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 CENTRAL DISTRICT OF CALIFORNIA  
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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

Comite de Jornaleros de Glendale, *et al.*,  
 Plaintiffs,  
 v.  
 City of Glendale,  
 Defendant.

NO. CV 04-3521 SJO (Ex)

**ORDER GRANTING MOTION FOR  
 PRELIMINARY INJUNCTION**

Plaintiffs Comite de Jornaleros de Glendale ("Comite de Jornaleros"), or Committee of Day Laborers of Glendale, and the National Day Laborer Organizing Network ("NDLON") bring this motion for preliminary injunction to enjoin the City of Glendale ("the City") from enforcing § 9.17.030 of the Glendale Municipal Code (hereinafter, "the Anti-Solicitation Ordinance" or "the Ordinance"), as amended. GLENDALE MUNICIPAL CODE § 9.17.030 (2004).<sup>1</sup> The motion is brought on the grounds that the Ordinance, as amended, violates the protected free-speech rights of day

<sup>1</sup> The court takes notice that Plaintiffs failed to comply with Local Rule 11-3.2 because some of the pages in their Mem. of P. & A. exceeded 28 lines. See *e.g.*, Mot. 8-10. Defendant's Opposition also violated this court's Initial Standing Order's requirement that "No opposition shall exceed fifteen (15) pages." See Initial Standing Order at page 6.

1 laborers.<sup>2</sup> Mot. 3. Having thoroughly considered all the pleadings and arguments, the court  
2 issues its ruling. Plaintiffs' motion to temporarily enjoin Defendant from enforcing § 9.17.030 is  
3 GRANTED. Plaintiffs' request to enjoin enforcement of other regulations in place that ameliorate  
4 secondary disruptive and undesirable effects caused by solicitation is DENIED.

5 The sole issue presented is whether the Anti-Solicitation Ordinance, as amended, deprives  
6 Plaintiffs and others of rights guaranteed by the First Amendment and Fourteenth Amendment  
7 of the United States Constitution. U.S. CONST. amends. I, XIV.

8 I. FACTUAL BACKGROUND

9 This action stems from the City of Glendale's enforcement of its Anti-Solicitation Ordinance.  
10 This civil rights action challenges the constitutionality of Glendale Municipal Code § 9.17.030.

11 A. The Parties

12 The Comite de Jornaleros is comprised of day laborers who sought and regularly seek day  
13 work in the City of Glendale. First Amended Complaint (hereinafter, "FAC") ¶ 2. These day  
14 laborers want to make their availability for day work known through means prohibited by the  
15 Ordinance. *Id.*

16 NDLO is a nationwide coalition of day laborers. FAC ¶ 3. Plaintiffs submit that the aims  
17 of the coalition include working for the repeal or invalidation of laws that restrict the right of day  
18 laborers to solicit lawful employment. *Id.* NDLO serves and includes day laborers who want to  
19 make their availability for day work known in the City of Glendale through means prohibited by the  
20 Ordinance. *Id.*

21 Defendant City of Glendale is an incorporated municipality located in Los Angeles County.  
22 *Id.* ¶ 4. Glendale adopts municipal ordinances through a five-member city council and enforces  
23 these ordinances through the Glendale police department.

24  
25  
26 <sup>2</sup> Day laborers are hired as independent contractors by homeowners, small businesses, and  
27 construction contractors on a temporary basis to perform odd jobs such as gardening, tree  
28 trimming, yard clean-up, moving, construction work, child care, house cleaning, and elder care.  
Declaration of Veronica Federovsky in Supp. of Pls.' Mot. for Prelim. Inj. (hereinafter, "Federovsky  
Decl.") ¶ 8.

1           B.     Plaintiffs' Factual Allegations

2           In 1996, the City enacted § 9.17.030 of the Glendale Municipal Code. GLENDALE  
3 MUNICIPAL CODE § 9.17.030 (1996) (amended 2004). The Ordinance made it "unlawful for any  
4 person, while standing in any portion of the public right-of-way, including, a street, roadway,  
5 sidewalk, parkway, alley, highway, and driveway, to solicit or attempt to solicit, employment,  
6 business or contributions of money or other property from any person traveling in a vehicle along  
7 a public right-of-way including but not limited to a street, roadway, sidewalk, parkway, alley or  
8 driveway." GLENDALE MUNICIPAL CODE § 9.17.030(A) (1996). The Ordinance also made it  
9 "unlawful for any person while the occupant of any vehicle, to solicit, or attempt to solicit,  
10 employment . . . from a person who is within the public right-of-way, including any street, roadway,  
11 sidewalk, parkway, alley or driveway." GLENDALE MUNICIPAL CODE § 9.17.030(B) (1996).

12           Plaintiffs allege that although the City has admitted that the Ordinance was constitutionally  
13 suspect, it has refused to repeal it. FAC ¶ 6. Further, Plaintiffs allege that while eschewing the  
14 issuance of citations under the Ordinance, the City's police department continued to enforce the  
15 provision by issuing warnings.

16           On June 29, 2004, the City amended §§ 9.17.010, 9.17.020, and 9.17.030. The purpose  
17 of the amended Anti-Solicitation Ordinance

18           is to protect the health and welfare of the general public and promote safer and  
19 more efficient traffic flow in Industrial and Commercial Zones by reasonably  
20 regulating the time, place and manner of the solicitation of employment and/or  
21 business from pedestrians and occupants of vehicles on the public right-of-way and  
22 in public and private parking areas.

23 GLENDALE MUNICIPAL CODE § 9.17.010 (2004). The Ordinance, as amended, according to §  
24 9.17.010, "[is] content neutral and [is] not intended and [does] not restrict the right of free speech  
25 or alternative channels of communication."

26           In Plaintiffs' view, § 9.17.030, as amended, is the same as its previous version. The  
27 amended § 9.17.030 (A) provides that:

28           No person shall stand in or on any street, roadway, curb, parkway, alley, highway,  
and driveway, and solicit or attempt to solicit, employment, business or contributions  
of money or other property from the occupant of any vehicle while that vehicle is  
located on any public street roadway, alley, highway or driveway and not lawfully

1 parked within, or immediately adjacent to, any Industrial or Commercial Zone within  
2 the City.

3 GLENDALE MUNICIPAL CODE § 9.17.030(A) (2004). Subdivision B of § 9.17.030, as amended,  
4 mirrors subdivision A and provides that:

5 No person, while the occupant of any vehicle located on any public street, roadway,  
6 alley, highway or driveway and not lawfully parked, shall solicit, or attempt to solicit  
7 employment, business or contributions of money or other property from a person  
8 who is on or within any street, roadway, curb, parkway, alley or driveway within, or  
9 immediately adjacent to, any Industrial or Commercial Zone within the City.

