

REPORT TO CITY COUNCIL

DATE: MAY 23, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: CANDICE K. LEE, ASSISTANT CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, REPEALING SECTION 3209 (PROHIBITION OF SOLICITATION IN PUBLIC RIGHT-OF-WAY) OF CHAPTER 2 (TRAFFIC REGULATIONS) OF TITLE III (PUBLIC SAFETY) OF THE AGOURA HILLS MUNICIPAL CODE

This report addresses the adoption of an ordinance repealing the City's ordinance prohibiting solicitation in the public right-of-way.

Section 3209(a) of the Agoura Hills Municipal Code currently prohibits a person, while standing in any portion of the public right-of-way, from soliciting or attempting to solicit employment, business, or monetary contributions or other property from any person traveling in a vehicle along the public right-of-way.

Section 3209(b) of the Agoura Hills Municipal Code prohibits an occupant of any vehicle from soliciting or attempting to solicit employment, business or monetary contributions or other property from a person who is within the public right-of-way.

A recent Ninth Circuit case invalidated the City of Redondo Beach's "no solicitation in the public right-of-way" ordinance. In *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 942 (9th Cir. 2011) ("*Redondo Beach*"), the district court found the Redondo Beach street solicitation ordinance to be an unconstitutional restraint on speech and thus barred the City of Redondo Beach ("Redondo Beach") from enforcing the ordinance. The Ninth Circuit reversed the district court's decision in 2010, but an en banc panel of the Ninth Circuit re-reviewed this decision and affirmed the district court's decision, holding that the ordinance in question was a facially unconstitutional restriction on speech.

The Redondo Beach ordinance barred individuals from "stand[ing] on a street or highway and solicit[ing], or attempt[ing] to solicit, employment, business, or contributions from an occupant of any motor vehicle," and it had a reciprocal provision to prevent the motorists from "stop[ping], park[ing] or stand[ing] a motor vehicle on a street or highway from which any occupant attempts to hire" another person.

In its analysis, the Ninth Circuit court assumed the ordinance to be content neutral and applied a test that allows the government to impose “reasonable restrictions on the time, place, or manner of protected speech.” Even so, the Ninth Circuit court invalidated Redondo Beach’s ordinance, holding that the ordinance was not narrowly tailored because: (1) the ordinance regulated significantly more speech than necessary to achieve Redondo Beach’s purpose of improving traffic flow and safety; and (2) Redondo Beach could have achieved these goals through less restrictive measures.

First, the Ninth Circuit court found that Redondo Beach’s ordinance applied to children selling lemonade on the sidewalk and Girl Scouts selling cookies, prohibited food vendors from advertising to passing motorists, and applied to charity carwashes. Second, although Redondo Beach introduced evidence of traffic problems in only a small number of major streets and medians, the ordinance applied to all streets and sidewalks, which the Court called “geographically overinclusive.” Third, the ordinance did not distinguish between lawfully parked cars and those moving in traffic. The Court found that although the legal test did not require Redondo Beach to employ the least-restrictive means, Redondo Beach had many less-restrictive options of addressing its concerns, including enforcing jaywalking and other traffic laws and portions of its municipal code regarding interference with traffic.

The City of Agoura Hills’s ordinance contains provisions that are very similar to those found deficient in the *Redondo Beach* case. Therefore, in light of the *Redondo Beach* case, we recommend that the City repeal its “no solicitation in the public right-of-way” ordinance.

RECOMMENDATION

Staff respectfully recommends the City Council introduce, read by title only, and waive further reading of Ordinance No. 12-397, An Ordinance of the City Council of the City of Agoura Hills, California, Repealing Section 3209 (Prohibition Of Solicitation In Public Right-of-Way) of Chapter 2 (Traffic Regulations) of Title III (Public Safety) of the Agoura Hills Municipal Code.

Attachment A: Ordinance No. 12-397

ORDINANCE NO. 12-397

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, REPEALING SECTION 3209 (PROHIBITION OF SOLICITATION IN PUBLIC RIGHT-OF-WAY) OF CHAPTER 2 (TRAFFIC REGULATIONS) OF TITLE III (PUBLIC SAFETY) OF THE AGOURA HILLS MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, does ordain as follows:

SECTION 1. Section 3209 (Prohibition of Solicitation in Public Right-of-Way) of Chapter 2 (Traffic Regulations) of Title III (Public Safety) of the Agoura Hills Municipal Code is hereby repealed in its entirety.

SECTION 2. The City Clerk shall certify to the passage of this ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and this ordinance shall become effective thirty (30) days after its passage.

INTRODUCED this 23rd day of May, 2012.

PASSED, APPROVED, AND ADOPTED this ___ day of ____, 2012, by the following vote:

- AYES: ()
- NOES: ()
- ABSTAIN: ()
- ABSENT: ()

BY:

John M. Edelston, Mayor
City of Agoura Hills

ATTEST:

APPROVED AS TO FORM:

Kimberly M. Rodrigues, MMC, City Clerk
City of Agoura Hills

Craig A. Steele, City Attorney
City of Agoura Hills