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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

VALLEY ENTERTAINMENT, INC. and CHAWKAT JAJIEH, Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B277204 Los Angeles County Super. Ct. No. BC583684

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Roger Jon Diamond for Plaintiffs and Appellants.

Mary C. Wickham, County Counsel, Elaine M. Lemke, Assistant County Counsel, Sari J. Steel, Deputy County Counsel and Jessica L. Cohen, Associate County Counsel, for Defendant and Respondent.

INTRODUCTION

The issue before us is whether nightclubs in Los Angeles County have the absolute right to present constitutionally-protected artistic expression (specifically, nude dancing) at all hours of the day and night.

Nude dancing has been recognized as a form of protected artistic expression under the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment, and article I, section 2, subdivision (a) of the California Constitution. But many municipalities have observed increased rates of crime and other negative impacts (such as excessive noise, drunk and disorderly conduct, blight, unhygienic litter) in areas immediately surrounding adult-oriented businesses and have sought to combat these so-called secondary effects through zoning ordinances that, for example, prohibit such business from operating within 500 feet of schools, churches, and private residences. According to both the United States Supreme Court and the California Supreme Court, so long as a zoning ordinance applicable only to adult businesses is justified by the municipality's intent to combat the secondary effects of adult businesses generally, the ordinance is deemed to be content-neutral and is subjected to intermediate scrutiny, i.e., the regulation must be narrowly tailored to address a significant governmental interest and must leave open adequate alternative means of communication.

Valley Entertainment, Inc. and its owner, Chawkat Jajieh,[1] applied to the Los Angeles Regional Planning Commission

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[1] We refer to Valley Entertainment, Inc. and Jajieh collectively as "Valley Entertainment."

(Commission) for a permit to operate Bliss Showgirls, an adult cabaret featuring nude female dancers (the club). Although the club is properly located in an area zoned for adult-oriented businesses, it was improperly operating after 2:00 a.m. on a regular basis, in violation of Los Angeles County Code section 22.62.030, subdivision (O) (the ordinance), which requires all adult-oriented businesses to close daily between the hours of 2:00 a.m. and 9:00 a.m. Based on past violations of the ordinance and Valley Entertainment's stated unwillingness to comply with the ordinance going forward, the Commission denied the permit request. Valley Entertainment filed a complaint seeking declaratory relief and a writ of mandate in the Los Angeles County Superior Court, asserting the ordinance is invalid on its face and as applied because it is an unconstitutional prior restraint on free speech rights.

Consistent with the long-standing interpretation of both the federal and state Constitutions, we conclude the ordinance is content-neutral because it is designed to combat the secondary effects of adult-oriented businesses. Applying intermediate scrutiny, we further conclude the ordinance is narrowly drawn to serve the government's interest in decreasing the secondary effects of adult-oriented businesses. And because the regulation allows the club to operate 17 hours each day, we conclude the regulation allows for adequate alternative means of communication.

We also reject as incorrect Valley Entertainment's contention that it was denied the opportunity to present evidence proving there is no justification for requiring the club to close at 2:00 a.m.

FACTS AND PROCEDURAL BACKGROUND

1. Application for Permit

In 2007, Jajieh purchased a nightclub in the Avocado Heights area of unincorporated Los Angeles County (the County). The nightclub had been operating as an adult cabaret[2] since at least the 1980s and is in an area zoned for adult-oriented businesses. Jajieh changed the name of the club to Bliss Showgirls[3] and began operating it as an adult cabaret while he awaited a decision from the Los Angeles Regional Planning Commission (the Commission) on his application for a permit. From the outset of its operations, Bliss Showgirls remained open after 2:00 a.m., in violation of the County's hours-of-operation ordinance.

The Commission's staff initially recommended issuance of the permit. But a subsequent investigation revealed, among other things, the club consistently operated past 2:00 a.m., sometimes closing as late as 5:00 a.m.[4] Eventually, the Commission denied

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[2] " 'Adult cabaret' means a nightclub, bar, restaurant or similar establishment which features any type of live entertainment which is distinguished or characterized by its emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical parts." (L.A. County Mun. Code, § 7.92.020.)

[3] Valley Entertainment, Inc., which does business as Bliss Showgirls, is owned by Jajieh.

[4] Shortly after the Commission staffers provided their first analysis of the permit application, staffers learned the Los Angeles County Sheriff's Department had recently cited five dancers at the club for soliciting and/or engaging in prostitution.

the permit application predicated in part on the club's persistent violation of the hours-of-operation ordinance.[5]

2. Trial Court Proceedings

After the Commission denied the permit request, Valley Entertainment filed a complaint for declaratory relief and writ of mandate challenging the constitutionality of the County's hours-of-operation ordinance. Specifically, Valley Entertainment sought a ruling that the ordinance is unconstitutional and therefore invalid, thus the club may operate at any time during the day or night. In addition, Valley Entertainment requested a writ of mandate directing the Commission to issue the permit.

Valley Entertainment submitted a trial brief in which it complained, as a procedural matter, that the case had initially been assigned to Department 36 of the Los Angeles Superior Court, a trial department, but had been reassigned to Department 86, a writs and receivers department. It objected to the transfer because, in its words, "no evidence may be taken" in Department 86. On the merits, Valley Entertainment asserted the ordinance was unconstitutional under both the federal and state Constitutions because it impermissibly restricted Valley Entertainment's free speech rights and violated principles of

[5] The Commission also found Bliss Showgirls had been violating a variety of other ordinances by, for example, consistently keeping its exterior door propped open, maintaining a flashing billboard advertising "lap dances" in the "VIP" section of the club, failing to hire a licensed uniformed security guard, and failing to obtain a valid business license. Valley Entertainment and the County subsequently resolved all the club's compliance issues except its hours of operation.

equal protection. Valley Entertainment submitted no evidence with its trial brief.[6]

The County responded that, under a long line of cases by the United States Supreme Court and the California Supreme Court, the ordinance is a valid content-neutral time, place, and manner regulation designed to combat the negative secondary effects that generally accompany adult-oriented businesses. In support of its opposition, the County requested, and the court apparently took, judicial notice of the ordinance and its legislative history, as well as the four prior iterations of the ordinance and the relevant legislative history.[7]

After concluding traditional mandamus under Code of Civil Procedure section 1085 was the appropriate vehicle for Valley Entertainment's challenge to the ordinance, the court denied Valley Entertainment's request and concluded the ordinance is a valid restraint on the right to free speech. Specifically, the court cited several cases from the United States Supreme Court upholding regulations targeted at adult-oriented businesses, each of which concluded municipalities may reasonably regulate the time, place, and manner of operations of such businesses to

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[6] Together with its reply brief, however, Valley Entertainment submitted a declaration and interrogatory requests and responses. The interrogatory responses established that bowling alleys and pool halls may stay open after 2:00 a.m.

[7] The County submitted two requests for judicial notice. The record does not include the court's ruling on the County's first request for judicial notice, which contained prior versions of the ordinance and their legislative history. We take judicial notice of those materials under Evidence Code sections 452, subdivision (b) and 459, subdivisions (b) and (c).

combat increased rates of crime and other negative impacts such businesses typically bring to their immediate surroundings.

Valley Entertainment timely appeals.

DISCUSSION

Valley Entertainment contends it was denied a proper trial below. It further asserts the ordinance prohibiting adult-oriented businesses from operating between the hours of 2:00 a.m. and 9:00 a.m. is an unconstitutional prior restraint on speech. We address these contentions in turn.

1. Valley Entertainment had an adequate opportunity to present its case.

Valley Entertainment contends it was denied "a real trial opportunity because [it] sought a writ of mandate." We disagree.

Citing *City of National City v. Wiener* (1992) 3 Cal.4th 832 (*Wiener*), Valley Entertainment argues its case "should have been in a trial court where the witnesses could have been presented. Petitioners would have established through live testimony the large number of businesses that operate 24 hours a day. Petitioners would have been able to establish that the Regional Planning Commission or Business License Commission could set hours of operation for the 6 adult cabarets that are operating in the County. Since adult businesses need permits and licenses anyway the Commissions could easily provide individualized consideration." And in its briefing to the trial court, Valley Entertainment also complained about its purported inability to present evidence to the court, arguing "[a]pparently evidence is not allowed in Department 86 (the writ department)," "Valley does not want the Writ Department, without the benefit of an evidentiary hearing, to make findings that will be binding when

the second phase of the trial is conducted in a trial court," and "the Court bureaucracy asserts that the action must first be heard in a writ department even though no evidence may be taken." But in *Wiener*, the California Supreme Court did not even consider whether, let alone hold that, a petitioner seeking a writ of mandate under Code of Civil Procedure section 1085 is entitled to a trial in which witnesses are called to testify. (*Id.* at p. 839 [holding adult-business zoning ordinance was a valid, content-neutral regulation].) That witness were called to testify in *Wiener* does not mean the case stands for the proposition that a trial with oral testimony was required in this case.[8] (See *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 343 ["A decision, of course, does not stand for a proposition not considered by the court"].)

The critical error in Valley Entertainment's argument is most clearly revealed in its trial brief. Like Valley Entertainment's citation to *Wiener* here, in its trial brief Valley Entertainment cited to the procedural history in *Gould v. Grubb* (1975) 14 Cal.3d 661, a case in which the trial court considered a petition for writ of mandamus challenging the constitutionality of an ordinance relating to voter ballots. After noting the trial court received live expert testimony and other evidence before deciding whether the ordinance was unconstitutional, *id.* at p. 666, Valley Entertainment stated: "Evidence was taken even though it was a writ of mandate case. Valley is perplexed. It does not know why it cannot obtain a trial where evidence can be presented simply

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[8] "Proceedings on the merits of a writ petition are typically referred to as the 'trial'; however, the procedures are, in fact, much more in the nature of an appeal or a law and motion matter than a typical civil trial." (Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2017) ¶ 20:225, p. 20-25.)

because this is a writ of mandate case. No rule prohibits an evidentiary hearing in a writ of mandate case."

We are also perplexed because Valley Entertainment could have presented written evidence with its trial brief, but elected not to do so.[9] Here, Valley Entertainment sought a writ of mandate under Code of Civil Procedure section 1085. In traditional mandamus proceedings (as opposed to administrative mandamus proceedings) the trial court has the discretion to receive documentary evidence and declarations not included in the administrative record. (Super. Ct. L.A. County, Local Rules, rule 3.231(h) (local rule 3.231(h)).)[10] The court may also receive oral testimony at the hearing. (*Ibid.*) And here, because the Commission had no authority to consider the constitutionality of the ordinance in question, the court would have been well within its discretion to receive evidence relevant to that issue, to the extent the administrative record was inadequate. (See, e.g., *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 30, fn. 19 [noting evidence may be submitted in certain traditional mandamus proceedings where agency action is informal or

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[9] As noted, Valley Entertainment only presented evidence when it filed its reply brief.

[10] Local rule 3.231(h) provides: "In traditional mandamus based on an agency's ministerial duty or informal action, and in other prerogative writs where no administrative hearing was required by law, the evidence is presented by way of declarations, deposition testimony, and documentary evidence unless a statute expressly provides for a record. Although the court has discretion to do so, it will rarely permit oral testimony. The evidence must be attached as exhibits to the parties' briefs or filed as a separate appendix. If separately presented, the evidence must be bound in appropriate side-bound three-inch binders. Spiral binding is preferred and three-ring binders are acceptable."

ministerial and administrative record is inadequate for court review].) But Valley Entertainment submitted almost no written evidence to support its request for a writ of mandate. Nor does the record indicate Valley Entertainment requested—and was denied—permission to offer additional relevant evidence, including oral testimony at the hearing on the merits. Instead, it seems Valley Entertainment erroneously believed it could not submit evidence to the court and therefore did not attempt to do so when it filed its trial brief. On this record, no error appears. (Cf. *Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338 (*Silver*) [no error in refusing request to present oral testimony in mandamus proceeding where request was untimely].)

In any event, contrary to its assertion, Valley Entertainment was not entitled to present live, oral testimony. It is well settled that in a writ of mandate hearing, the trial court has broad discretion to decide a case solely on the basis of declarations and other documentary evidence. (See *California School Employees Assn. v. Del Norte County Unified Sch. Dist.* (1992) 2 Cal.App.4th 1396, 1405; Cal. Civil Writ Practice 4th (Cont.Ed.Bar 2018) § 9.22, p. 9-10 [standard law and motion rules apply when petitioner uses noticed motion procedure rather than alternative writ procedure]; Cal. Rules of Court, rule 3.1306; Local rule 3.231(h).)

In short, and as the court observed, "[t]he fact that Petitioners did not avail themselves of the ability to submit

evidence is not due to any rule or prohibition preventing them from doing so." Nor was it due to any error by the court.[11]

2. Valley Entertainment fails to demonstrate the hours-of-operation ordinance is unconstitutional.

2.1. Standard of Review

In the mandamus proceeding, Valley Entertainment challenged the validity of the Commission's denial of its request for a permit on constitutional grounds. Specifically, Valley Entertainment argued the hours-of-operation ordinance is an unconstitutional prior restraint on free speech. A writ of mandate lies to compel performance of a legal duty imposed on government officials. (*Silver, supra,* 79 Cal.App.4th at p. 347.) Here, Valley Entertainment's request for a writ of mandate required the trial court to determine, in the first instance, whether the County's ordinance is constitutional.[12] Mandamus under Code of Civil Procedure section 1085[13] is the appropriate vehicle to challenge the constitutionality or validity of statutes or other official acts.

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[11] Valley Entertainment also suggests the court erred by dismissing the declaratory relief action as moot. Because Valley Entertainment fails to develop its argument or cite any supporting legal authority, it has forfeited this issue. (See, e.g., *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700 (*Landry*) [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].)

[12] The Commission could not, and did not, consider the validity of Los Angeles County Code section 22.62.030, subdivision (O).

[13] That section provides in pertinent part: "(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station ... ."

(See *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2 [noting mandate is the appropriate remedy for compelling a public official to act in accordance with the law and challenging the constitutionality or validity of a statute].) And because the construction and validity of a statute is a question of law, we review the trial court's decision on that issue de novo. (See *Silver*, at pp. 347–348 [de novo review of questions of law]; *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 642 ["[t]he constitutionality of a statute is a question of law, which we review de novo"].)

2.2. Content-Neutral Restrictions on Protected Speech and Expression

2.2.1. Under federal law, regulations designed to combat the secondary effects of businesses offering adult entertainment are deemed content neutral.

The United States Supreme Court has recognized nude dancing as a form of artistic expression protected under the First Amendment to the United States Constitution. (See *City of Erie v. Pap's A.M.* (2000) 529 U.S. 277, 289 (*Erie*); *Barnes v. Glen Theatre, Inc.* (1991) 501 U.S. 560.) However, "nude dancing ... falls only within the outer ambit of the First Amendment's protection." (*Erie,* at p. 289; *City of Renton v. Playtime Theatres, Inc.* (1986) 475 U.S. 41, 49, fn. 2 (*Renton*) [" '[I]t is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate' "]; *Barnes,* at p. 566 ["[N]ude dancing of the kind sought to be performed here is expressive conduct within the outer perimeters of the First Amendment, though we view it as only marginally so"].)

The high court has also recognized that businesses offering adult-oriented entertainment (including but not limited to nude dancing) tend to attract increased rates of crime, disorderly conduct, excessive noise, and other generally negative impacts (so-called "secondary effects") to the surrounding community. In the seminal case of *Renton*, the court upheld an ordinance that prohibited adult motion picture theaters from locating within 1,000 feet of a residential zone, single- or multi-family dwelling, church, park or school. The court first found that the ordinance was "properly analyzed as a form of time, place, and manner regulation" since the ordinance did not ban adult theaters altogether, but merely restricted the location of such businesses. (*Renton, supra*, 475 U.S. at p. 46.) The court also deemed the ordinance to be content neutral because the city's " '*predominate* concern' " was "aimed not at the *content* of the films shown at 'adult motion picture theatres,' but rather at the *secondary effects* of such theaters on the surrounding community." (*Id.* at p. 47; and see *id.* at p. 49 ["the Renton ordinance is completely consistent with our definition of 'content-neutral' speech regulations as those that 'are *justified* without reference to the content of the regulated speech' "].) On that basis, the court deemed the ordinance to be a content-neutral time, place, and manner regulation and applied an intermediate level of scrutiny, considering whether the ordinance was designed to serve a substantial governmental interest and allowed for reasonable alternative avenues of communication. (*Id.* at p. 50; and see *Erie, supra,* 529 U.S. at p. 296.)

In 2002, a plurality of the Supreme Court clarified its holding in *Renton*. (See *City of Los Angeles v. Alameda Books, Inc.* (2002) 535 U.S. 425 (*Alameda Books*).) Discussing *Renton*,

the court stated, "We held that a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial, independent government interest. [Citation.] This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance. [Citation.]" (*Alameda Books*, at pp. 438–439.) The court also endorsed the city's reliance on a 1977 study of crime patterns by the Los Angeles Police Department that showed increased crime rates near adult-oriented businesses. (*Id.* at pp. 435–436.)

Following *Renton*, the federal courts have routinely upheld restrictions on the location of adult-oriented businesses through zoning laws (*Alameda Books, supra,* 535 U.S. at p. 442), licensing requirements (*Genusa v. City of Peoria* (7th Cir. 1980) 619 F.2d 1203, 1213), disclosure requirements (*Schultz v. City of Cumberland* (7th Cir. 2000) 228 F.3d 831, 851–852), and restrictions such as a "no touch" rule (*Hang On, Inc. v. City of Arlington* (5th Cir. 1995) 65 F.3d 1248, 1254). And several federal courts of appeals have upheld hours-of-operation ordinances similar to—and in some cases significantly more restrictive than—the Los Angeles County ordinance at issue here. (See, e.g.,

Mitchell v. Com'n on Adult Entertainment Est. (3d Cir. 1993) 10 F.3d 123 [upholding ordinance requiring business closure 10:00 a.m. to 10:00 p.m. daily, all day Sunday and some holidays]; *Lady J. Lingerie, Inc. v. City of Jacksonville* (11th Cir. 1999) 176 F.3d 1358 [upholding ordinance requiring closure 2:00 a.m. to 10:00 a.m. daily]; *Schultz*, at p. 831 [upholding ordinance requiring closure midnight to 10:00 a.m. daily and all day on Sunday].)

2.2.2. California law is consistent with federal law.

Article I, section 2 of the California Constitution contains our state's counterpart to the free speech provision found in the First Amendment to the United States Constitution. Article I, section 2, subdivision (a) (the liberty of speech clause) declares, "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

The California Supreme Court has held the free speech guarantee within the liberty of speech clause is at least as broad as, and in some ways is broader than, the comparable provision of the federal Constitution's First Amendment. (See, e.g., *Delano Farms Company v. California Table Grape Com.* (2018) 4 Cal.5th 1204, 1221 (*Delano Farms*); *Beeman v. Anthem Prescription Management, LLC* (2013) 58 Cal.4th 329, 341 (*Beeman*).) "Unlike the First Amendment, California's free speech clause 'specifies a "right" to freedom of speech explicitly and not merely by implication,' 'runs against ... private parties as well as governmental actors' and expressly 'embrace[s] all subjects.' [Citation.] However, '[m]erely because our provision is worded more expansively and has been interpreted as more protective

than the First Amendment ... does not mean that it is broader than the First Amendment in all its applications.' [Citation.]" (*Beeman*, at p. 341.)

"Furthermore, although the state Constitution is an independent source of fundamental rights (*Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 365 [(*Alliance*)]; see also Cal. Const., art. I, § 24), '[o]ur case law interpreting California's free speech clause has given respectful consideration to First Amendment case law for its persuasive value' (*Beeman*, [*supra*,] 58 Cal.4th at p. 341). Thus, in appropriate situations we have construed article I, section 2 in a manner congruent with prevailing interpretations of the First Amendment. [Citation.]" (*Delano Farms, supra,* 4 Cal.5th at p. 1221.)

As pertinent here, the California Supreme Court surmised, even before the United State Supreme Court so held, that nude dancing is a form of expressive conduct protected under the First and Fourteenth Amendments. (See *Morris v. Municipal Court* (1982) 32 Cal.3d 553, 564, fn. 11 [discussing *In re Giannini* (1968) 69 Cal.2d 563, 567–568].) Our high court held such entertainment was protected under the liberty of speech clause in the California Constitution. (*Morris*, at p. 564.)

Also, and prior to *Renton*, our high court suggested strict scrutiny should be applied to regulations that infringe on speech rights and are targeted specifically at adult businesses. In *People v. Glaze* (1980) 27 Cal.3d 841 (*Glaze*), the court applied the California Constitution's liberty of speech clause and struck down an ordinance requiring all picture arcades to remain closed between the hours of 2:00 a.m. and 9:00 a.m. The city stated it adopted the ordinance to prevent public masturbation during

those early morning hours when law enforcement problems are greatest. (*Id.* at p. 847.) The court noted the ordinance applied to all picture arcades—not solely those showing sexually explicit films—and therefore was not an "incidental infringement of freedom of expression." It then indicated that "because of the 'preferred position' of freedom of speech in our system of ordered liberty," a "higher standard of review" should be applied. "Under this test, the government must bear the burden of showing that the regulation is narrowly and explicitly drawn and necessary to further a legitimate government interest." (*Id.* at pp. 845–846.)

As explained *ante*, *Renton* later rejected such a heightened standard when evaluating an ordinance directed at adult-oriented businesses under the First Amendment, and instead applied an intermediate level of scrutiny. (*Renton, supra*, 475 U.S. at p. 47 [holding ordinance aimed at secondary effects of speech constitutional if it is "designed to serve a substantial governmental interest and [does] not unreasonably limit alternative avenues of communication"].)

After *Renton*, our high court has adopted an intermediate level of scrutiny in reviewing challenges to local ordinances under the California Constitution's liberty of speech clause. Twenty years after deciding *Glaze*, the California Supreme Court answered a question certified from the United States Court of Appeals for the Ninth Circuit: What is the appropriate level of scrutiny under the liberty of speech clause to analyze the constitutionality of ordinances restricting speech in the form of public requests for an immediate donation of money? (*Alliance, supra,* 22 Cal.4th at p. 352.) The specific issue before the Ninth Circuit was whether an ordinance prohibiting and/or restricting certain forms of speech (panhandling) to combat the secondary

effects of that speech violated the California Constitution's liberty of speech clause. The ordinance prohibited requests for an immediate donation of money or other thing of value (i.e., panhandling) in certain public areas (near banks, ATMs, occupied motor vehicles, on public transportation, near public transportation stops, and in parking lots or structures after dark) and barred "aggressive" panhandling[14] in public areas throughout the city.

Like the ordinance at issue in *Renton* which applied only to adult-oriented business, the ordinance in *Alliance* applied only to a specific type of speech—solicitation for an immediate donation. (*Alliance*, *supra*, 22 Cal.4th at p. 363.) Our high court discussed at length several United States Supreme Court cases that, like *Renton*, considered regulations targeted to particular types of speech to be content neutral—and thus subject to intermediate scrutiny—to the extent the regulations were aimed at the secondary effects of speech. (*Id.* at pp. 367–373.) And although the court acknowledged the California Constitution is an independent document not governed by federal decisions interpreting the First Amendment, see *id.* at p. 365, our high court advised that the intermediate level of scrutiny should apply

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[14] Solicitation conducted in an " 'aggressive manner' " was defined as "approaching, speaking to, or following a person in a manner intended to cause or reasonably likely to cause fear of bodily harm or intimidation; intentionally touching in the course of soliciting; intentionally blocking or interfering with passage; using violent or threatening gestures; persisting in closely following after being informed that the person does not want to donate; or using profane, offensive, or abusive language likely to provoke an immediate violent reaction." (*Alliance, supra*, 22 Cal.4th at p. 363.)

to the analysis under the liberty of speech clause as well. (*Id*. at pp. 378–379.)

Although *Alliance* concerned a restriction on panhandling, not adult-oriented entertainment, the same standard applies. Citing *Alliance*, our Supreme Court subsequently indicated, in response to a certified question from the Ninth Circuit, that an ordinance restricting the hours of operation of an adult business should be reviewed, for purposes of the liberty of speech clause, under intermediate scrutiny.[15] (See *Fantasyland Video, Inc. v. County of San Diego* (2007) 505 F.3d 996, 1001 (*Fantasyland Video*) [summarizing the California Supreme Court's response to certified question and concluding federal and state standards are identical]; cf. *Krontz v. City of San Diego* (2006) 136 Cal.App.4th 1126, 1137 [applying *United States v. O'Brien* (1968) 391 U.S. 367, 377, holding content-neutral regulation valid if "(1) the regulation is within the power of the government to enact; (2) it furthers an important or substantial governmental interest; (3) the government interest is unrelated to the suppression of free speech; and (4) the restriction is no greater than is essential to the furtherance of the governmental interest"].)

For the reasons just stated, we reject Valley Entertainment's suggestion that *Glaze* is controlling and requires us to invalidate the challenged ordinance in the present case.

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[15] We take judicial notice of the Supreme Court order filed September 26, 2007 (No. S155408) denying the Ninth Circuit's request for decision of a certified question.

2.3. The hours-of-operation ordinance is a valid, content-neutral restriction on expressive conduct such as nude dancing.

Valley Entertainment contends the hours-of-operation ordinance is unconstitutional on its face.[16] "A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. [Citation.] ' "To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute. … Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." ' [Citation.]" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)

The ordinance at issue, like the ordinances in *Renton* and *Alliance*, is not a complete ban on protected expression and has as its stated purpose the regulation of the secondary effects of adult-oriented businesses. We therefore treat the regulation as content neutral and examine whether the regulation is narrowly tailored to serve a substantial governmental interest and leaves open adequate alternative means of communication.

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[16] Although one of the argument headings in Valley Entertainment's brief suggests it believes the hours-of-operation ordinance is unconstitutional facially and as applied, the only substantive argument developed by Valley Entertainment is a facial challenge to the ordinance. Valley Entertainment has therefore forfeited any challenge to the ordinance as applied. (*Landry, supra*, 39 Cal.App.4th at pp. 699–700.)

As we have explained, local governments throughout the country have recognized, and attempted to address through zoning ordinances, the negative secondary effects that traditionally surround adult-oriented business. Los Angeles County is no exception. The Los Angeles County Code section 22.62.010 currently states, "In order to promote the health, safety, and general welfare of the residents of the county of Los Angeles, this chapter is intended to regulate adult business which, unless closely regulated, have serious secondary effects on the community. These secondary effects include, but are not limited to, the following: depreciation of property values, increases in vacancy rates in residential and commercial areas, increases in incidences of criminal activity, increases in litter, noise, and vandalism and the interference with enjoyment of residential property in the vicinity of such businesses. [¶] It is neither the intent nor the effect of this chapter to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of this chapter to restrict or deny access by adults to materials of a sexually explicit nature, or to deny access by the distributors or exhibitors of such materials to their intended market."

The ordinance's stated purpose is consistent with the legislative history of the current and prior versions of the ordinance. In 1978, when the County first adopted an ordinance targeted at adult-oriented businesses, the County added a code provision requiring adult businesses applying for a permit to show, in addition to the standard findings required by the zoning board:

"(1) The requested use at the proposed location will not adversely affect the use of a church, temple or other place used

exclusively for religious worship, school, park, playground or similar use within a 500 foot radius.

"(2) The requested use at the proposed location is sufficiently buffered in relation to residentially zoned areas within the immediate vicinity so as not to adversely affect said areas, and

"(3) The exterior appearance of the structure will not be inconsistent with the external appearance of commercial structures already constructed or under construction within the immediate neighborhood so as to cause blight, deterioration, or substantially diminish or impair property values within the neighborhood." (L.A. Ord. No. 11,830, § 16 [adopted by the L.A. County Board of Supervisors November 21, 1978].)

A study concerning the ordinance conducted by the Los Angeles County Department of Regional Planning concluded "The long-term social impacts are considered beneficial. Currently, people living in residential areas adjacent, or in close proximity, to adult entertainment businesses complain of noise, restriction of their movement (particularly in the evenings), deterioration of neighborhoods, and the loss of businesses serving nearby residents. The intent of the proposed ordinance is to reduce and/or minimize these problems." (Appen. II to Proposed Ordinance [submitted by the Office of the County Counsel to the Board of Supervisors November 3, 1978].)

In 1994, the County amended the ordinance to include the hours-of-operation restriction in effect today. In the preamble of the ordinance, the County set forth its intention:

"Prior to the adoption of this ordinance, the Board of Supervisors reviewed detailed studies prepared by other jurisdictions regarding the detrimental social and economic

effects on persons and properties immediately surrounding established sex-oriented businesses. The studies reviewed included those prepared by the cities of Austin, Texas; Taylor, Michigan; Detroit, Michigan; Indianapolis, Indiana; Garden Grove, California; Los Angeles, California; Phoenix, Arizona; and the Report of the Minnesota Attorney General's Working Group on the Regulation of Sexually Oriented Businesses.

"Based on its review of such studies, the Board of Supervisors believes the following statements to be true:

a. Sex-oriented businesses increase crime in general and sex-related crimes in particular;
b. Crime rates are higher in residential areas surrounding sex-oriented businesses than in commercial or industrial areas surrounding sex-oriented businesses[;]
c. Crime rates are higher in areas where sex-oriented businesses are closely situated to one another than in areas where sex-oriented businesses are separated from one another;
d. The presence of sex-oriented businesses in close proximity to residential areas has been shown to reduce property values in those areas;
e. The image of the County of Los Angeles as a pleasant and attractive place to reside and to conduct business will be adversely affected by the presence of sex-oriented businesses in close proximity to residential uses, religious institutions, parks and schools;
f. Sex-oriented business should be regulated to prevent deterioration or degradation of the vitality of the community, but such regulations should give persons

desiring to patronize such businesses an opportunity to do so; and

g. Sex-oriented businesses should be regulated through mechanisms that will separate such businesses from those land uses with which they are incompatible." (L.A. County Ord. No. 94-0081, pp. 1–2 [adopted October 18, 1994].)

Based on these findings, the County could reasonably infer that restrictions on the hours of operation of adult-oriented businesses, in combination with other zoning restrictions, would have the effect of reducing crime, disorderly conduct, traffic, and noise during late night and early morning hours. (Accord, *Fantasyland Video, supra,* 505 F.3d at p. 1002.)

Valley Entertainment does not challenge the basis of the County's findings, nor does it argue that regulating the secondary effects of adult businesses is an illegitimate governmental purpose. Instead, Valley Entertainment contends the County had no studies specifically related to the limitation of hours of operation as a means of combating those secondary effects, and therefore it should be prohibited from requiring any adult business to limit its hours of operation. We agree with the United States Supreme Court, which rejected that precise argument in *Renton*. Specifically, the court held that the City of Renton was not required to conduct its own studies regarding the secondary effects of adult-oriented businesses but was instead entitled to rely on findings made by other municipalities. (*Renton*, *supra*, 475 U.S. at p. 51.) The court went on to explain: "Nor is our holding affected by the fact that Seattle ultimately chose a different method of adult theater zoning than that chosen by Renton, since Seattle's choice of a different remedy to combat the

secondary effects of adult theaters does not call into question either Seattle's identification of those secondary effects or the relevance of Seattle's experience to Renton." (*Id*. at p. 52.) Moreover, the courts generally give substantial latitude to municipalities to experiment with the precise manner of regulation. The United States Supreme Court has observed, on more than one occasion, that " 'It is not our function to appraise the wisdom of [the city's] decision to require adult theaters to be separated rather than concentrated in the same areas. … [T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.' " (*Ibid*. [citing *Young* v. *American Mini Theaters, Inc.* (1976) 427 U.S. 50, 71].)

Valley Entertainment also complains that other businesses, such as bowling alleys, restaurants, and fitness clubs, are allowed to operate 24 hours a day while adult-oriented businesses must close between 2:00 a.m. and 9:00 a.m. Given that Valley Entertainment has not supported its position with any legal authority or cogent analysis, we pass the point without further discussion. (See, e.g., *Landry, supra*, 39 Cal.App.4th at pp. 699–700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].) In any event, we are unaware of any authority or other information suggesting bowling alleys, restaurants, and fitness clubs draw into their immediate surroundings the same sort of negative secondary effects associated with adult-oriented businesses.

Finally, Valley Entertainment contends its club "has caused no problems. It is in an industrial area of the County and no one is disturbed." It also asserts Bliss Showgirls "operates in a heavy industrial area with no residences or churches or sensitive uses nearby … ." On this premise, Valley Entertainment argues

the County should individually evaluate each adult business in unincorporated Los Angeles Country to determine whether it should be required to comply with the hours-of-operation ordinance. Valley Entertainment provides no legal authority, and we are unaware of any, prohibiting the County from enacting an ordinance applicable to all adult-oriented businesses, or requiring the County to undertake an individualized examination of each such business in order to issue exemptions from its generally-applicable ordinances. We decline Valley Entertainment's invitation to create such a requirement out of whole cloth. And, in any case, the administrative record indicates that as to Valley Entertainment specifically, half of all calls to the Los Angeles County Sheriff's Department concerning activities in and around Bliss Showgirls occurred between 2:00 a.m. and 9:00 a.m.

We also conclude the ordinance is narrowly drawn and leaves open adequate alternative means of communication. The ordinance only requires Bliss Showgirls to close seven out of every 24 hours, leaving the other 17 hours per day available for performances of nude dancing. As noted *ante*, several federal courts of appeal have upheld more restrictive regulations than the ordinance at issue, concluding adequate time remained for the presentation of the protected artistic expression. And although an ordinance that prohibits protected speech during specific hours could be so restrictive as to be unconstitutional, this one is not.

DISPOSITION

The judgment is affirmed. The County to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

GOODMAN, J.*

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.