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

LONE STAR SECURITY & VIDEO,  
INC.,

Plaintiff,

v.

CITY OF LOS ANGELES; CITY OF  
SANTA CLARITA; CITY OF RANCHO  
CUCAMONGA; CITY OF LOMA  
LINDA,

Defendants.

Case No. 2:11-cv-2113-ODW(FMOx)

**ORDER DENYING PLAINTIFF  
LONE STAR SECURITY’S MOTION  
FOR SUMMARY JUDGMENT [78]  
AND GRANTING DEFENDANTS’  
MOTION FOR SUMMARY  
JUDGMENT [82]**

**I. INTRODUCTION**

The present Cross-Motions for Summary Judgment ask this Court to determine the constitutionality of four city ordinances that prohibit the parking of “mobile billboard advertising displays” on city streets. The four ordinances are virtually identical and mirror the language of the state legislative act granting municipalities across California the authority to pass these ordinances. Plaintiff Lone Star Security and Video, Inc. (“Lone Star”) is pursuing only a facial challenge to the ordinances, arguing that they should be struck down for violating the First Amendment. The parties have stipulated to the facts in this case, so only questions of law remain.<sup>1</sup> (*See*

<sup>1</sup> This case was consolidated with *Sami Ammari v. City of Los Angeles*, No. 2:12-cv-04644-ODW (MRWx) (case filed May 29, 2012). *Ammari* involves a separate, although closely related, Los Angeles city ordinance regulating advertising signs on motor vehicles. Cross-Motions for Summary Judgment have been filed in that action as well.

1 Stipulated Facts (“Stip.”), ECF No. 80.) Having considered all arguments in support  
2 of and in opposition to the present Cross-Motions for Summary Judgment, the Court  
3 finds that the ordinances at issue are constitutional as content-neutral reasonable time,  
4 place, and manner restrictions on speech. Accordingly, the Court hereby **DENIES**  
5 Lone Star’s Motion for Summary Judgment (ECF No. 78) and **GRANTS** Defendants’  
6 Motion for Summary Judgment (ECF No. 82).

## 7 **II. FACTUAL BACKGROUND**

8 On August 25, 2010, the California Legislature passed Assembly Bill (“AB”)  
9 2756, which took effect on January 1, 2011. (Stip. ¶ 1.) AB 2756 amended portions  
10 of the California Vehicle Code to explicitly authorize cities and counties to regulate  
11 “mobile billboard advertising displays.” (Stip. Ex. 1.) A “mobile billboard  
12 advertising display” is defined as “an advertising display that is attached to a wheeled,  
13 mobile, nonmotorized vehicle, that carries, pulls, or transports a sign or billboard, and  
14 is for the primary purpose of advertising.” (*Id.*) In enacting AB 2756, the California  
15 Legislature stated that communities across the state were “experiencing a surge in  
16 mobile billboards” and that vehicles and trailers carrying mobile billboards were being  
17 parked on city streets for long periods of time, sometimes for several days. (*Id.*) In  
18 addition, the California Legislature included the following findings:

19 Not only are mobile billboards a visual blight, but they pose a significant  
20 safety hazard when motorists are forced to veer around them into the next  
21 lane of traffic. Mobile billboards also reduce available on-street parking  
22 and impair the visibility of pedestrians and drivers.  
23 (*Id.*) Defendants in this case—the Cities of Los Angeles, Santa Clarita, Rancho  
24 Cucamonga, and Loma Linda (“Cities”)—all passed ordinances in direct response to  
25 AB 2756.

26 The Los Angeles City Council passed Ordinance No. 181495 on December 17,  
27 2010. (Stip. ¶ 3.) The ordinance created new Los Angeles Municipal Code section  
28 87.53. (*Id.*) Section 87.53 incorporates by reference the California Legislature’s

1 amendments to the Vehicle Code under AB 2756. The ordinance makes it “unlawful  
2 for any person to park a mobile billboard advertising display, as defined under Section  
3 395.5 of the California Vehicle Code, on any public street or public lands in the City  
4 of Los Angeles.” (Stip. ¶ 4, Ex. 2.) Penalties for parking mobile billboard advertising  
5 on city streets mirror those authorized by the California Legislature. (Stip. Exs. 1–2.)

