to add subsection (b). That memorandum states that
6 the Ordinance “was designed to alleviate sidewalk congestion and traffic hazards
7 which occurred when large numbers of persons congregated on the sidewalks
8 during the rush hours to obtain temporary employment.” Exhibit T.

9 The City also offers “testimonial” evidence concerning the statute’s
10 purportedly non-speech related purpose, in the form of a declaration from Officer
11 Rody A. Contreras, who has been employed as a police officer in Redondo Beach
12 since 1986. Officer Contreras declares that the City has, for the past 15 years,
13 experienced “numerous traffic problems with day laborers who solicit employment
14 at the intersection of Artesia Boulevard and Felton Lane, and at the intersection of
15 Manhattan Beach Boulevard and Inglewood Avenue.” Officer Contreras also
16 asserts that citizen complaints have grown along with the size of the groups and
17 that these complaints pertain to interruption of traffic flow as well as acts of
18 vandalism, litter, and urination near businesses.⁷

19 Finally, with regard to the effect of the statute, Plaintiffs have submitted
20 evidence that it primarily affects day laborers. The City does not disagree, to the
21 extent that it recognizes that its October 2004 enforcement efforts were known as
22

23 ⁷ Plaintiffs object to this portion of Mr. Contreras’ declaration on the grounds that it
24 consists of unsubstantiated factual conclusions and constitutes inadmissible hearsay, to the extent
25 that it recounts “unsubstantiated constituent complaints.” However, in his capacity as an active
26 police officer, Mr. Contreras would have personal knowledge of the presence of day laborers at
27 the specific intersections and any concomitant traffic problems. With respect to his statements
concerning the citizen 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*.

1 “The Day Labor Enforcement Project” and that “mass” arrests of day laborers
2 occurred on particular dates. Def. Opp. to Statement of Uncontroverted Facts at 5,
3 8. The existence of these facts does not, however, indicate that the Ordinance is
4 aimed at the content or communicative impact of speech.

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

16 Contrary to Plaintiffs’ assertions, the Ninth Circuit’s recent decision in
17 *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005) does not purport to
18 clarify *Boos* in any way or otherwise hold that the secondary effects doctrine is
19 limited to “sexual or pornographic speech.” Rather, *Gammoh* is another example
20 of the Court applying the “secondary effects” doctrine to the facts of the case
21 before it. Indeed, the fact that the Court has affirmatively stated the secondary
22 effects doctrine applies to pornographic speech does not mean it does not apply to
23 speech in other categories.

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

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

3 **1. Significance of The City's Asserted Interests**

4 The City contends that the Ordinance was enacted to protect and promote
5 the following interests: (1) traffic flow and safety; (2) crime prevention; (3)
6 esthetics. If it finds that any one of these interests is "significant," the Court must
7 address the question of whether the Ordinance is in fact "narrowly tailored" to
8 further that interest. *See, e.g., Edwards v. City of Santa Barbara*, 150 F.3d 1213,
9 1216 (9th Cir. 1998) ("A single legitimate government interest may be sufficient
10 to sustain a content-neutral regulation.") (citing *Heffron v. Int'l Soc'y for Krishna*
11 *Consciousness, Inc.*, 452 U.S. 640, 650 n.13, 69 L. Ed. 2d 298, 101 S. Ct. 2559
12 (1981)). For the reasons discussed below, the Court so finds.

13 First, it is virtually axiomatic that the City has a "significant" interest in
14 traffic flow and safety. *Accord Heffron*, 452 U.S. at 650 ("As a general matter, it
15 is clear that a State's interest in protecting the 'safety and convenience' of persons
16 using a public forum is a valid governmental objective"); *see also ACORN*, 798
17 F.2d at 1268 (recognizing "the substantial risk of disruption in crowd or traffic
18 control that may be presented by solicitation of contributions, as compared to
19 other forms of expression."). The City's interest in crime prevention is similarly,
20 intrinsically significant. *See Martin v. Struthers*, 319 U.S. 141, 144, 63 S. Ct. 862,
21 87 L. Ed. 1313 (1943). Finally, numerous courts have recognized that cities and
22 municipalities have a significant interest in maintaining the esthetic appearance of
23 their public fora (often in tandem with an interest in traffic safety). *Accord*
24 *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-508, 101 S. Ct. 2882, 69
25 L. Ed. 2d 800 (1981) ("Nor can there be substantial doubt that the twin goals that
26 the ordinance seeks to further—traffic safety and the appearance of the city—are
27 substantial governmental goals"); *G.K. Ltd. Travel v. City of Lake Oswego*, 436

1 F.3d 1064 (9th Cir. 2006) (“Against the backdrop of numerous decisions of the
2 Supreme Court and this court, we do not doubt that Lake Oswego’s interests in its
3 appearance and the safety of the public are significant and well established.”).

4 **2. Tailoring**

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

16 **a. Traffic and Pedestrian Safety**

17 The City maintains that the Court must find that the Ordinance is narrowly
18 tailored to promote “traffic flow and safety” because it “was based specifically on
19 the Phoenix ordinance” at issue in *ACORN*, *supra*. Mot. at 17. However, *ACORN*
20 involved an essentially “as-applied” challenge to the Phoenix ordinance on behalf
21 of a political activist organization (“ACORN”) that engaged in highly specific
22 tactics to attract the attention of passing motorists. These tactics, known as
23 “tagging,” involved an activist “stepping into the street and approaching an
24 automobile when it is stopped at a red traffic light.” *ACORN*, 798 F.2d at 1262.
25 That same individual would then proceed to “ask[] the occupants of the vehicle for
26 a contribution to ACORN and distribute[] a slip of paper, or ‘tag,’ providing

1 information about ACORN and its activities.” *Id.* Also, the *ACORN* Court
2 specifically noted that the Phoenix ordinance did not clearly target individuals
3 soliciting from a sidewalk and/or from locations not “in direct proximity to the
4 street.” *Id.* at 1269, n.9.

5 Thus, by its very terms, the Ordinance at issue here sweeps in a much larger
6 amount of “solicitation” speech and speech-related conduct than the ordinance at
7 issue in *ACORN*. First, the Ordinance unequivocally applies to individuals who
8 stand on the *sidewalk*. These individuals may or may not attempt to stop the flow
9 of traffic; although a given day laborer may signal a given vehicle and its
10 occupants to “stop” and confer, he or she may just as readily signal for that
11 individual to pull into an adjacent parking lot. Indeed, the various photographs
12 submitted by the City show that the sidewalks that run along the relevant streets
13 and intersections go back several feet, such that the Ordinance would reach an
14 individual standing well away from the flow of traffic and who merely holds up a
15 sign inviting the occupants of vehicles to drive to a private location to confer.
16 Exhibits A-Q. Such activity is a far cry from the “tagging” tactics employed by
17 the political activists in *ACORN*. Compare *ACORN*, 798 F.2d at 1272 (“[T]he
18 district court concluded there was no evidence to suggest that the Phoenix
19 ordinance curtailed any activity other than solicitation from vehicles at an
20 intersection. We agree.”), with *Coalition for Humane Immigrant Rights of Los*
21 *Angeles (CHIRLA) v. Burke*, 2000 U.S. Dist. LEXIS 16520 *18 (C.D. Cal. 2000)
22 (striking down city ordinance banning solicitation of motor vehicles by day
23 laborers where the ordinance reached “even a solicitor who stands on the
24 sidewalk, away from the curb, and unobtrusively attempts to make known to the
25 occupants of the vehicle his availability for work.”). Second, because the
26 Ordinance does not define the terms “solicit,” or “business,” it may plausibly

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1 apply to an individual attempting to hail a cab or a bus or any of a number of other
2 activities that do not interrupt the general flow of traffic and that were left entirely
3 unanalyzed by the *ACORN* decision.⁸ Moreover, as this Court has already noted,
4 “the risk of drivers being ‘distracted’ appears to be significantly less where the
5 drivers are actively seeking the services of day laborers instead of being suddenly
6 and unwillingly approached by strangers.” Findings of Fact and Conclusions of
7 Law, December 15, 2005, at 9.

8 The ordinance is similarly overbroad with respect to the prohibition on
9 motorists. The City makes much of the fact that “there is no place along Artesia
10 Boulevard or Manhattan Beach Boulevard, where the day laborers congregate,
11 where parking is legal.” However, as it is written, the Ordinance in fact applies to
12 solicitation of employment from occupants of *lawfully* parked vehicles or vehicles
13 stopped on residential streets on which there may or may not be significant traffic.
14 Indeed, by its plain terms, the Ordinance would apply to a motorist who stops, on
15 a residential street, to inquire whether a neighbor’s teen-age daughter or son would
16 be interested in performing yard work or babysitting. The City’s response to such
17 an argument is that the Ordinance has never been and would not be enforced in
18 such a situation, viz., where no actual safety issues are presented. *See* Defs.
19 Mot. at 19; Reply at 9-10. However, the fact that the City admits that it will
20 enforce the Ordinance only when the activity at issue actually implicates traffic
21 safety (and/or only when day laborers are involved) confirms that the Ordinance is
22 overbroad, and raises serious equal protection concerns. *See, e.g.,* Kenneth Karst,
23 *Equality as a Central Principle in the First Amendment*, 43 Chi.L.Rev. 20, 38
24 (1975-76) (“One of the evils of an overly broad statute is its potential for selective

25 ⁸ In fact, the Ordinance would technically apply to children selling lemonade on the
26 sidewalk in front of their home, as well as to Girl Scouts selling cookies on the sidewalk outside
27 of their school.