8 GLENDALE MUNICIPAL CODE § 9.17.030(B) (2004).

9 Plaintiffs allege that § 9.17.020, as amended, defines prohibited solicitation in a manner  
10 intended to reach day laborers alone by, for example, excluding from the proscription any person  
11 "using signs." FAC ¶ 9.<sup>3</sup>

12 Plaintiffs aver that § 9.17.030, as amended, discriminates among speech and other  
13 expressive activity on the basis of content, prohibiting and prescribing criminal penalties for  
14 speech of particular content while speech of different content, even if expressed in the same time,  
15 place, and manner, is not proscribed or regulated. FAC ¶ 14.<sup>4</sup> Plaintiffs also claim that §  
16 9.17.030 regulates lawful, non-misleading commercial speech and lacks a compelling or  
17 substantial legitimate governmental interest in regulating speech and expression. *Id.* ¶¶ 15-16.  
18 Further, Plaintiffs claim that the provision is unduly vague and not sufficiently tailored to serve any  
19 appropriate governmental interest. *Id.* ¶¶ 17-18.

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22 <sup>3</sup> The Ordinance, as amended, defines "solicit" and "solicitation" as "[t]he act of making a  
23 request, offer or announcement by use of the spoken word, bodily act or gesture." GLENDALE  
24 MUNICIPAL CODE § 9.17.020(1) (2004). The act "shall be deemed completed when made, whether  
25 or not an employment relationship is created." GLENDALE MUNICIPAL CODE § 9.17.020(2) (2004).

26 <sup>4</sup> Plaintiffs explain that since the employment of day laborers is informal, the employers and  
27 day laborers do not find each other through conventional means such as advertising. Federovsky  
28 Decl. ¶ 9. Rather, day workers announce their availability for work through the very act of  
gathering in a particular area, by gesture, and by otherwise signaling their desire to work. *Id.*  
They make themselves visible in a public area, often near or in the area of a home repair store.  
*Id.*

1           Because Plaintiffs believe that the original § 9.17.030 chills the First Amendment rights of  
2 day laborers, Plaintiffs filed this 42 U.S.C. § 1983 action on May 19, 2004. The First Amended  
3 Complaint, filed on July 2, 2004, following the adoption of the amended version of § 9.17.030,  
4 superceded the original Complaint. Plaintiffs' *First Claim* based on 42 U.S.C. § 1983, alleges that  
5 § 9.17.030, as amended, deprives Plaintiffs and others of rights guaranteed by the First  
6 Amendment and Fourteenth Amendment of the United States Constitution. The *Second Claim*  
7 seeks a declaration of Plaintiffs' rights with regard to § 9.17.030 and of the challenged actions of  
8 enforcement.

9           Among other things, Plaintiffs pray that Defendant be enjoined from enforcing § 9.17.030  
10 or from undertaking other acts to discourage the speech the code section makes unlawful.  
11 Plaintiffs also seek a court order declaring § 9.17.030 unconstitutional.

12           On August 10, 2004, the City commenced enforcement of the amended Anti-Solicitation  
13 Ordinance.

14           Plaintiffs seek a preliminary injunction to prevent the City of Glendale from enforcing §  
15 9.17.030. Plaintiffs contend they will be irreparably harmed by the enforcement of the Ordinance  
16 in that Plaintiffs' members face not only the loss of First Amendment freedoms, but also  
17 diminishing employment opportunities, loss of livelihoods, and in some cases, homelessness.  
18 Plaintiffs cite to *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136 (9th Cir. 1998) for the proposition  
19 that due to the ongoing abrogation of First Amendment rights imposed by the Anti-Solicitation  
20 Ordinance, irreparable harm must be presumed.

21           Further, Plaintiffs argue that they are likely to succeed on the merits because the  
22 Ordinance is indistinguishable from a statute considered and invalidated as content-discriminatory  
23 in *Cincinnati v. Discovery Network*, 507 U.S. 410 (1993).

24           Finally, Plaintiffs assert that the Ordinance is also an invalid time, place, and manner  
25 restriction.

26           C.     Defendant's Factual Allegations

27           Defendant posits that the Ordinance, as amended, passes constitutional muster.  
28 Defendant asserts that the main difference between the amended and the original Ordinance is

1 that the amended Ordinance *exempts sidewalks* from the areas wherein solicitation is prohibited.  
2 Opp'n 8.

3 As a matter of background, beginning in the mid-1990's, the City of Glendale experienced  
4 problems related to the activities of day laborers who were soliciting work from drivers passing by  
5 the street.<sup>5</sup> Distaso Decl. ¶ 2. In their search for work, these laborers assembled on sidewalks  
6 and streets at three main locations: Dunn-Edwards paint store (at the corner of Broadway and  
7 Jackson), Home Depot (at San Fernando and Harvard), and a U-Haul store (located on South  
8 Brand Boulevard). *Id.* When vehicles pulled out of the parking lots, laborers would rush into the  
9 street and swarm vehicles in an effort to obtain employment. Opp'n 4. According to the  
10 Defendant, this situation created a danger to the laborers, to the drivers of vehicles, and to  
11 uninvolved vehicles and pedestrians. Distaso Decl. ¶ 3. It also created traffic hazards and  
12 congestion. *Id.* Further, the situation obstructed streets and sidewalks. *Id.* Defendant claims  
13 that, in the course of congregating, the day laborers littered, trespassed, urinated and defecated  
14 in public, became involved in fights with one another, and generally disturbed the peace of the  
15 neighborhood. *Id.* Additionally, the day laborers began congregating at one of the locations in  
16 the evening hours which fostered drinking and drug use. *Id.* Repeated traditional policing  
17 attempts to resolve these problems failed. *Id.*

18 In 1994, the Glendale police department formed a "Community Police PartnerShip" or  
19 "COPPS unit," now known as Community Policing and Problem Solving ("COPPS"). COPPS' goal  
20 was to address long term and recurring problem areas and issues which were not being remedied  
21 by traditional policing. *Id.* ¶ 4. One of the first problems that the COPPS unit was called upon to  
22 address was related to the issues created by day laborers who were soliciting work at specific  
23 locations throughout the City. *Id.*

24 As a result of a comprehensive study, COPPS officers, in partnership with the community,  
25 proposed a five-step approach for solving the problems related to day laborers: (1) locate a site  
26

27  
28 <sup>5</sup> There is little doubt that the number of solicitors, both day laborers and employers who stop  
their vehicles illegally to pick up laborers, increased in the last several years.

1 for a day laborer facility; (2) develop a site that included a drive-up section, staff office, waiting  
2 area, access for the disabled, telephones, benches, shade, drinking water, restrooms, hand  
3 washing areas, and trash receptacles; (3) establish staffing for the facility; (4) create an ordinance  
4 that would encourage day laborers and employers to use the facility and discourage day laborers  
5 from seeking employment on city streets; and (5) establish an outreach program. Carrillo Decl.  
6 ¶ 4.

7 In August 1996, the City adopted the original § 9.17.030. GLENDALE MUNICIPAL CODE §  
8 9.17.030 (1996) (amended 2004). *Id.* ¶ 5.