6 On April 12, 2011, the City of Santa Clarita adopted Ordinance No. 11-7,  
7 creating new section 12.84 of the Santa Clarita Municipal Code. (Stip. ¶ 5.) The  
8 ordinance states, “It shall be unlawful for any person to park a Mobile Billboard  
9 Advertising Display on any public street or public lands in the City of Santa Clarita.”  
10 (Stip. ¶ 6, Ex. 3.) Like the City of Los Angeles, Santa Clarita’s ordinance  
11 incorporates by reference the California Legislature’s amendments to the Vehicle  
12 Code including penalties and the definition of “mobile billboard advertising display.”  
13 (*Id.*)

14 The City of Rancho Cucamonga passed Ordinance No. 839 on April 6, 2011.  
15 (Stip. ¶ 7.) The ordinance created new section 10.52.080 of the Rancho Cucamonga  
16 Municipal Code, making it “unlawful for any person to park, stand, or otherwise allow  
17 to remain upon any City street, any mobile billboard advertising display.” (Stip. ¶ 8,  
18 Ex. 4.) Once again, the city incorporated by reference the California Legislature’s  
19 authorized penalties and definition of a “mobile billboard advertising display.” (*Id.*)

20 On May 10, 2011, the City of Loma Linda adopted Ordinance No. 704, which  
21 created new section 10.36.070 of the Loma Linda Municipal Code. (Stip. ¶ 9.) Loma  
22 Linda’s ordinance states, “It is unlawful for any person to park, stand, or otherwise  
23 allow to remain upon any City street, any mobile billboard advertising display.” (Stip.  
24 ¶ 10, Ex. 5.) As with the other three city ordinances, the amendments to the  
25 California Vehicle Code are explicitly referenced including penalties and definitions.  
26 (*Id.*)

27 Lone Star filed suit on March 11, 2011, challenging the City of Los Angeles  
28 ordinance on both federal and California constitutional grounds. (ECF No. 1.) The

1 Complaint was amended on June 6, 2011, to add the Cities of Santa Clarita, Rancho  
2 Cucamonga, and Loma Linda as defendants. (ECF No. 17.) Lone Star is a  
3 corporation that operates a fleet of mobile billboards, and has been subject to  
4 enforcement under the ordinances at issue. (*Id.* at ¶¶ 2, 7–8.) The Amended  
5 Complaint asserts claims for free speech, due process, and privileges or immunities  
6 clause violations under both the United States and California Constitutions. (*Id.*)

7 This Court denied Lone Star’s Motion for Preliminary Injunction on June 2,  
8 2012, finding that Lone Star had not demonstrated a likelihood of success on the  
9 merits. (ECF No. 53.) In denying the preliminary injunction, the Court held that the  
10 ordinances are not content-based restrictions on speech. (*Id.*) The Ninth Circuit  
11 affirmed this Court’s denial of the preliminary injunction on March 21, 2013, holding  
12 that the ordinances are in fact content-neutral. (ECF No. 70.) The parties have now  
13 filed Cross-Motions for Summary Judgment to determine whether the ordinances are  
14 constitutional as reasonable time, place, and manner restrictions. (ECF Nos. 78, 82.)

### 15 III. LEGAL STANDARD

16 Summary judgment should be granted if there are no genuine issues of material  
17 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.  
18 P. 56(c). The moving party bears the initial burden of establishing the absence of a  
19 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).  
20 Once the moving party has met its burden, the nonmoving party must go beyond the  
21 pleadings and identify specific facts through admissible evidence that show a genuine  
22 issue for trial. *Id.*; Fed. R. Civ. P. 56(c). Conclusory or speculative testimony in  
23 affidavits and moving papers is insufficient to raise genuine issues of fact. *Thornhill’s*  
24 *Publ’g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

25 A genuine issue of material fact must be more than a scintilla of evidence or  
26 evidence that is merely colorable or not significantly probative. *Addisu v. Fred*  
27 *Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). A disputed fact is “material” where the  
28 resolution of that fact might affect the outcome of the suit under the governing law.

1 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). An issue is “genuine” if  
2 the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving  
3 party. *Id.* Where the moving and nonmoving parties’ versions of events differ, courts  
4 are required to view the facts and draw reasonable inferences in the light most  
5 favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

#### 6 **IV. DISCUSSION**

7 The parties have stipulated to the facts in this case, namely the enactment of the  
8 relevant ordinances and their admissibility. (Stip. ¶¶ 1–10.) In addition, the parties  
9 have stipulated that Lone Star is pursuing only a facial challenge to the ordinances.  
10 (Stip. ¶ 11.) While the Amended Complaint contains claims for violations under the  
11 Fourteenth Amendment as well as under the California Constitution, disposition of  
12 this case and the instant Cross-Motions for Summary Judgment turn entirely on the  
13 application of well-established First Amendment law. Lone Star concedes this point.  
14 (Lone Star Opp’n 2:6–11.) Accordingly, the Court will first address the validity of the  
15 ordinances under the First Amendment and then address any remaining claims.

#### 16 **A. Facial Challenges Under the First Amendment**

17 “When the Government restricts speech, the Government bears the burden of  
18 proving the constitutionality of it.” *United States v. Playboy Entm’t Grp., Inc.*, 529  
19 U.S. 803, 816 (2000). Nonetheless, a typical facial challenge to a law’s validity  
20 requires “that no set of circumstances exists under which [the law] would be valid,” or  
21 that the law “lacks any ‘plainly legitimate sweep.’” *United States v. Stevens*, 559 U.S.  
22 460, 472 (2010); *see also United States v. Salerno*, 481 U.S. 739, 745 (1987);  
23 *Washington v. Glucksburg*, 521 U.S. 702, 740 n.7 (1997) (Stevens, J., concurring in  
24 judgments). In the First Amendment context, however, a law may also be facially  
25 invalid as overbroad if “a substantial number of its applications are unconstitutional,  
26 judged in relation to the statute’s plainly legitimate sweep.” *Stevens*, 550 U.S. at 473;  
27 *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936,  
28 944–45 (9th Cir. 2011) (en banc). This overbreadth doctrine exists “out of concern

1 that the threat of enforcement of an overbroad law may deter or ‘chill’ constitutionally  
2 protected speech . . . .” *Virginia v. Hicks*, 539 U.S. 113, 119 (2003); *Comite de*  
3 *Jornaleros*, 657 F.3d at 944. This concern for chilling protected speech means that a  
4 party seeking to strike down a statute for overbreadth is not required to demonstrate  
5 that his own conduct could not be regulated by a more narrowly drawn statute. *See*  
6 *Comite de Jornaleros*, 657 F.3d at 944; *Parker v. Levy*, 417 U.S. 733, 759 (1974).

7         Nevertheless, facial challenges are disfavored for several reasons. They “often  
8 rest on speculation” and “run contrary to the fundamental principle of judicial restraint  
9 that courts should neither anticipate a question of constitutional law in advance of the  
10 necessity of deciding on it nor formulate a rule of constitutional law broader than is  
11 required by the precise facts to which it is to be applied.” *Wash. State Grange v.*  
12 *Wash. State Republican Party*, 552 U.S. 442, 450. (2009) (internal quotations  
13 omitted). Facial challenges also “threaten to short circuit the democratic process by  
14 preventing laws embodying the will of the people from being implemented in a  
15 manner consistent with the Constitution.” *Id.* at 451.

