

1 ANNA ERICKSON WHITE (BAR NO. 161385)

JANA G. GOLD (BAR NO. 154246)

2 JAMES OLIVA (BAR NO. 215440)

MORRISON & FOERSTER LLP

3 755 Page Mill Road

Palo Alto, California 94304-1018

4 Telephone: (650) 813-5600

Facsimile: (650) 494-0792

5 THOMAS A. SAENZ (BAR NO. 159430)

6 BELINDA ESCOBOSA HELZER (BAR NO. 214178)

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

7 634 South Spring Street, 11th Floor

Los Angeles, CA 90014

8 Telephone: (213) 629-2512

9 Attorneys for Plaintiffs

SOCIETY OF ST. VINCENT DE PAUL OF

10 SANTA CLARA COUNTY and

WORKERS' COMMISSION

11  
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15  
16 THE SOCIETY OF ST. VINCENT DE PAUL  
OF SANTA CLARA COUNTY; and

17 WORKERS' COMMISSION,

18 Plaintiffs,

19 v.

20 THE CITY OF LOS ALTOS,

21 Defendant.

Case No. C-02 00847 JF PVT

**CONSENT DECREE**

22  
23  
24  
25  
26  
27  
28  
**CONSENT DECREE**

**CASE No. C-02 00847 JF PVT**

pa-816831

## INTRODUCTION

1. Plaintiff the Society of St. Vincent de Paul of Santa Clara County (“Society”) is a nonprofit public benefit corporation organized under the laws of the State of California with its main office in San Jose, California. The Society previously operated St. Joseph’s the Worker Center in Los Altos, California, which provided support services to day laborers, including counseling, coordination with prospective employers, protection of the workers from exploitation, and other social services. The Society continues to provide services to prospective day labor employers, including coordination of available workers, worker training, and facilities.

2. Plaintiff the Workers’ Commission (“Commission”) is an unincorporated association comprised of day laborers and others whose goals are to defend the rights of local day laborers and to address the problems that they face. The members of the Commission are current and former day laborers who desire to make their availability for day work known within the City of Los Altos.

3. Defendant the City of Los Altos (“City” or “Los Altos”) is a general law city incorporated in the State of California. Through its five-member City Council, it has enacted and enforced ordinances affecting the speech and conduct of day laborers in Los Altos, specifically Chapter 9.12 (Sections 9.12.010-9.12.050) of the Los Altos Municipal Code, as enacted in the fall of 1999 and as amended in May 2002, which regulates vehicle solicitation in Los Altos (“the Solicitation Ordinance”).

4. In February 2002, Plaintiffs the Society and the Commission (collectively “Plaintiffs”) filed suit against the City under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, alleging that the Solicitation Ordinance, as enacted in July and August 1999, violated the First and Fourteenth Amendments of the United States Constitution. In April 2002, Plaintiffs moved the Court for a preliminary injunction to enjoin the City from enforcing the Solicitation Ordinance.

5. Before the motion could be heard, the City amended the Solicitation Ordinance in May 2002. Believing the amendment did not markedly change the ordinance and was still

1 unconstitutional, Plaintiffs amended their complaint to challenge the constitutional validity of the  
2 amended Solicitation Ordinance. Plaintiffs then renewed their motion for preliminary injunction.

3 6. In August 2002, the Court granted in part Plaintiffs' motion, temporarily enjoining  
4 the City from enforcing part of the Solicitation Ordinance. The Court held that the Solicitation  
5 Ordinance, as written, is likely unconstitutional because it is not narrowly tailored, burdening  
6 more speech than necessary to further the City's identified governmental interests in traffic  
7 safety and traffic flow.

8 7. The parties thereafter entered into settlement discussions. This Consent Decree is a  
9 result of those discussions.

10 8. Prior to, and as a material condition of, entering into this Consent Decree, the City  
11 has repealed the amended Solicitation Ordinance, and adopted a new ordinance, Chapter 9.12 of  
12 the Los Altos Municipal Code, renamed "Roadway Solicitation" ("the Revised Ordinance") in  
13 substantially the form attached to this Consent Decree as Exhibit A.

14 NOW, THEREFORE, THE PARTIES TO THIS CONSENT DECREE AGREE AND  
15 THE COURT HEREBY FINDS, ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

16 **JURISDICTION AND VENUE**

17 9. The Court has jurisdiction over the parties hereto and the claims asserted in  
18 Plaintiffs' complaint. Venue is proper in this judicial district.

