



CITY COUNCIL AGENDA REPORT

MEETING DATE: October 1, 2013

ITEM NUMBER:

SUBJECT: SECOND READING OF ORDINANCE TO REPEAL MUNICIPAL CODE SECTION 10-354

DATE: SEPTEMBER 24, 2013

FROM: TOM DUARTE, CITY ATTORNEY
ELENA Q. GERLI, DEPUTY CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: TOM DUARTE
ELENA Q. GERLI (714) 446-1400

RECOMMENDED ACTION:

It is recommended the City Council:

Give second reading and adopt Ordinance 13-03 entitled, "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.

BACKGROUND:

This Ordinance was introduced for first reading at the regular City Council meeting of September 17, 2013.

The Ninth Circuit Court of Appeals' ruling in Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936 (9th Cir. 2011) held that an ordinance prohibiting solicitation of employment, business or funds to/from vehicles throughout the city is unconstitutional under the First Amendment, as it curtails substantially more protected conduct than necessary to achieve the city's goals. Specifically, the Court found that the ordinance was not justified, because the city provided evidence that solicitation was causing problems at only two intersections. Additionally, the Court found that the city had a number of alternative means of addressing their interests both under state law and under their own code (such as provisions prohibiting public excretion, blocking traffic, etc.). The Court overturned its own earlier opinion in the case of ACORN v. City of Phoenix, 798 F.2d 1260 (1986), which held constitutional an ordinance very similar to the one challenged in Redondo Beach.

ANALYSIS:

Section 10-354 mirrored the 1986 ACORN ruling. As the Ninth Circuit has now reversed itself and held that such an ordinance violates the First Amendment, Section 10-354 may no longer be enforced. As this section affects protected conduct, it is advisable to repeal it so that its existence in the Costa Mesa Municipal Code does not infringe on the exercise of First Amendment rights.

ALTERNATIVES CONSIDERED:

The City can choose not to adopt the proposed ordinance repeal.

FISCAL REVIEW:

This ordinance will not generate any new financial obligations to the City of Costa Mesa.

LEGAL REVIEW:

The City Attorney's office has reviewed and approved the attached municipal ordinance as to form and content.

TOM HATCH
CEO

TOM DUARTE
City Attorney

DISTRIBUTION: City CEO
City Attorney
Finance Director
City Clerk

ATTACHMENTS: A) [Proposed Ordinance Repealing Section 10-354](#)
B) [CMMC section 10-354](#)