16         Turning to Lone Star’s facial challenge, there is no question here that the  
17 ordinances bear upon protected expression under the First Amendment. The  
18 ordinances prohibit parking of “mobile billboard advertising displays” on public  
19 streets and public lands. (Stip. Exs. 2–5.) “Advertising” is a protected form of speech  
20 and can convey a “broad range of different kinds of messages.” *Metromedia, Inc. v.*  
21 *City of San Diego*, 453 U.S. 490, 500–01 (1981); *see also Members of City Council of*  
22 *City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 803 (1984); *City & Cnty. of S.F.*  
23 *v. Eller Outdoor Adver.*, 192 Cal. App. 3d 643, 656 (Ct. App. 1987). Moreover,  
24 public streets are a traditional public forum under First Amendment law. *Snyder v.*  
25 *Phelps*, 131 S.Ct. 1207, 1218 (2011). Therefore, the Court must turn to the well-  
26 established principles guiding regulation of protected speech in a public forum to  
27 determine the facial validity of the ordinances.

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1 **B. Reasonable Time, Place, and Manner Restrictions**

2 In public places, such as streets and sidewalks, content-based restrictions on  
3 speech have to meet strict scrutiny, meaning that the regulation must be necessary to  
4 serve a compelling state interest. *Comite de Jornaleros*, 657 F.3d at 940. On the  
5 other hand, “[f]or content-neutral regulations, the State may limit ‘the time, place, and  
6 manner of expression’ if the regulations are ‘narrowly tailored to serve a significant  
7 government interest, and leave open ample alternative channels of communication.’”  
8 *Id.* (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45  
9 (1983)). The Court finds that the ordinances are constitutional as reasonable time,  
10 place, and manner restrictions on speech.

11 **1. Content-Neutral**

12 The issue of content-neutrality with respect to the ordinances has already been  
13 addressed by this Court. In denying Lone Star’s Motion for Preliminary Injunction,  
14 this Court held that the ordinances are content-neutral. (ECF No. 53.) The Ninth  
15 Circuit affirmed that decision, also holding that the ordinances are content-neutral.  
16 (ECF No. 70.) Moreover, Lone Star and the Cities agree that the law-of-the-case  
17 doctrine controls the issue of content-neutrality. (Lone Star Mot. 16:4–12; Cities Mot.  
18 6:9–8:5.)

19 Under the law-of-the-case doctrine, “[A] court will generally refuse to  
20 reconsider an issue that has already been decided by the same court or a higher court  
21 in the same case.” *Gonzalez v. Arizona*, 677 F.3d 383, 389, n.4 (9th Cir. 2012). The  
22 doctrine can apply even when the issue arises from a preliminary-injunction ruling,  
23 particularly where legal conclusions have been made and no new evidence has been  
24 adduced.<sup>2</sup> *See Reed v. Town of Gilbert, Ariz.*, 707 F.3d 1057, 1067 (9th Cir. 2013)  
25 (applying the law-of-the-case doctrine after preliminary injunction appeal involving  
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27 <sup>2</sup> Exceptions to the law-of-the-case-doctrine apply when (1) the decision is “clearly erroneous and  
28 enforcement would work a manifest justice;” (2) intervening controlling authority makes  
reconsideration appropriate; or (3) substantially different evidence was adduced at a subsequent trial.  
*Reed v. Town of Gilbert, Ariz.*, 707 F.3d 1057, 1067 n.9 (9th Cir. 2013).

1 similar First Amendment issues). Here, Lone Star is raising a facial challenge and  
2 there have been no subsequent amendments to the ordinances. This case has turned  
3 on issues of law since its outset. Simply put, nothing has changed since this Court  
4 ruled on the preliminary injunction, finding that the ordinances were content-neutral.  
5 The parties appear to be in agreement on that point. (Lone Star Mot. 16:4–12; Cities  
6 Mot. 6:9–8:5.) Accordingly, the Court applies the law-of-the-case doctrine and finds  
7 that the ordinances have already been deemed content-neutral by both this Court and  
8 the Ninth Circuit.<sup>3</sup>

## 9 **2. Narrowly Tailored to Serve a Significant Government Interest**

10 The parties do not dispute that the Cities’ asserted government interests in  
11 traffic safety, parking control, and aesthetics constitute significant, or substantial,  
12 government interests. (Lone Star Mot. 19:13–19; Cities Opp’n 4:20–5:13.) Case law  
13 has repeatedly confirmed that these goals are indeed “substantial” and the Court finds  
14 no reason to conclude otherwise. *See Metromedia*, 453 U.S. at 507–08 (plurality  
15 opinion); *Taxpayers for Vincent*, 466 U.S. at 807 (reaffirming the holding from  
16 *Metromedia*); *One World One Family Now v. City & Cnty. of Honolulu*, 76 F.3d 1009,  
17 1013 (9th Cir. 1996). Instead, the Court focuses its attention on the majority of the  
18 parties’ arguments, which concern whether the ordinances are narrowly tailored to  
19 serve the substantial interests of traffic safety, parking control, and aesthetics.

20 To be narrowly tailored, a regulation should “achieve its ends without  
21 restricting substantially more speech than necessary.” *Long Beach Area Peace*  
22 *Network v. City of Long Beach*, 574 F.3d 1011, 1024 (9th Cir. 2008). The regulation  
23 will be valid if it “promotes a substantial government interest that would be achieved

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24 <sup>3</sup> The ordinances are content-neutral because they do not “distinguish favored speech from  
25 disfavored speech on the basis of the ideas or views expressed.” *Reed v. Town of Gilbert, Ariz.*, 587  
26 F.3d 966, 977 (9th Cir. 2009). A display of *any* message falls within the definition of “advertising”  
27 and is sufficient to establish content-neutrality. An officer enforcing one of the ordinances need not  
28 consider the content of a billboard on a vehicle. *See S.O.C., Inc. v. County of Clark*, 152 F.3d 1136,  
1145 (9th Cir. 1998). The officer is only required to distinguish between vehicles whose primary  
purpose is advertising and vehicles that have a different primary purpose, such as transporting  
passengers or carrying cargo. (Stip. Ex. 1.)



1 less effectively absent the regulation.” *Ward v. Rock Against Racism*, 491 U.S. 781,  
2 799 (1989). The Court may consider “obvious alternatives,” but narrow tailoring does  
3 not require the regulation to be the “least restrictive alternative.” *Id.* at 798–99; *Long*  
4 *Beach Area Peace Network*, 574 F.3d at 1025.

5 In this case, Lone Star contends that the ordinances are not narrowly tailored to  
6 the interests of traffic safety, parking control, and aesthetics, because the ordinances  
7 really operate as blanket bans on an entire medium of speech. (Lone Star Reply  
8 4:12–21.) Lone Star argues that the stated interests are better served by other state and  
9 local laws, such as vehicle-registration requirements and laws on impeding traffic  
10 flow. (Lone Star Mot. 20:3–20.) In addition, Lone Star contends that the ordinances  
11 ban all “advertising” without mention of how attractive or unattractive the advertising  
12 may be, and without mention of proper placing in relation to traffic flow. (*Id.*) Lone  
13 Star rests its arguments heavily on the holding in *Comite de Jornaleros*, where the  
14 Ninth Circuit struck down a city ordinance that prohibited day laborers from soliciting  
15 motorists anywhere in the city. *Comite de Jornaleros*, 657 F.3d at 948–51.

16 On the other hand, the Cities argue that the ordinances are narrowly tailored  
17 because they directly address the substantial interests of traffic safety, parking control,  
18 and aesthetics, and do not foreclose an entire medium of speech. (Cities Mot.  
19 10:12–16; Cities Opp’n 6:3–16.) According to the Cities, the ordinances do not  
20 prohibit all mobile advertising, only the parking of mobile billboard advertising  
21 displays that have a primary purpose of advertising. (Cities Opp’n 6:7–16.) Vehicles  
22 bearing advertising are still permitted, and can even park on public streets, so long as  
23 the vehicle is motorized or has some other primary purpose beyond advertising. (*Id.*)

24 The Court finds the ordinances are narrowly tailored. First, the Court finds the  
25 holding in *Comite de Jornaleros* distinguishable. In that case, the Ninth Circuit  
26 considered an anti-solicitation ordinance that barred individuals from soliciting  
27 “employment, business, or contributions from an occupant of any motor vehicle.”  
28 *Comite de Jornaleros*, 657 F.3d at 940. The Ninth Circuit held that the ordinance was

1 overinclusive because it barred *all* solicitation on public streets and sidewalks. *Id.* at  
2 948–950. Unlike in *Comite de Jornaleros*, the ordinances at issue here do not ban all  
3 advertising, nor do they ban all advertising on motor vehicles. The ordinances only  
4 prohibit the parking of mobile billboard advertising displays that have a primary  
5 purpose of advertising. Motor vehicles may display advertising if they have another  
6 primary purpose, such as transporting passengers or carrying cargo. Moreover, the  
7 ordinances only prohibit the parking of these mobile billboard advertising displays.  
8 The ordinances restrict only a particular manner in which advertising is conducted on  
9 vehicles.<sup>4</sup> They do not restrict all advertising on vehicles. *Cf. Maldonado v. Morales*,  
10 556 F.3d 1037, 1046 (9th Cir. 2009) (upholding content-neutral advertising ban  
11 because it did not foreclose or nearly foreclose on an entire medium of speech).

12 Furthermore, the Court finds that the ordinances directly address the substantial  
13 government interests asserted by the Cities. As to aesthetics, the ordinances prevent  
14 streets from being cluttered with signage. Lone Star’s assertion that the ordinances  
15 should address the attractiveness of the advertising would actually be more  
16 problematic as potential content-based restrictions on speech. The ordinances are also  
17 appropriately tailored to the Cities’ interests in traffic safety and parking control. As  
18 the California Legislature indicated in passing AB 2756, the findings of which the  
19 Cities adopted in their ordinances, mobile billboard advertising displays limit  
20 available on-street parking and restrict visibility for motorists. On-street parking is  
21 available to drivers for the purpose of temporarily leaving a vehicle while the driver  
22 visits a local business, residence, or other establishment. On-street parking is not  
23 made available primarily for advertising. Also, the prohibition on parking mobile

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24 <sup>4</sup> In the *Ammari* case, the City of Los Angeles further restricts advertising on vehicles, requiring that  
25 advertising be “painted directly upon or permanently affixed to the body of, an integral part of, or  
26 fixture of a motor vehicle for permanent decoration, identification, or display and that do not extend  
27 beyond the overall length, width or height of the vehicle.” L.A. Mun. Code § 87.54. The Court  
28 finds that the *Ammari* ordinance has no colorable effect on the discussion of narrow tailoring or  
ample alternative channels of communication in this case. The City of Los Angeles ordinance  
included in this facial challenge is still narrowly tailored and leaves open ample alternative channels  
of communication regardless of whether the *Ammari* ordinance is in effect.

1 billboard advertising displays clearly addresses the visibility problem to drivers  
2 because these displays will not be present. The Cities have demonstrated that the  
3 ordinances promote substantial government interests “that would be achieved less  
4 effectively absent the regulation.” *Ward*, 491 U.S. at 799 (quoting *United States v.*  
5 *Albertini*, 471 U.S. 675, 689 (1985)).