9 In February 1997, the Glendale Temporary Skilled Worker Center (hereinafter, the  
10 "Center") opened across from Home Depot at Harvard Street and San Fernando Road. *Id.* The  
11 City worked in cooperation with the Catholic Charities of Los Angeles, Inc. ("Catholic Charities"),  
12 a social service provider, to hire a coordinator for the site. *Id.*

13 Through outreach, the day laborers were urged to go to the Center. Defendant observes  
14 that, in addition to having a better opportunity to obtain employment, laborers also took advantage  
15 of a variety of social services offered at the Center including English language instruction and  
16 computer classes. *Id.* ¶ 7. Although initially there was no charge for the Center, the laborers  
17 offered in 1998 to pay monthly dues to cover a budgetary deficit. *Id.* ¶ 10.

18 In 2000, following Judge George H. King's decision to strike down a County of Los Angeles  
19 ordinance similar to Glendale's (as it existed at that time), the City of Glendale decided to stop  
20 enforcing the Ordinance. Distaso Decl. ¶ 8.

21 Thereafter, according to the Defendant, from approximately 2001 through 2004, the  
22 situation involving solicitation began to deteriorate, particularly at the Home Depot location. *Id.*  
23 ¶ 9. Resident and business owner complaints increased as did the number of incidents in the  
24 area requiring police response. *Id.*

25 In 2003, the police department began exploring the possibility of amending § 9.17.030 due  
26 to an escalation of the problems. Opp'n 7. According to the police, there was an increase of  
27 complaints to the police department regarding the day laborers. *Id.* The nature of the complaints  
28 were the same as experienced previously: public drinking and intoxication, public urination,

1 trespassing, possession of controlled substances, illegal vending activity, littering, disturbances  
2 or fights, and aggressive solicitation and "vehicle swarming." Hansen Decl. ¶ 3.

3 Since the first week in April, police personnel initiated 27 detainment and enforcement  
4 actions. Distaso Decl. ¶ 12. This enforcement resulted in the arrest of or the issuance of citations  
5 to 25 individuals for a variety of violations ranging from trespassing to inhibiting the flow of traffic.  
6 *Id.* Included in these enforcement actions are contractors who stopped illegally in the roadway  
7 causing traffic hazards for other motorists. *Id.* The overall enforcement activity at and around  
8 Home Depot from January 2004 to April 2004 totaled 82 incidents involving 25 arrests or citations.  
9 *Id.*

10 On June 29, 2004, the City Council adopted an amended § 9.17.030. As mentioned, the  
11 City claims that the main difference between the amended and original Ordinance is that the  
12 amended Ordinance exempts sidewalks from the areas prohibited from solicitation.

13 In an effort to make the Center more accessible, the City Council agreed to absorb the cost  
14 of the Center for one year and make the Center free for all who wanted to use it. *Id.* ¶ 13.

15 The Center is open from 6:00 a.m. to 4:00 p.m., seven days per week, 365 days per year.  
16 Young Decl. ¶ 2. Several employees of Catholic Charities are present at the site to assist in the  
17 operation. When employers drive into the Center, they are met by one or more employees of  
18 Catholic Charities who determine by speaking to the prospective employer how many workers are  
19 needed and what type of work will be undertaken. *Id.* ¶ 4. These employees also discuss the  
20 hourly rate that the workers will be paid. *Id.*

21 At the Center, workers waiting for employment have the following amenities available to  
22 them: restrooms, bottled water, a 32" television, tables and benches in the shade, vending  
23 machines, and pay phones. *Id.* ¶ 6. Additionally, workers are allowed to use the Center's phone  
24 to call employers. *Id.* The Center has arranged for a food truck to come to the location twice a  
25 day. *Id.*

26 Catholic Charities has been tasked by the City of Glendale with promoting and marketing  
27 the Center. *Id.* ¶ 9. Lora Young coordinates the distribution of fliers and door hangers (printed  
28 by the City of Glendale at its expense) which advertise the Center and the availability of skilled



1 workers at the site. *Id.* The fliers are distributed by day laborers on a volunteer basis through all  
2 of Glendale, La Cañada, Pasadena, and some parts of Los Angeles. *Id.*

3 The City seeks an order denying the instant motion on the grounds that the Ordinance, as  
4 amended, is a valid time, place, and manner regulation; is not unduly vague; and provides for  
5 alternate avenues for solicitation.

6 II. LEGAL STANDARD

7 A party seeking preliminary injunctive relief must meet one of two tests: "either a likelihood  
8 of success on the merits and the possibility of irreparable injury, or that serious questions going  
9 to the merits were raised and the balance of hardships tips sharply in its favor." *Immigrant*  
10 *Assistance Project of the Los Angeles County Fed'n of Labor v. Immigration and Naturalization*  
11 *Serv.*, 306 F.3d 842, 873 (9th Cir. 2002). The Ninth Circuit explained that "these two alternatives  
12 represent 'extremes of a single continuum,' rather than two separate tests." *Id.* (citing *Sun*  
13 *Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1119 (9th Cir. 1999)). The greater the  
14 relative hardship to the moving party, the less it has to show the probability of success. *Id.*  
15 However, even if the balance of hardships tips decidedly in favor of a party moving for preliminary  
16 injunction, it must be shown as an irreducible minimum that there is a fair chance of success on  
17 the merits. *Stanley v. University of Southern California*, 13 F.3d 1313, 1319 (9th Cir. 1994). On  
18 the other end of the continuum, a preliminary injunction may also be granted even though the  
19 harm factor favors the defendant, provided that there is a strong likelihood of success on the  
20 merits. *Id.*; see also *Immigrant Assistance Project of the Los Angeles County Fed'n of Labor*, 306  
21 F.3d at 873. Depending on the nature of the case, the court may also consider whether the public  
22 interest favors granting relief. See *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427,  
23 1430 (9th Cir. 1995); *Environmental Info. Prot. Ctr., Inc. v. Pacific Lumber Co.*, 67 F. Supp. 2d  
24 1090, 1103 (N.D. Cal. 1999).

25 A preliminary injunction is an extraordinary and drastic remedy, one that should not be  
26 granted unless the movant, by a clear showing, carries the burden of persuasion. See *Mazurek*  
27 *v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*). There is a distinction to be made between  
28 a mandatory preliminary injunction and a prohibitory preliminary injunction. See *Stanley*, 13 F.3d

1 at 1319-20. A prohibitory injunction preserves the status quo. *Id.* at 1320 (*citing Johnson v. Kay*,  
2 860 F.2d 529, 541 (2d Cir. 1988)). Whereas a mandatory injunction "goes well beyond simply  
3 maintaining the status quo *pendente lite* [and] is particularly disfavored." *Id.* (*quoting Anderson*  
4 *v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)). Accordingly, when the court is considering  
5 a request for mandatory preliminary relief that goes well beyond maintaining the status quo  
6 *pendente lite*, the Ninth Circuit instructs that "courts should be extremely cautious about issuing  
7 a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir.  
8 1984). "When a mandatory preliminary injunction is requested, the district court should deny such  
9 relief 'unless the facts and law clearly favor the moving party.'" *Stanley*, 13 F.3d at 1320.

10 In the instant case, Plaintiffs seek to restrain and enjoin Defendant from enforcing §  
11 9.17.030, as amended. Because the requested relief seeks the disturbance of the status quo  
12 *pendente lite*, the instant motion is properly termed mandatory injunction.

### 13 III. DISCUSSION

#### 14 A. Likelihood of Success on the Merits

15 It is well-established that solicitation is a form of speech recognized by the First  
16 Amendment. *United States v. Kokinda*, 497 U.S. 720, 725 (1990). However, "the degree of  
17 protection afforded to an interest within the scope of the First Amendment depends in substantial  
18 part upon the forum in which the activity is pursued." *ACORN v. City of Phoenix*, 798 F.2d 1260,  
19 1264 (9th Cir. 1986).

20 Public property is divided into three broad categories for First Amendment purposes. The  
21 first category comprises traditional public fora: places which "have immemorially been held in  
22 trust for the use of the public and, time out of mind, have been used for purposes of assembly,  
23 communicating thoughts between citizens, and discussing public questions." *Hague v. Committee*  
24 *for Indus. Org.*, 307 U.S. 496, 515-16 (1939). A traditional public forum has as "a principal  
25 purpose . . . the free exchange of ideas." *International Soc'y for Krishna Consciousness, Inc. v.*  
26 *Lee*, 505 U.S. 672, 679 (1992). Certain public locales such as sidewalks, streets, and parks have  
27 been recognized as traditional public fora, which have by long tradition been devoted to assembly  
28

1 and debate. *ACORN*, 798 F.2d at 1264. The government's ability to restrict speech in such  
2 places is very limited. See *United States v. Grace*, 461 U.S. 171, 177 (1983).

3 The court does not discuss the other two categories inasmuch as they are irrelevant for the  
4 purposes of the instant motion.

5 1. The City of Glendale's Anti-Solicitation Ordinance is Content-Neutral.

6 The Ordinance, as amended, regulates the time, place, and manner of expression in  
7 traditional public fora where the government's ability to regulate speech is most restricted. Mot.  
8 6; Opp'n 12. The City's Ordinance does not ban the solicitation altogether, but rather regulates  
9 the locales and manner in which such solicitation may occur.

10 On its face, the Ordinance applies even-handedly to every person, regardless of viewpoint,  
11 who desires to solicit employment, business, or contribution of money from occupants of vehicles  
12 located on Glendale streets and not lawfully parked. The City does not restrict other forms of  
13 communication, such as political or religious advocacy or the distribution of literature. The  
14 ordinance is accordingly analyzed as a form of time, place or manner regulation. *ACORN*, 798  
15 F.2d at 1267.

16 In assessing the constitutionality of an ordinance that limits the time, place or manner of  
17 speech in a public forum, a court must determine whether the statute is content-neutral or content-  
18 based. See *Tollis, Inc. v. San Bernadino County*, 827 F.2d 1329, 1332 (9th Cir. 1987). If it is  
19 content-based, the court applies strict scrutiny to determine whether the statute is tailored to  
20 "serve a compelling state interest and is narrowly drawn to achieve that end." *Simon & Schuster,*  
21 *Inc. v. New York Crime Victims Bd.*, 502 U.S. 105, 118 (1991) (quotation omitted). However, if  
22 the statute is content neutral, the government may enforce it provided the ordinance (1) is  
23 narrowly tailored to serve a significant governmental interest, and (2) leaves open ample  
24 alternative channels for communicating the information. *ACORN*, 798 F.2c at 1267. As the  
25 Supreme Court instructed, "even in a public forum the government may impose reasonable  
26 restrictions on the time, place, or manner of protected speech, provided the restrictions 'are  
27 justified without reference to the content of the regulated speech, that they are narrowly tailored  
28 to serve a significant governmental interest, and that they leave open ample alternative channels

1 for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)  
2 (emphasis added).

3 Regulations of solicitation have repeatedly been found content-neutral. See, e.g., *Kokinda*,  
4 497 U.S. 720, 736 (1990); *Heffron v. Int’l Soc. for Krishna Consciousness*, 452 U.S. 640, 649  
5 (1981); *ACORN*, 798 F.2d at 1267; *ISKCON of Potomac, Inc. v. Kennedy*, 314 U.S. App. D.C. 63,  
6 61 F.3d 949, 954-58 (D.C. Cir. 1995). A restriction on solicitation may be content-neutral even  
7 if it regulates solicitation while leaving other types of speech untouched, because the regulation  
8 focuses on the inherently disruptive nature of solicitation itself, and not on the content of the  
9 speech. *Kokinda*, 497 U.S. at 736.

10 Plaintiffs contend that the Ordinance at issue is content-based, “because it singles out  
11 solicitation speech, but leaves other speech – such as artistic, political, or religious – untouched.”  
12 Mot. 7. Plaintiffs argue that the challenged Ordinance can only be enforced with reference to the  
13 content of expression. *Id.* The court concludes otherwise.

14 The court in *Carreras v. City of Anaheim*, 768 F.2d 1039 (9th Cir. 1985), held that a similar  
15 law that prohibited and regulated solicitation in areas near Anaheim was content-based. The  
16 court held that, under state constitutional law, the ordinance worked as an impermissible content  
17 discrimination because it singled out for regulation speech involving solicitation of donations. *Id.*  
18 Nevertheless, *Carreras*, which was relied upon by Plaintiffs, is inapposite to the instant case  
19 because *Carreras* applied state constitutional law. More importantly, the California Supreme  
20 Court has clarified recently that regulations that single out a particular type of solicitation should  
21 not be necessarily viewed as content-based or constitutionally suspect for purposes of analysis  
22 under article I, section 2(a), of the California Constitution. *Los Angeles Alliance for Survival v. City*  
23 *of Los Angeles*, 22 Cal. 4th 352, 378 (2000).

24 Plaintiffs also cite *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) as the  
25 standard for determining content discrimination. Mot. 9. In *Discovery Network*, the court held that  
26 a municipal ordinance prohibiting sidewalk news racks dispensing commercial publications, but  
27 permitting news racks distributing newspapers, was content-based because “the very basis of the  
28

1 regulation is the difference in content between ordinary newspapers and commercial speech.”  
2 *Id.* at 429.

3 The instant case is distinguishable from *Discovery Network* because the Ordinance only  
4 limits the place and manner in which solicitation may occur.

5 Defendant cites *Los Angeles Alliance for Survival*, 22 Cal.4th at 352, for the proposition  
6 that regulations of solicitation are content-neutral. Opp’n 13. *Los Angeles Alliance* differs from  
7 the instant case. *Los Angeles Alliance* addressed the proper standard under California state law  
8 for analyzing the constitutionality of ordinances governing the public solicitation of funds. *Id.* at  
9 356. The court noted that public solicitation of funds referred to “in-person requests for the  
10 immediate donation or payment of money.” *Id.* The matter here does not involve solicitation for  
11 immediate payment of money or involve constitutionality under state law.

12 Defendant also cites *ACORN v. City of Phoenix*, 798 F.2d 1260 (9th Cir. 1986) in which the  
13 Ninth Circuit determined that an ordinance prohibiting fund solicitation from occupants of vehicles  
14 was content-neutral. The instant Ordinance is similar to the ordinance involved in *ACORN* in that  
15 it did not ban solicitation of contributions altogether, but rather regulated “the locale and  
16 permissible targets for such activity.” *Id.* at 1267.

17 Plaintiffs claim that *ACORN* was incorrectly decided, because the court conflated the  
18 doctrine of content neutrality with the doctrine of viewpoint neutrality. Mot. 9, n. 4.

19 There is a distinction between content-neutrality and viewpoint neutrality. Here, the  
20 Ordinance is viewpoint neutral in that it applies even-handedly to every organization or individual,  
21 regardless of viewpoint. *Id.* at 1267. It is seemingly content-based in that it singles out an entire  
22 subcategory of speech – solicitation. Nevertheless, a restriction on solicitation may be considered  
23 content-neutral even if it regulates solicitation while leaving other types of speech untouched  
24 where the regulation focuses on the inherently disruptive nature of solicitation itself, and not on  
25 the content of the speech. *Kokinda*, 497 U.S. at 736. As observed by Judge George H. King, a  
26 seemingly content-based regulation may be analyzed as content-neutral “if the government shows  
27 [as the City of Glendale has done] that they are justified by a desire to eliminate a ‘secondary  
28 effect’ – an undesirable effect only indirectly related to the content or communicative impact of

1 the speech." *Coalition for Humane Immigrant Rights of Los Angeles v. Burke*, No. CV 98-  
2 4863 GHK, 1999 WL 33288183 (C.D. Cal. Oct. 29, 1999) (hereinafter, "*CHIRLA I*") (citation  
3 omitted).

4 Plaintiffs' argument, *i.e.*, that an anti-solicitation regulation such as the one before this court  
5 could be characterized as content-based, has been considered and ultimately rejected by Judge  
6 George H. King in *CHIRLA I*, 1999 WL 33288183, at \* 8. The court finds Judge King's decision  
7 in *CHIRLA I* persuasive.

8 In *CHIRLA I*, the court held that the County of Los Angeles' anti-solicitation ordinance was  
9 content-neutral. *CHIRLA I*, 1999 WL 33288183 at \* 8. The subject ordinance provides:

10 It shall be unlawful for any person, while standing in any portion of the public right-  
11 of-way, including but not limited to public streets, highways, sidewalks and  
12 driveways, to solicit, or attempt to solicit, employment, business, or contributions of  
13 money or other property, from any person traveling in a vehicle along a public right-  
of-way, including, but not limited to, public streets, highways or driveways. The  
provisions of this Section shall only be operative in the unincorporated areas of the  
County.

14 LOS ANGELES COUNTY, CA. CODE § 13.15.011 (1994). Section 13.15.012 provides:

15 It shall be unlawful for any person, while the occupant of a moving vehicle, to solicit,  
16 or attempt to solicit, employment, business, or contributions of money or other  
17 property, from a person who is within the public right-of-way, including but not  
limited to a public street, highway, sidewalk, or driveway. The provisions of this  
Section shall only be operative in the unincorporated areas of the County.

18 LOS ANGELES COUNTY, CA. CODE § 13.15.012 (1994).

19 The court in *CHIRLA I* observed that "as an initial matter, the ordinance appear[ed] to be  
20 content-discriminatory." *CHIRLA I*, 1999 WL 33288183, at \*3. Nevertheless, Judge King  
21 cautioned that the fact that the subject ordinance appeared to be content-discriminatory is not  
22 quite the end of the inquiry. *Id.* Judge King observed that:

23 Some regulations which are seemingly content-based are analyzed as content-  
24 neutral regulations if the government shows that they are justified by a desire to  
25 eliminate a "secondary effect"--an undesirable effect only indirectly related to the  
content or communicative impact of the speech.

26 *Id.* (citing *Crawford v. Lundgren*, 96 F.3d 380, 385 (9th Cir.1996). Judge King then turned to the  
27 issue of whether the County of Los Angeles was justified by its desire to eliminate a "secondary  
28 effect."

1 In holding that the subject ordinance was content-neutral, Judge King relied, *inter alia*, on  
2 *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48-49 (1986). In *Renton*, the Supreme  
3 Court upheld a city ordinance restricting the location of adult theaters, holding that the ordinance  
4 was content-neutral because it was directed not at the content of the movies shown in the  
5 theaters, but at the "secondary effects" that adult theaters allegedly produced in surrounding  
6 neighborhoods. *Id.* The court in *CHIRLA I* observed that the "Secondary Effects Doctrine"  
7 articulated in *Renton* is not limited in its application to "disfavored" or "proscribable" speech.  
8 *CHIRLA I*, 1999 WL 33288183, at \*3. Instead, the doctrine was equally applicable in cases  
9 involving solicitation. *Id.* at \* 5.

10 Having concluded that the secondary effects doctrine applies to solicitation, the court in  
11 *CHIRLA I* went on to apply the *Colacurcio Test* on the facts presented before the court to  
12 determine whether the Los Angeles County ordinance targeted secondary effects. The Ninth  
13 Circuit test stated that:

14 If the ordinance is predominantly aimed at the suppression of first amendment  
15 rights, then it is content-based and presumptively violates the first amendment. If,  
16 on the other hand, the predominant purpose of the ordinance is the amelioration of  
17 secondary effects, then the ordinance is content-neutral and the court must then  
determine whether the ordinance passes constitutional muster as a content-neutral  
time, place, and manner regulation.

18 *Colacurcio v. City of Kent*, 163 F.3d 545, 551 (9th Cir.1998) (citing *Tollis*, 827 F.2d at 1332). The  
19 court in *CHIRLA I* elaborated the test as follows:

20 The government . . . bears the burden of proving that a speech regulation is justified  
21 by a desire to eliminate a secondary effect. To carry this burden, the government  
22 may rely on evidence reasonably believed to be relevant to the problem that the city  
23 addresses, including the experiences of other jurisdictions. In determining whether  
24 a law's purpose is to alleviate secondary effects, a court should look to all objective  
indicators of intent, such as (1) the face of the statute; (2) the effect of the statute;  
and (6) the record of proceedings.

25 *CHIRLA I*, 1999 WL 33288183, at \*5 (citations and internal quotations omitted). Having  
26 considered all relevant factors, the court in *CHIRLA I* concluded that the Los Angeles County anti-  
27 solicitation ordinance, as it existed at that time, was content-neutral. *Id.* at \*8.

1           Glendale's Ordinance, like the County of Los Angeles' ordinance in *CHIRLA I*, was enacted  
2 to target the undesirable *secondary effects of solicitation* in the subject public fora. Specifically,  
3 Defendant has demonstrated that the conduct of the solicitors (both the day laborers and the  
4 employers who stop their vehicles illegally to pick up the laborers) creates traffic hazards, causes  
5 danger to pedestrians and drivers, and creates quality of life issues for the residents, business  
6 owners and solicitors. Opp'n 3-4. These problems regarding "traffic flow and safety, as well as  
7 the depositing of trash and other waste, qualify as secondary effects." 1999 WL 33288183, at \*6.

