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CARMEN A. TRUTANICH
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REPORT NO. R 1 1 - 0 0 1 9

JAN 11 2011

REPORT RE:

**DRAFT ORDINANCE AMENDING SUBDIVISION 3 OF SUBSECTION B
OF THE LOS ANGELES MUNICIPAL CODE TO PROHIBIT PRACTICING,
CARRYING ON OR CONDUCTING ANY TRADE, OCCUPATION, BUSINESS OR
PROFESSION IN A CITY PARK, EXCEPT UNDER A CONCESSION CONTRACT
WITH THE CITY, AND AMENDING SUBSECTION A OF SECTION 63.44 TO ADD A
DEFINITION OF "DEPARTMENT"**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 10-2422

Honorable Members:

This Office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. Subdivision 3 of Subsection B of Section 63.44 of the Los Angeles Municipal Code (LAMC) (Section 63.44 B 3) was suspended by the Council on October 1, 2005, due to litigation involving First Amendment challenges to the right of free expression in City parks and the sale of items that are constitutionally protected because they are the seller's own expression or are inextricably intertwined with the seller's religious, political, philosophical or ideological message. This ordinance would reinstate Section 63.44 B 3 to prohibit conducting any trade, occupation, business or profession within a City park without a concession contract with or permit issued by the City, while recognizing that expressive items may be sold in City parks without a concession contract or permit if they are the seller's own

expression or are inextricably intertwined with the seller's religious, political, philosophical or ideological message. The draft ordinance would also amend Subsection A of Section 63.44 to define "Department" as the Department of Recreation and Parks.

Background

Prior to its suspension, Section 63.44 B 3 prohibited the sale in City parks of any commercial merchandise or practicing, carrying on, conducting or soliciting any trade, occupation, business or profession, except by contract with the Board of Recreation and Park Commissioners. Section 63.44 B 3, along with other provisions of the LAMC including Section 42.15 prohibiting vending on beaches, was alleged to be unconstitutional in litigation relating to the Venice Boardwalk. That litigation has since been resolved, but several attempts to revise Section 42.15 have resulted in several lawsuits, one of which—*Dowd v. City of Los Angeles*, CV 09-06731—is still pending. In the meantime, the City has been unable to enforce the prohibition on practicing, carrying on or conducting a trade, occupation, business or profession without a contract or permit on City park property. One result of the City's inability to enforce 63.44 B 3 is reflected in the motion (Parks-Perry) adopted on October 6, 2010, explaining that complaints have been received about people conducting the business of dog obedience training on park property at Norman O. Houston Park in Council District 8. In response to those facts and other complaints received by this Office that items are being sold in parks throughout the City that are not expressive items protected by the First Amendment to the United States Constitution, this Office has prepared and transmits this draft ordinance. Similarly to LAMC Section 42.15, this draft ordinance recognizes that the First Amendment protects the sale of certain expressive items in parks which the courts have found to be traditional public fora for expressive activity. Therefore, while the draft ordinance prohibits conducting any trade, occupation, business or profession in City parks without a contract or permit from the Department of Recreation and Parks, exception is made for the sale of items that constitute the seller's own speech or are inextricably intertwined with the seller's religious, political, philosophical or ideological message.


Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Department, the Department of General Services, Office of Public Safety and the Department of Recreation and Parks. To expedite this matter, we are requesting that they provide any comments they have directly when the Council considers this matter.

If you have any questions regarding this matter, please contact Senior Assistant City Attorney Mark L. Brown at (213) 978-8199. He or another member of this Office will be available when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:MB:lee
Transmittal

ORDINANCE NO. _____

An ordinance amending Subdivision 3 of Subsection B of Section 63.44 of the Los Angeles Municipal Code to prohibit practicing, carrying on or conducting any trade, occupation, business or profession in a City park, except under a concession contract or permit with the City, and amending Subsection A of Section 63.44 to add a definition of the word "Department."

WHEREAS, the City of Los Angeles (City) has received complaints about people providing dog obedience training (including attack dogs) in City parks, such as Norman O. Houston Park, without a permit or contract approved by the Department of Recreation and Parks (Department); and

WHEREAS, these and similar activities are deterring residents from using Norman O. Houston Park and other City parks for fear that large unleashed attack dogs are present; and

WHEREAS other businesses, including many that sell purely commercial items and services, are being conducted without authorization from the City on City park property that would otherwise be available to the public for recreation, converting public property to their private business use; and,

WHEREAS the unauthorized business activities compete unfairly with the City's concessionaires who are authorized by the Department to furnish goods and services to the public by concession contract or permit and are required to pay rent or permit fees to the Department; and

WHEREAS Los Angeles Municipal Code (LAMC) Section 63.44 B 3, as presently written, prohibits any person from conducting any trade or business on City park property without permission from the Department. This section of the LAMC was suspended on October 1, 2005, due to litigation involving First Amendment challenges to the right of free expression in City parks and the sale of items relative to a person's political, ideological, philosophical or religious message. The City's purpose in enacting this ordinance does not infringe upon a person's right to use City parks for free expression but rather involves only the prevention of the unauthorized use of City park property under the management and control of the Department for commercial business activities unrelated to constitutionally protected speech. It is therefore the purpose of this ordinance to reinstate the portion of LAMC Section 63.44 B 3 that prohibits the practice of conducting any trade, occupation, business or profession, except as authorized by contract or permit, while recognizing that expressive items that are constitutionally protected, because they are the seller's own expression or are inextricably intertwined with the seller's religious, political, philosophical or ideological message, may be sold in parks without the Department's authorization.

NOW THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Subdivision 3 of Subsection B of Section 63.44 of the Los Angeles Municipal Code previously suspended by Ordinance No. 176,929 is hereby deleted in its entirety and replaced with the following:

(3) No person shall practice, carry on, or conduct any trade, occupation, business or profession, except by contract with or permit issued by the Board, Department or Commission or their authorized representatives. However, nothing in this subdivision shall prohibit the sale or offering for sale of newspapers, leaflets, periodicals, pamphlets, bumper stickers, patches, or expressive buttons and other forms of communication which have been created, written or composed by the seller, including books, cassettes, tapes, compact discs, digital video discs, paintings, photographs and sculptures, or other items that are inextricably intertwined with the seller's religious, political, philosophical or ideological message, except that the sale or the offering for sale of any such items is prohibited in museums, in those portions of the park to which access is restricted by payment of an admission fee or in those facilities which are operated under contract with or by permit from the Board, Department or Commission. For purposes of this subdivision, forms of communication shall be deemed to have been created by the seller only if they have been predominantly authored, performed, recorded, filmed or otherwise made or assembled by the seller.

Sec. 2. Subsection A of Section 63.44 is amended by adding a paragraph at the end of the subsection to read:

"Department" shall mean the Department of Recreation and Parks.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 

MARK L. BROWN
Senior Assistant City Attorney

Date 1-10-11

File No. 10-2422