1 enforcement. Police who look charitably on a postgame victory celebration in the
2 streets of a college town may not feel the same way about anti-war
3 demonstrations.”). Also, as Plaintiffs point out, predicating an individual’s
4 criminal liability under the Ordinance on whether the solicited driver actually
5 “stops” his or her vehicle would allow “residents who are hostile to day laborers” to
6 “catalyze an arrest or citation” simply by so stopping. This would improperly
7 “confer broad powers of censorship, in the form of a ‘heckler’s veto,’” on these
8 individual residents. *Reno v. ACLU*, 521 U.S. 844, 880, 117 S. Ct. 2329, 138 L.
9 Ed. 2d 874 (1997).

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

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

23 **b. Crime Prevention and Esthetics**

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

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

17 3. Alternative Avenues for Communication

18 It is the City's burden to prove that the Ordinance leaves day laborers (and
19 others) with adequate alternative avenues of communication. *Lim v. City of Long*
20 *Beach*, 217 F.3d 1050, 1054 (9th Cir. 2000). The City may meet this burden
21 through the introduction of evidence showing that the day laborers may
22 communicate their message and obtain the same advantages therefrom (i.e.,
23 employment) through other means than standing on the sidewalk and soliciting
24 motor vehicles. *See, e.g., Members of City Council v. Taxpayers for Vincent*, 466
25 U.S. 789, 812, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984). The City argues that
26 such a showing may be readily made because the Ordinance, as plainly written,
27

1 leaves day laborers with the option of congregating in the parking lots of adjacent
2 businesses and soliciting drivers from *that* vantage point. Nevertheless, it has
3 presented no evidence that any of the local businesses whose parking lots abut the
4 public sidewalks would allow this practice.

5 Indeed, as the Court has already recognized, parking lots of private
6 businesses are not necessarily treated as public fora. As it did in its Opposition to
7 the Court's Order to Show Cause Re: Preliminary Injunction, the City relies on
8 *Prunyard Shopping Center v. Robins*, 447 U.S. 74, 64 L.Ed. 2d 741, 100 S.Ct.
9 2035 (1980) and *Glendale Assocs., supra*, as well as *Kuba v. I-A Agric. Ass'n*, 387
10 F.3d 850 (9th Cir. 2004) and *Carreras v. City of Anaheim*, 768 F.2d 1039, 1042
11 (9th Cir. 1985). Each of those cases involved major private shopping centers or
12 stadiums which attracted thousands of patrons per day and/or encompassed
13 numerous businesses; the Courts held that these features rendered the location the
14 functional equivalent of a traditional public forum. However, California courts
15 have eschewed the application *Prunyard* to smaller spaces, such as the parking
16 lots of large grocery stores. *See, e.g., Albertson's Inc. v. Young*, 107 Cal. App. 4th
17 106, 121 (Cal. Ct. App. 2003) ("[T]he smaller the business, the more weight the
18 owners' rights will have."); *Trader Joe's Co. v. Progressive Campaigns, Inc.*, 73
19 Cal. App. 4th 425, 433 (Cal. Ct. App. 1999). In the instant case, the photographs
20 submitted by the City reveal that the businesses that abut the sidewalks on Artesia
21 Boulevard and Manhattan Beach Boulevard consist of even smaller, individual
22 proprietor-type operations, such as a doughnut shop, gas stations, restaurants and a
23 "7-Eleven." Exhibits A-Q. Thus, their parking lots would be unlikely to be
24 regarded by state or federal courts as the equivalent of public fora for First
25 Amendment purposes.

26 Moreover, as this Court previously noted:

1 The Supreme Court based its holding in *Pruneyard* on the fact that
2 the shopping center “may restrict expressive activity by adopting
3 time place and manner regulations that will minimize interference
4 with its commercial function” Since shopping centers may
5 restrict expressive activities on their property, their parking lots
6 do not constitute an adequate alternative forum for the solicitation
7 of employment, business or contributions. While the shopping
8 centers in Redondo Beach may not have such time, place and
9 manner regulations at the present time, they may very well
implement them if day laborers moved there.⁹ Day laborers who
did not abide by such restrictions would risk being charged with
trespass.

10 Findings of Fact and Conclusions of Law, December 15, 2004, at 12 (quoting
11 *Pruneyard*, 477 U.S. at 83). *Accord CHIRLA*, 2000 U.S. Dist. LEXIS 16520 at
12 *41 (“Trespass is not an ‘ample alternative avenue’ to speaking in a public
13 forum.”). Thus, the Court finds that the City has failed to present evidence that
14 the adjacent parking lots are adequate alternative avenues of communication for
15 Plaintiffs’ members.

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

24 ⁹ Indeed, it is reasonable to infer that the businesses whose parking lots front the
25 sidewalks *will* attempt to restrict solicitors, as these are the very same businesses that lodged the
26 complaints about the day laborers’ presence that prompted the City to pass the Ordinance in the
27 first instance.

1 at motor vehicles, speech (signs, shouting) or speech-related conduct (gestures)
2 directed at pedestrians may be inadvertently construed by law enforcement officers
3 to be directed at passing cars as well. *See id.* at *22-23 (“Although the County
4 argues that the Ordinance permits speakers to solicit pedestrians and the occupants
5 of legally parked cars, it is difficult to see how a solicitor could direct his speech at
6 these listeners in the vicinity of a public street or driveway without experiencing a
7 reasonable and chilling fear that he would be prosecuted under the Ordinance.”).

8 Finally, the mere existence of various “labor centers” or “hiring halls” in the
9 greater Los Angeles metropolitan area is insufficient to support a finding that there
10 exist “adequate alternative channels” for Plaintiffs’ members’ speech.¹⁰ While it is
11 true that Plaintiffs have not disclosed the names and addresses of their members
12 such that the Court might determine their relative proximity to a “labor center,”
13 the fact remains that none of the centers referenced by the City are located *within*
14 its borders. Nor has the City endeavored to create such a center or designate other
15 public property as a place for facilitating exchanges between day laborers and
16 potential employers. *Compare Xiloj-Itzep v City of Agoura Hills*, 24 Cal. App. 4th
17 620, 645 (Cal. Ct. App. 1994) (city-sponsored “telephone hiring exchange”
18 constituted ample alternative channel for communication.).

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

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26 ¹⁰ The City has produced no actual evidence attesting to the existence of these
27 centers; it simply refers to them by reference to a list contained on Plaintiff NDLO’s website.

1 **III. Evidentiary Objections**

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

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

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

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

22 The portions of the Contreras declaration which describe the extent of the
23 City's problems with day laborers and the complaints are relevant to establish the
24 motivation for the Ordinance's enactment. To the extent that Contreras'
25 statements regarding the citizens' complaints are offered and considered only for
26 the limited purpose of showing the effect they had on the City Council—i.e., that
27

1 they motivated the council members to enact the Ordinance—they are admissible
2 non-hearsay. *See L.A. News Serv. v. CBS Broad., Inc.*, 305 F.3d 924, 936 (9th Cir.
3 2002) (“Out-of-court declarations introduced to show the effect on the listener are
4 not hearsay.”). Moreover, as a patrol field sergeant who has been with the
5 Redondo Beach Police Department since 1986, Mr. Contreras has sufficient
6 personal knowledge of these facts. Accordingly, the Court **OVERRULES**
7 Plaintiffs’ objections to these portions of his declaration.

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

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

20 **C. Plaintiffs’ Objections to the Declaration of W. Michael Webb**

21 Plaintiffs also object to portions of the Declaration of W. Michael Webb, the
22 current City Attorney for the City of Redondo Beach. Webb describes the history
23 and precise nature of the complaints the City has received regarding congregating
24 day laborers since 1981 and mentions that the City tried, without success, to
25 address the complaints using existing laws. (§§ 3-4.) He then describes, based on
26 his review of the legislative history, the City’s enactment of each section of the
27

1 ordinance. (¶¶ 5-6.) Finally, he authenticates and describes the contents of three
2 documents from the legislative history “file” of the Ordinance. (¶¶ 7-9.)

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

22 With respect to Webb’s statements concerning citizen complaints about day
23 laborers’ involvement in littering, vandalism, and public urination more generally,
24 and the City’s efforts to curtail these problems prior to its enactment of the
25 Ordinance (¶¶ 3-6), Plaintiffs object that they lack foundation. As Webb has
26 obtained his knowledge of the complaints only from his review of Exhibits R-T,
27

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

3 **CONCLUSION**

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

8 It is hereby ORDERED that:

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

16
17 (2) Any and all fines, penalties, or records of infractions of Redondo
18 Beach Municipal Code § 3-7.1601 shall be rescinded or removed and
19 restitution provided.

20
21 IT IS SO ORDERED.

22 Date: April 27, 2006

23 
24 **CONSUELO B. MARSHALL**
25 **UNITED STATES DISTRICT JUDGE**