19 10. The Court shall retain jurisdiction over the parties and the subject matter of this  
20 litigation in order to implement the terms and provisions of this Consent Decree, for a period not  
21 to exceed ten years.

22 **PARTIES BOUND**

23 11. The obligations of this Consent Decree apply to and are binding upon Plaintiffs and  
24 the City, including but not limited to, their constituent entities, current or future officers or  
25 council members, agents, employees, and representatives.

26 12. Each of the undersigned representatives of Plaintiffs and the City certify that he or  
27 she is fully authorized by the party to enter into this Consent Decree, including all of its terms  
28

1 and conditions; to legally execute and bind the party to this Consent Decree; and to execute this  
2 Consent Decree on behalf of the party.

3 **EFFECTIVE DATE OF CONSENT DECREE**

4 13. This Consent Decree shall be deemed effective as of the date on which it is entered  
5 by the Court.

6 **ORDINANCE**

7 14. The Solicitation Ordinance, as amended in May 2002, violates the First and  
8 Fourteenth Amendments of the United States Constitution because it is not narrowly tailored,  
9 burdening more speech than necessary to further the City's identified governmental interests in  
10 traffic safety and traffic flow. The City is in perpetuity enjoined from enforcing the Solicitation  
11 Ordinance should it ever be readopted.

12 15. The Court finds that the Revised Ordinance, as set forth in Exhibit A, will protect  
13 the City's identified governmental interests and, at the same time, preserve the constitutional  
14 rights of Plaintiffs and day workers as those rights have been interpreted to date.

15 **EDUCATION/OUTREACH**

16 16. Upon adopting the amended ordinance in Exhibit A, the City shall inform and  
17 educate day laborers, day labor employers, and the general public about the amended ordinance  
18 by the following means:

19 (a) Removing all existing "No Solicitation Zone" signs within ten business days of  
20 the entry of this Consent Decree;

21 (b) Advertising, in English and Spanish, the Revised Ordinance along with  
22 explanatory text in the *Los Altos Town Crier*, the *Mountain View Voice*, and the *Palo Alto*  
23 *Weekly*, weekly newspapers, for the first 3 weeks after the entry of this Consent Decree, and then  
24 at least every three months for the year thereafter. The explanatory text will be prepared by  
25 Plaintiffs, but must be approved by the City prior to the publication, such approval not to be  
26 unreasonably withheld.

1 (c) Publishing, in English and Spanish, notice of the Revised Ordinance on the  
2 City's official website for the first 52 weeks after entry of this Consent Decree. The content of  
3 the notice shall be mutually agreed upon by the parties. The notice must be provided on the  
4 "opening" webpage, <http://www.ci.los-altos.ca.us>, with a link to the text of the Revised  
5 Ordinance.

6 (d) Publishing a one-page document, in English and Spanish, to be affixed with  
7 the City seal, that provides the text of the Revised Ordinance and a brief explanation of what is  
8 lawful and unlawful under the Revised Ordinance, to be included with the next edition of the Los  
9 Altos Communique, a newsletter published by the City approximately every four months and  
10 sent to approximately 20,000 addresses ("Communique Flyer"). The content of the  
11 Communique Flyer shall be prepared by the Plaintiffs, but will not be published until approved  
12 by the City, such approval not to be unreasonably withheld. The City shall assume the initial  
13 cost of reproducing the Communique Flyer and shall make no fewer than 30,000 copies, with the  
14 excess copies to be distributed in cooperation with the Plaintiffs. Plaintiffs shall have the right to  
15 copy and distribute the Communique Flyer at any time. The two editions of the Los Altos  
16 Communique following the edition including the Communique Flyer shall include a brief item,  
17 to be prepared by the Plaintiffs and approved by the City (such approval not to be unreasonably  
18 withheld) reminding recipients of the existence and location of the Day Worker Center operated  
19 by Plaintiffs.

20 (e) Co-sponsoring a public meeting with Plaintiffs, to be held at the Los Altos  
21 Youth Center within six weeks after entry of this Consent Decree, to inform day laborers, day  
22 labor employers, and the general public about the amended ordinance and to explain what is  
23 lawful and unlawful under the Revised Ordinance. The parties will work together in good faith  
24 to prepare an agenda for the meeting. The City shall take reasonable steps to publicize the  
25 meeting. Both Plaintiffs and the City shall designate representatives to attend the meeting.  
26 Plaintiffs shall provide translation services for the meeting.