6 Although Lone Star has supplied examples of alternative methods in which the  
7 Cities can address their substantial interests, the First Amendment does not require the  
8 Cities to choose the “least restrictive or least intrusive means” of achieving its goals.  
9 *Ward*, 491 U.S. at 799. The ordinances at issue do not “regulate expression in such a  
10 manner that a substantial portion of the burden on speech does not serve to advance  
11 [the Cities’] goals.” *Id.* Accordingly, the Court finds that the ordinances are narrowly  
12 tailored to achieve the substantial government interests of aesthetics, traffic safety,  
13 and parking control.

### 14 **3. Ample Alternative Channels of Communication**

15 A time, place, and manner regulation must also leave open ample alternative  
16 channels of communication. *S.O.C., Inc.*, 152 F.3d at 1145. Lone Star contends that  
17 the ordinances do not leave open alternative channels of communication, because  
18 there are no roadside locations in the Cities where mobile billboard advertising  
19 displays are permitted. (Lone Star Mot. 20:21–21:1.) On the other hand, the Cities  
20 argue that the ordinances should be viewed in a broader context. The ordinances  
21 leave open ample alternative methods of advertising to the same audience, such as  
22 free-standing billboards, busses, taxis, and bus benches to name a few. (Cities Mot.  
23 10:12–16.) The Court agrees with the Cities’ assessment.

24 The First Amendment “does not guarantee the right to communicate one’s  
25 views at all times and places or in any manner that may be desired.” *Heffron v. Int’l*  
26 *Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). But alternatives are  
27 not adequate if they do not allow the speaker to reach her intended audience, the  
28 location is part of the expressive message, or there are no opportunities for

1 spontaneity. *Long Beach Area Peace Network*, 574 F.3d at 1025. The cost and  
2 convenience of alternatives may also be a factor. *See City of Ladue v. Gilleo*, 512  
3 U.S. 43, 57 (1994).

4 The intended audience for these mobile billboard advertising displays is drivers  
5 and passersby on the sidewalk. As the Cities have pointed out, this audience can still  
6 be reached in a number of other ways. The Court fails to see why an advertiser’s  
7 message cannot be communicated just as effectively on a bus bench or traditional  
8 free-standing billboard. In addition, since advertising is allowed on vehicles such as  
9 busses or taxis and on bus benches, the Court finds that the ordinances do not  
10 foreclose a particular location for expressive activity. The public streets and roadways  
11 are still wide open for advertising; only one specific manner of advertising—parking  
12 mobile billboard advertising displays that have a primary purpose of advertising—is  
13 foreclosed. While cost and convenience of alternatives should be considered, and  
14 parking on a public street may be inexpensive or even free, the First Amendment does  
15 not guarantee a right to the cheapest and most convenient means of advertising.  
16 Moreover, the record is devoid of any information to suggest that mobile billboard  
17 advertising displays are in fact the cheapest or most convenient means of advertising  
18 on public streets. Therefore, the Court finds that ample alternative channels of  
19 communication exist in the Cities to advertise on public streets and public lands.

20 The Cities have established that the ordinances are content-neutral, narrowly  
21 tailored to significant government interests, and leave open ample alternative channels  
22 of communication. Therefore, the ordinances satisfy the requirements for reasonable  
23 time, place, and manner restrictions and do not violate the First Amendment.

### 24 **C. Remaining Claims in the Amended Complaint**

25 Lone Star concedes that disposition of this entire action turns on the application  
26 of First Amendment law. (Lone Star Opp’n 2:6–11.) Nevertheless, the operative  
27 pleading in this case, the Amended Complaint, raises claims not only under the First  
28 Amendment but also under the Fourteenth Amendment and the California

1 Constitution. Accordingly, the Court finds it necessary to address these claims to  
2 properly grant summary judgment in favor of the Cities.

3 **1. California Constitution Free Speech Clause**

4 Lone Star alleges in the Amended Complaint that the ordinances are facially  
5 invalid under the California Constitution’s free-speech provision, article I, section  
6 2(a). (Am. Compl. ¶¶ 31–33.) Since California courts “employ the same time, place  
7 and manner test as the federal courts” in analyzing the California’s free-speech clause,  
8 *Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1336 (Ct. App. 2012), the  
9 Court’s First Amendment findings above apply equally to Lone Star’s article I, section  
10 2(a) claim.