8           In determining whether the Ordinance's purpose is to alleviate secondary effects, the court  
9 must apply the *Colacurcio Test*.

10           (a)    *The Face of the Statute*

11           Like the Los Angeles County ordinance in *CHIRLA I*, the two operative sections of  
12 § 9.17.030, as amended, mirror each other.

13           The amended § 9.17.030(A) prohibits any person who is standing "in or on any street,  
14 roadway, curb, parkway, alley, highway, and driveway," from soliciting or attempting to solicit,  
15 "employment, business or contributions of money or other property from the occupant of any  
16 vehicle while that vehicle is located on any public street roadway, alley, highway or driveway and  
17 not lawfully parked within, or immediately adjacent to, any Industrial or Commercial Zone within  
18 the City." GLENDALE MUNICIPAL CODE § 9.17.030(A) (2004).

19           The amended § 9.17.030(B) prohibits any "occupant of any vehicle" from doing the same  
20 with regard to a person who is standing "on or within any street, roadway, curb, parkway, alley or  
21 driveway within, or immediately adjacent to, any Industrial or Commercial Zone within the City."  
22 GLENDALE MUNICIPAL CODE § 9.17.030(B) (2004).

23           Facially, the Ordinance appears to be directed at alleviating problems caused by  
24 communications between people in moving vehicles and people on the street, and not at  
25 suppression of solicitation speech due to disagreement with its content.



1 (b) The Effect of the Statute

2 Colacurcio gives little indication of what effect this factor is intended to measure. *Id.*  
3 Nevertheless, it is imperative to note that since the enforcement of the amended Anti-Solicitation  
4 Ordinance, the number of day laborers registered at the Center has increased, and the number  
5 of day laborers loitering on City streets has decreased. Opp'n 11. Defendant submits that at least  
6 from August 10, 2004 through the time the Opposition was filed on August 24, 2004, the police  
7 department was unaware of any citizen complaints relating to day laborers. Distaso Decl. ¶ 15.

8 (c) Comparison to Prior Law

9 Defendant admits that the original version of the Ordinance was similar to the County of  
10 Los Angeles ordinance that was before Judge King in *CHIRLA I*. Opp'n 6.

11 Notwithstanding the court's finding the Los Angeles County ordinance was content-neutral,  
12 *CHIRLA I*, 1999 WL 33288183, at \*9, the court struck down the ordinance as unconstitutional on  
13 the grounds that it was not narrowly tailored and it failed to leave open ample alternative avenues  
14 of communication. *Coalition for Humane Immigrant Rights v. Burke*, 2000 U.S. Dist. LEXIS 16520  
15 \*43 (C.D. Cal. 2000) (hereinafter, "*CHIRLA II*").

16 The Glendale Ordinance, as amended, needs to be narrowly tailored; is vague; and does  
17 not clearly provide that sidewalks are an alternative avenue of communication. The fact that  
18 Glendale's Anti-Solicitation Ordinance was amended to exempt sidewalks from the areas  
19 prohibited from solicitation demonstrates an effort on the part of the City to enact an ordinance  
20 that attempts to cure the deficiencies in its original version and the ordinance at issue in *CHIRLA I*.  
21 However, important shortcomings remain.

22 First, the City asserts that sidewalks are one alternative avenue of communication. Opp'n  
23 19. However, on the face of the statute, the amended Ordinance does not explicitly exempt  
24 sidewalks. See GLENDALE MUNICIPAL CODE § 9.17.030 (2004).

25 Further, the Ordinance is vague in its prohibition of solicitation from a curb. The Ordinance  
26 does not define the term "curb" in § 9.17.020. The boundaries of the curb's beginning and end  
27 points are not delineated. Accordingly, it is unclear what portion of the sidewalk if any, constitutes  
28 the curb.

1 Finally, the Ordinance prohibits solicitation from the street which it defines as "a way or  
2 place of whatever nature, publicly maintained and open to the use of the public for the purpose  
3 of vehicular travel." GLENDALE MUNICIPAL CODE § 9.17.020 (2004). The Ordinance's definition  
4 differs from common usage of the word "street," which is often used to refer to sidewalks.<sup>6</sup>

5 A second alternative avenue of communication asserted by Defendant is the Center.  
6 Although the establishment of a day laborer Center may constitute an ample alternative avenue  
7 for solicitation, Glendale's Center, operated by Catholic Charities, is a non-profit organization that  
8 has no legal obligation to continue providing services to day laborers. Should the Catholic  
9 Charities decide to discontinue the Center and pursue other service opportunities, this avenue of  
10 communication would be lost.

11 Moreover, this avenue of communication is not provided for in the Ordinance and would  
12 be lost should the Catholic Charities lose its funding for the Center. Indeed, the Center has  
13 already experienced a budget deficit in 1998. Opp'n 6. Defendant states that laborers offered  
14 to pay monthly dues of \$25 to cover the budgetary deficit. *Id.* The dues were in effect until July  
15 of 2004. Carrillo Decl. ¶ 10. Under these circumstances, and because of facial deficiencies in  
16 the amended Ordinance, the court cannot conclude that the Center suffices as an alternative  
17 avenue of communication.

18 (d) Facts Surrounding Enactment

19 Defendant submits that after it decided not to enforce the original § 9.17.030, the situation  
20 involving solicitation began to deteriorate, particularly at the Home Depot in San Fernando Blvd.  
21 According to Sgt. Mark Hanson, who had been assigned to COPPS since 2001, the situation was  
22 such that he advised the police department that there was an increase of calls to the location and  
23 citizen complaints regarding laborers. Opp'n 7; see also, Distaso Decl. ¶ 12

24  
25  
26 <sup>6</sup> Merriam-Webster's Collegiate Dictionary (10th ed.) defines "street" as "a thorough-fare esp.  
27 in a city, town, or village that is wider than an alley or lane and that *usu. includes sidewalks.*"  
28 (emphasis added). For example, the phrase "I was walking down the street" is widely understood  
to mean someone walking on the sidewalk and not on a place for vehicular travel. Presumably,  
if the Ordinance explicitly exempted sidewalks, confusion would be eliminated.

1 (e) The Stated Purpose

2 The stated purpose of the amended Anti-Solicitation Ordinance is  
3 to protect the health and welfare of the general public and promote safer and more  
4 efficient traffic flow in Industrial and Commercial Zones[.]

5 GLENDALE MUNICIPAL CODE § 9.17.010.

6 (f) The Record of Proceedings

7 The record of city council proceedings was not made available to the court for its  
8 consideration. Accordingly, this factor is neutral.

9 After considering all applicable factors, the court concludes that the City has shown that  
10 its principal purpose in passing the Ordinance was to alleviate significant secondary effects.  
11 Accordingly, the court concludes that the Ordinance is a content-neutral regulation.

12 2. The Ordinance Is Vague and Not Narrowly Tailored to Serve a Significant  
13 Governmental Interest.

14 (a) The City's Interests

15 The City contends that it has significant interest in reducing traffic congestion, assuring the  
16 safety of drivers and pedestrians, and preserving and improving (where possible) the quality of  
17 life of its residents and business owners. Opp'n 17.<sup>7</sup> In amending the Anti-Solicitation Ordinance,  
18 the council of the City added § 9.17.015, which *inter alia*, expressed that

19 ~~the approaching and solicitation by pedestrians directed to the occupants of~~  
20 ~~vehicles which are located in the public right-of-ways and roadways has caused a~~  
21 ~~significant public safety risk by causing vehicles to stop, impede and block the flow~~  
22 ~~of traffic in travel lanes within or adjacent to Industrial or Commercial zones and it~~  
23 ~~will be in the interest of the public health, safety and welfare to restrict the~~  
24 ~~solicitation acts that occur in, within, or directly affect traffic conditions upon any~~  
25 ~~public street, roadway or alley within the City.~~

26 GLENDALE MUNICIPAL CODE § 9.17.015 (2004). The City's asserted interests are significant enough  
27 to justify an appropriately tailored ordinance. The City has a significant interest in promoting the

28 <sup>7</sup> As mentioned previously, the Ordinance was enacted to:

protect the health and welfare of the general public and promote safer and more  
efficient traffic flow in Industrial and Commercial Zones[.]

GLENDALE MUNICIPAL CODE § 9.17.010.

1 safety of pedestrians and motorists and combating traffic congestion. See *Heffron*, 452 U.S. at  
2 650 ("It is clear that a State's interest in protecting the 'safety and convenience' of persons using  
3 a public forum is a valid governmental objective."); *ACORN*, 798 F.2d at 1263 ("The orderly flow  
4 of motorized traffic is a major concern in congested urban areas, particularly because an  
5 obstruction or delay in traffic at one point along a traffic artery results in delays and backups far  
6 back down the roadway."). In addition, the City has a significant interest in maintaining the quality  
7 of urban life, see *Young v. American Mini Theatres*, 427 U.S. 50, 71 (1976) (plurality opinion),  
8 which can translate into a significant interest in preventing activities such as harassment, littering,  
9 trespassing, and public urination and defecation. See *S.O.C., Inc.*, 152 F.3d at 1146 ("The  
10 County also may have a substantial interest in preventing solicitors from harassing pedestrians  
11 on streets and sidewalks."), amended by 160 F.3d 541 (9th Cir. 1998); *One World One Family*  
12 *Now v. Honolulu*, 76 F.3d 1009, 1013 (9th Cir. 1996) (cities have a substantial interest in  
13 protecting their aesthetic appearance by reducing visual clutter). Finally, in *CHIRLA II*, the court  
14 assumed that the County of Los Angeles has a significant interest in moderating the number of  
15 police needed to patrol its streets. 2000 U.S. Dist. LEXIS 16520 \*8.

16 Based on the aforementioned authorities, the court finds the Glendale Ordinance serves  
17 a significant governmental interest in reducing traffic congestion, assuring the safety of drivers and  
18 pedestrians, and preserving and improving the quality of life of its residents, business owners, and  
19 solicitors.

20 (b) Narrow Tailoring

21 The test for narrow tailoring places a burden on the City of Glendale to show that a  
22 "reasonable fit" exists between its legitimate interests and the terms of its Ordinance. *S.O.C.*, 152  
23 F.3d at 1148. This does not mean that the Ordinance must "be the least restrictive or the least  
24 intrusive means" of furthering the City's interests. *Colacurcio*, 163 F.3d at 553. The requirement  
25 of narrow tailoring is satisfied so long as the Ordinance promotes a substantial government  
26 interest that would be achieved less effectively absent the regulation, *id.*, and does not "burden  
27 substantially more speech than is necessary to further the government's legitimate interests."  
28 *Ward*, 491 U.S. at 799. In other words, the City must show that in enacting the particular

1 limitations, "it relied upon evidence permitting the reasonable inference that, absent such  
2 limitations," the proscribed speech would have harmful secondary effects. *Tollis*, 827 F.2d at  
3 1333.

4 In the instant case, Plaintiffs argue that the Defendant has readily available  
5 mechanisms – in the form of laws banning the solicitors' alleged behaviors – that easily address  
6 its concerns without targeting speech. Reply 3.

7 Further, Plaintiffs argue that the challenged ordinance sweeps too broadly, because it does  
8 not limit itself to solicitation activities that are asserted to present traffic safety problems. *Id.*  
9 Instead, the Ordinance regulates all solicitation speech (and even attempted solicitation)  
10 regardless of whether the speaker approaches vehicles, or whether vehicles stop, impede or block  
11 traffic. *Id.* at 3-4.

12 Additionally, Plaintiffs assert that the purported concerns such as public drinking, urination,  
13 trespassing, possession of controlled substances, illegal vending, littering, and disturbances are  
14 unrelated to solicitation speech. *Id.*

15 Finally, Plaintiffs argue that the Ordinance is under-inclusive (and therefore constitutes  
16 content discrimination) because the purported solicitation activities that relate to traffic safety  
17 problems are indistinguishable from political, religious, or other speech permitted to remain on  
18 Glendale's public rights-of-way.

19 The Supreme Court has instructed that restrictions on the time, place, or manner of  
20 protected speech are not invalid "simply because there is some imaginable alternative that might  
21 be less burdensome on speech." *Ward*, 491 U.S. at 797. As stated above, "a regulation of the  
22 time, place, or manner of protected speech must be narrowly tailored to serve the government's  
23 legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive  
24 means of doing so. Rather, the requirement of narrow tailoring is satisfied 'so long as the . . .  
25 regulation promotes a substantial government interest that would be achieved less effectively  
26 absent the regulation.'" *Id.* at 798-99.

27 "So long as the means chosen are not substantially broader than necessary to achieve the  
28 government's interest, . . . the regulation will not be invalid simply because a court concludes that

1 the government's interest could be adequately served by some less-speech-restrictive alternative."  
2 *Id.*

3 Here, the Plaintiffs contend that the Ordinance is overbroad because "[e]ven assuming  
4 sidewalks are exempt from the prohibitions of the ordinance, day laborers who announce and  
5 advertise their ability for work from a curb, parkway ('space between the street and the sidewalk'),  
6 alley, or driveway, and intend that interested vehicle occupants pull into a same parking space or  
7 loading zone to negotiate and agree on a hiring transaction, are nonetheless guilty of violating the  
8 ordinance." Reply 4, n.6.

9 Defendant notes that solicitation even on the curbs or "edges" of a street can cause similar  
10 traffic issues as if solicitation were taking place amidst traffic on streets and highways. Opp'n 19.  
11 However, the court sees no significant distinction between solicitation taking place on a sidewalk  
12 which Defendant asserts would be permissible under the Ordinance, and the curb or "edges" of  
13 a sidewalk. Moreover, the term "curb," which is not defined or delineated in the Ordinance, is too  
14 vague for the purpose of enforcing the statute.

15 In addition, although the Ordinance does not list "sidewalk" as a place where solicitation  
16 is prohibited, § 9.17.030 does list "street" and "curb" as prohibited places. Both of these terms  
17 may reasonably be interpreted to include sidewalks. To be sure, the common usage of the word  
18 "street" often includes the sidewalk.<sup>8</sup>

19 Likewise, it is also unclear where the curb ends and where the sidewalk begins. The  
20 vagueness of the Ordinance is likely to chill permissible speech inasmuch as the boundaries of  
21 permissible solicitation are unclear. An example of how the vagueness of the Ordinance may  
22 cause confusion and misunderstanding is found in an advertisement for the Center. Defendant's  
23 Opp'n, Ex. 2. The advertisement has in large, bold letters the word "Warning!" followed by  
24 language that states "The City of Glendale Has a law restricting solicitation for work. Illegal  
25 behavior includes: Soliciting work from portions of the public right-of-way." *Id.* The term "public  
26 right-of-way" is extremely broad and confusing. It is not at all clear from the advertisement that,  
27

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28 <sup>8</sup> See, *supra*, n. 6.

1 under the Ordinance, day laborers may continue to convey their availability for work verbally by  
2 standing on sidewalks.

3 Based on the foregoing, the court finds that the Ordinance is vague and not sufficiently  
4 tailored to achieve the City's interest in improving the quality of life of the laborers, residents, and  
5 business owners.<sup>9</sup>

6 3. The Ordinance Does Not Leave Open Ample Alternative Channels for  
7 Communication of the Information.

8 It is well-established that "the burden of proving alternative avenues of communication rests  
9 on" the government. *Seung Chun Lim v. City of Long Beach*, 217 F.3d 1050, 1054 (9th  
10 Cir. 2000).

11 Here, the City must at least make a reasonable and good faith showing that its proffered  
12 alternative avenues of communication provide a reasonable opportunity for Plaintiffs to convey  
13 their messages within the City. *CHIRLA II*, 2000 U.S. Dist. LEXIS 16520 '34. To meet this  
14 burden, the City explains that under the Ordinance, solicitation in any form is permitted on City  
15 sidewalks:

16 Solicitors can verbally announce their availability for work from the sidewalk; they  
17 can hold up signs advertising their availability or, as some workers do, they can  
18 utilize hand gestures with passing drivers. Alternatively, day laborers can announce  
19 their availability for work at the Temporary Skilled Worker Center. At the Center,  
20 laborers have 75% likelihood of obtaining work. Moreover, they are more likely to  
21 receive a fair and competitive wage. Additionally, the fact that they are at the  
22 Center, ready to work is announced to tens of thousands of local residents through  
23 fliers that are circulated.  
24 Opp'n 20.

25 As mentioned, the City has not satisfied the burden of showing alternative avenues of  
26 communication.

---

27 <sup>9</sup> Plaintiffs also claim that the Ordinance reaches all solicitation of employment, business, or  
28 contributions while the "evidence" that the Defendant presents relates solely to day laborers'  
29 solicitation of employment. *Id.* at 4. "[T]he government need not wait for accidents to justify  
30 safety regulations." *ACORN v. St. Louis County*, 930 F.2d at 596 (citing *United States Labor*  
31 *Party v. Oremus*, 619 F.2d 683, 688 n.4 (7th Cir. 1980) (in upholding ban on in-the-roadway  
32 solicitation court states that the State need not wait for personal injuries)). Accordingly, the fact  
33 that the "evidence" proffered by Defendant relates solely to day laborers' solicitation of  
34 employment is without probative value.

1 The first purported alternative avenue of communication is the sidewalk. Opp'n 19. The  
2 court cannot rely upon the availability of this avenue of communication because: (1) the  
3 Ordinance does not explicitly provide that solicitation may occur on a sidewalk; (2) the Ordinance  
4 is vague and the boundaries of permissible solicitation, with respect to sidewalk and curb, are  
5 unclear; and (3) the Ordinance prohibits solicitation from the street, which it defines as a place  
6 for vehicular travel, and may be misinterpreted since the common usage of the term "street"  
7 includes sidewalks.

8 Further, the court cannot conclude that the second alternative avenue that Defendant  
9 asserts – the Center – will continue to be available. The availability of the Center as an avenue  
10 for communication is not mentioned in the Ordinance and is contingent upon the funding and  
11 management decisions of a private organization. Defendant posits no other alternative avenues  
12 of communication.

13 In light of the foregoing, the court finds that the City's asserted alternative avenues are  
14 insufficient.

15 B. Irreparable Injury

16 "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably  
17 constitutes irreparable injury." S.O.C., 152 F.3d at 1148. Because Plaintiffs have demonstrated  
18 probable success on the merits of the claim that the Glendale Ordinance is vague, and because  
19 Defendant has failed to meet its burden of proving alternative avenues of communication, the  
20 court finds that Plaintiffs would suffer irreparable injury as a result of the threatened and continued  
21 enforcement of the Ordinance *pendente lite*.

22 C. Serious Questions

23 Serious questions exist as to the constitutionality of the Ordinance. Accordingly, this factor  
24 weighs in favor of granting the requested preliminary relief.



1 D. Balance of Hardship

2 Enforcement of the Ordinance will subject Plaintiffs to severe economic hardship because  
 3 it will discourage them from soliciting employment from the sidewalk, which the City claims is  
 4 allowed under the Ordinance. Although Plaintiffs may seek employment at the Center, they would  
 5 be precluded from seeking employment in the manner some of them find to be the most effective.  
 6 In contrast, the hardship that would be suffered by the City is less since the City can easily amend  
 7 the Ordinance to correct facial deficiencies and in the interim enforce regulations that are already  
 8 in place to address traffic safety and quality of life issues. Accordingly, the court concludes that  
 9 the balance of hardship tips decidedly in favor of the Plaintiffs.<sup>10</sup>

10 IV. CONCLUSION

11 Having considered the papers filed in support of, and opposition to, the motion, the court  
 12 FINDS and ORDERS as follows:

- 13 1. Plaintiffs are likely to succeed on their claim that § 9.17.030 of the Glendale Municipal  
 14 Code is vague and does not provide for ample channels for communicating solicitation and  
 15 thus, violates the First and Fourteenth Amendments of the United States Constitution.  
 16 2. Plaintiffs have demonstrated the possibility of irreparable harm resulting from the City's  
 17 continued enforcement or threat of enforcement of the Ordinance.  
 18 3. Plaintiffs have demonstrated that the balance of hardship tips strongly in their favor.

19 IT IS HEREBY ORDERED that Plaintiffs' motion for preliminary injunction is GRANTED.

20 The court's decision is not intended to impinge on the City's enforcement of regulations  
 21 already in place that address negative secondary effects caused by solicitation.

22 IT IS SO ORDERED.

23 Dated this 14 day of January, 2005.

24  
 25 S. JAMES OTERO  
 26 S. JAMES OTERO  
 27 UNITED STATES DISTRICT JUDGE

28 <sup>10</sup> Defendant filed an objection to the declaration submitted by Veronica Fedorovsky. Because this declaration has no bearing on the court's decision, the court need not rule on the objection.