(f) For purposes of (b) through (e) above, any disputes that cannot be promptly resolved regarding the content of any advertisement, publication, or other joint statement under this section, may be referred to the Court for resolution.

#### **POLICE TRAINING**

17. The City shall use its best efforts to ensure that the Los Altos Police Department is informed and educated about the Revised Ordinance and properly trained on enforcement of the Revised Ordinance, including but not limited to what is lawful and unlawful under the Revised Ordinance. The flyer prepared in accordance with section 16(d) above shall be the basis for such training, and shall be part of any special orders or directives promulgated by the Chief of Police to staff in connection with the Revised Ordinance. For a period of three years after entry of this Consent Decree, the City Manager or his or her designee, upon request, shall meet with representatives of Plaintiffs on a quarterly basis to discuss concerns related to the implementation and enforcement of the Revised Ordinance and Day Worker concerns generally.

#### **REPORTING**

18. In accordance with the Revised Ordinance set forth in Exhibit A, the Chief of Police of the Los Altos Police Department shall submit to the City Council, on an annual basis, a written statement reporting the number of citations issued under the amended ordinance. This written statement shall be provided to plaintiff's representatives prior to the next quarterly meeting held pursuant to paragraph 17, so that it may be considered at that meeting.

#### **DAY WORKER CENTER**

19. The City shall, in good faith, cooperate with Plaintiffs in any efforts to locate and support a suitable site in or near the City of Los Altos for a permanent day worker center or other facility to provide shelter and services for day workers and employers, including, upon request, communicating with other government and funding agencies for assistance.

**DAMAGES AND ATTORNEYS' FEES**

20. The City shall pay damages and attorneys' fees in the amount of ninety thousand dollars (\$90,000), the amount to be wire transferred to Morrison & Foerster, counsel for plaintiffs, within ten days of the entry of this Consent Decree.

**NOTICES OR COMMUNICATION**

21. Any notice or communication between Plaintiffs and the City arising out of or relating to matters addressed in this Consent Decree shall be given or communicated to all parties to this Consent Decree by addressing the notice or communication as follows:

For Plaintiffs:  
Anna Erickson White, Esq.  
Jana G. Gold, Esq.  
Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, California 94304-1018  
Telephone: (650) 813-5600  
Facsimile: (650) 494-0792

For the City:  
City Manager  
Los Altos City Hall  
One North San Antonio Road  
Los Altos, CA 94022

Thomas A. Saenz, Esq.  
Belinda Escobosa Helzer, Esq.  
Mexican American Legal Defense & Educational  
Fund  
634 South Spring Street, 11th Floor  
Los Angeles, CA 90014  
Telephone: (213) 629-2512

**JUDGMENT**

Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between Plaintiffs and the City.

1 THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE AND  
2 SUBMIT IT TO THE COURT FOR ITS APPROVAL:

3 Dated: September 5, 2003

4 ANNA ERICKSON WHITE  
5 JANA G. GOLD  
6 JAMES OLIVA  
MORRISON & FOERSTER LLP

7 THOMAS A. SAENZ  
8 BELINDA ESCOBOSA HELZER  
9 MEXICAN AMERICAN DEFENSE AND  
EDUCATIONAL FUND

10 By: s/ Anna Erickson White  
11 Anna Erickson White  
12 Attorneys for Plaintiffs  
13 SOCIETY OF ST. VINCENT DE PAUL OF  
SANTA CLARA COUNTY  
and WORKERS' COMMISSION

14 Dated: September 5, 2003

15 MARC HYNES  
16 CITY OF LOS ALTOS

17  
18 By: s/ Marc Hynes  
19 Marc Hynes  
Attorney for Defendant  
CITY OF LOS ALTOS

20 I, Anna Erickson White, am the ECF User whose ID and password are being used to file this  
21 Consent Decree. In compliance with General Order 45, X.B., I hereby attest that Marc Hynes has  
22 concurred in this filing.

23 Dated: September 8, 2003

MORRISON & FOERSTER LLP

24  
25 By: s/ Anna Erickson White  
26 Anna Erickson White  
27 Attorneys for Plaintiffs  
28 SOCIETY OF ST. VINCENT DE PAUL  
OF SANTA CLARA COUNTY  
and WORKERS' COMMISSION