11 **2. Fourteenth Amendment Substantive Due Process**

12 Lone Star’s Amended Complaint also asserts a violation of substantive due  
13 process under the Fourteenth Amendment. (Am. Compl. ¶¶ 25–27.) The Cities argue,  
14 however, that the specific First Amendment rubric supplants the broader, more  
15 nebulous due-process protection under the *Graham* rule. *See Graham v. Connor*, 490  
16 U.S. 386, 395 (1989) (holding that the Fourth Amendment’s “explicit textual source  
17 of constitutional protection” applied instead of “the more generalized notice of  
18 ‘substantive due process’”). The Cities are correct that the First Amendment analysis  
19 applies in this case in lieu of substantive due process under the Fourteenth  
20 Amendment. *See Corales v. Bennett*, 567 F.3d 554, 569 n.11 (9th Cir. 2009) (noting  
21 that denial of the plaintiffs’ First Amendment claims foreclosed consideration of their  
22 substantive due-process claim); *Hufford v. McEnaney*, 249 F.3d 1142, 1151 (9th Cir.  
23 2001) (“In this case, because the First Amendment explicitly covers [plaintiff’s]  
24 claim, the First Amendment, not the Fourteenth Amendment’s guarantee of  
25 substantive due process, should guide the analysis of the [plaintiff’s] claim[s].”).

26 **3. California Constitution Substantive Due Process**

27 The Amended Complaint states a violation of substantive due process under the  
28 California Constitution as well. (Am. Compl. ¶¶ 31–33.) California Constitution

1 article I, section 7(a) provides that a “person may not be deprived of life, liberty, or  
2 property without due process of law.” To survive scrutiny under this clause, a law  
3 need only be reasonably related to a proper legislative goal. *Coshov v. City of*  
4 *Escondido*, 132 Cal. App. 4th 687, 711 (Ct. App. 2005). Since the First Amendment’s  
5 time, place, and manner rubric employs a more heightened standard, the ordinances at  
6 issue here are valid under article 1, section 7(a) of the California Constitution as well.

7 **4. Fourteenth Amendment Privileges or Immunities Clause**

8 Lone Star also raises a claim for a violation of the Fourteenth Amendment’s  
9 privileges or immunities clause. (Am. Compl. ¶¶ 28–30.) However, “[n]atural  
10 persons, and they alone, are entitled to the privileges and immunities which Section 1  
11 of the Fourteenth Amendment secures for ‘citizens of the United States.’” *Hague v.*  
12 *Comm. for Indus. Org.*, 307 U.S. 496, 514 (1939). Lone Star is a corporation, not a  
13 natural person, so the Fourteenth Amendment’s privileges or immunities clause  
14 affords no relief.

15 **5. California Constitution Privileges and Immunities Clause**

16 Lone Star’s last remaining claim states that the ordinances violate the privileges  
17 and immunities clause contained in the California Constitution. (Am. Compl.  
18 ¶¶ 34–37.) The California Constitution’s Privileges and Immunities Clause provides  
19 that a “citizen or class of citizens may not be granted privileges or immunities not  
20 granted on the same terms to all citizens.” Cal. Const., art. I., § 7(b). As with Lone  
21 Star’s federal privileges or immunities claim, Lone Star is not entitled to the  
22 protection of California’s privileges and immunities clause because a corporation it is  
23 not a “citizen.” *City and Cnty. of S.F. v. Flying Dutchman Park, Inc.*, 122 Cal. App.  
24 4th 74, 87 (Ct. App. 2004).

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**V. CONCLUSION**

For the reasons discussed above, the Court **DENIES** Plaintiff Lone Star's Motion for Summary Judgment (ECF No. 78) and **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 82). A judgment will issue.

**IT IS SO ORDERED.**

December 20, 2013



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**OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE**