

## ORDINANCE NO. 13- 03

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA REPEALING SECTION 10-354 OF CHAPTER XIX OF TITLE 10 OF THE COSTA MESA MUNICIPAL CODE RELATING TO SOLICITATION OF EMPLOYMENT, BUSINESS, OR CONTRIBUTIONS TO AND FROM MOVING VEHICLES

WHEREAS, the Ninth Circuit Court of Appeals in Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936 (9th Cir. 2011) held that an ordinance that prohibits solicitation of employment, business or funds to/from vehicles throughout the city is unconstitutional under the First Amendment of the U.S. Constitution, as it curtails substantially more protected conduct than necessary to achieve the City's goals. This case overturned an earlier case, ACORN v. City of Phoenix, 798 F.2d 1260 (1986), which upheld the constitutionality of an ordinance almost identical to the one challenged in Redondo Beach;

WHEREAS, Section 10-354, prohibiting solicitation to and from moving vehicles, was based on the language approved by the Ninth Circuit in ACORN, and overturned by Comite De Jornaleros de Redondo Beach.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 10-354 of Chapter XIX of Title 10 of the Costa Mesa Municipal Code is hereby repealed.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF COSTA MESA )

I, BRENDA GREEN, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 13-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following roll call vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa