



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 4 - 0 3 1 3
JUL 3 1 2014

REPORT RE:

DRAFT ORDINANCE AMENDING SECTION 63.44 OF THE LOS ANGELES MUNICIPAL CODE (LAMC) TO ADD CERTAIN DEFINITIONS AND REVISE IN ITS ENTIRETY THE PREVIOUSLY SUSPENDED PROHIBITION ON VENDING IN PUBLIC PARKS, TO FURTHER DEFINE THE PROHIBITION AGAINST CAMPING IN PARKS AND TO SPECIFY THE PENALTIES FOR VIOLATION OF LAMC 63.44

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

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, amending various subsections within LAMC Section 63.44, which sets forth regulations applicable at City parks, including beach parks. Specifically, the draft ordinance amends Subsection A of LAMC Section 63.44 to add certain operational definitions. This draft ordinance also revises in its entirety Subdivision 3 of Subsection B of LAMC Section 63.44, replacing the previously suspended prohibition on vending in public parks with a new subdivision regulating vending in public parks in a manner consistent with recent court rulings. Additionally, the draft ordinance amends Subdivision 4 of Subsection D and Subdivision 9 of Subsection I of LAMC Section 63.44 to further clarify the prohibition against camping in public parks and beach parks, except in areas designated for camping. Lastly, the draft ordinance adds two new Subsections, R and S, to LAMC Section 63.44. Subsection R modifies the penalties for violations of LAMC Section 63.44, and Subsection S adds a severability clause. This Office requests that the City Clerk place the draft ordinance on the first available City Council agenda for action on an urgency basis.

Background and Summary of Ordinance Provisions

This draft ordinance reinstitutes a ban on commercial vending in public parks by replacing the previously suspended vending ban in Subdivision 3 of Subsection B of LAMC Section 63.44. Subdivision 3 was suspended by ordinance on October 1, 2005, as a result of litigation involving a challenge to the legality of another ordinance, LAMC Section 42.15, which banned commercial vending on the Venice boardwalk. In connection with two lawsuits against the City -- *Michael Hunt, Matt Dowd v. City of Los Angeles* (2011) 638 F. 3d. 703 and *Matt Dowd, et al. v. City of Los Angeles*, 2013 U.S. Dist. LEXIS 11145, the Ninth Circuit and the United States District Court, respectively, have clarified the legal standard applicable to the regulation of vending in parks. This draft ordinance revises Subsections A and B.3 of LAMC Section 63.44 to ensure that the City's regulation of vending in City parks is consistent with the recent court rulings.

This draft ordinance also seeks to amend Subdivision 4 of Subsection D of LAMC Section 63.44 to clarify the prohibition on camping and the use of tents within all City parks and beach parks, except in locations specifically designated for camping. The draft ordinance provides an exception for certain umbrellas and sun shades.

This draft ordinance further specifies progressive penalties for violations of LAMC Section 63.44.

CEQA Recommendations

We recommend that prior to the adoption of this ordinance you determine that your action is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378, because the ordinance is not a project in that it represents general policy and/or procedure making.

We also recommend that you determine that the adoption of the ordinance is exempt pursuant to State CEQA Guidelines Section 15301 (City CEQA Guidelines Article III, Section 1.a.), in that the ordinance involves negligible or no expansion of use of existing facilities; and State CEQA Guidelines Section 15305 (City CEQA Guidelines, Article III, Section 1.e.), in that the ordinance implements a minor change in park limitations. We also recommend that you find your adoption of the ordinance exempt from CEQA under Guidelines Section 15323, in that the ordinance provides for the normal operation of existing facilities for public gatherings. Finally, Council may determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption), because it can be seen with certainty that there is no possibility that the action in question may have a significant effect on the environment. If the City Council concurs, it may comply with CEQA by making one or more of the above determinations prior to or concurrent with its action on the ordinance. Council should thereafter direct staff to cause the filing of a Notice of Exemption.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Recreation and Parks, the Los Angeles Police Department and the Department of General Services. The Board of Recreation and Parks Commissioners approved the draft ordinance at a meeting on July 23, 2014. The Board of Recreation and Parks Commissioners recommended that the Council consider a six month delay in implementation to provide public awareness of the new vending rules and also recommended lower penalties for second and subsequent violations of that ordinance. We ask that the Department of Recreation and Parks, the Los Angeles Police Department and the General Services Department provide comments directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Assistant City Attorney Valerie Flores at (213) 978-8149. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

DM:VF:ac
Transmittal

cc: Michael Shull, Interim General Manager
Department of Recreation and Parks
Charles Beck, Chief
Los Angeles Police Department
Tony Royster, General Manager
General Services Department
Gary Newton, Chief
Office of Public Safety
General Services Department

ORDINANCE NO. _____

An ordinance amending Subsections A and Subdivision 3 of Subsection B of Section 63.44 of Chapter VI of the Los Angeles Municipal Code to prohibit vending of commercial items or services in all public parks (including beach parks and recreation areas), and amending Subdivision 4 of Subsection D and Subdivision 9 of Subsection I of Section 63.44 of Chapter VI of the Los Angeles Municipal Code to further define and prohibit camping, including the use of tents, within all City parks, except in locations designated for such purposes, adding a new Subsection R to Section 63.44 to specify penalties for violations, and adding a new Subsection S to Section 63.44 to add a severability clause to ensure that if a court declares any portion of the section to be unlawful that the remaining portions of Section 63.44 remain in full force and effect.

WHEREAS, the City of Los Angeles is home to more than 3.5 million residents and the availability of safe, urban parks make the City a very desirable place to recreate and visit. Population density and limited open parkland present threats to the quality of life in the City's parks and open spaces; and

WHEREAS, governmental regulation of activities in public parks is a legitimate exercise of the City's police power, granted through the City's Charter and Municipal Code; and

WHEREAS, the City has broad powers to control the conduct of commercial activity in its parks and there is no vested right to do business in public parks; and

WHEREAS, to protect the public safety and to ensure unencumbered access to safe and open parks, the City seeks to adopt regulations in a manner that respects and protects the constitutional rights of people visiting and enjoying public parks which are quintessential public fora; and

WHEREAS, unregulated vending, business or trade in public parks contributes to unsafe and encumbered park and open space and thereby impedes the rights of citizens to enjoy and recreate in parks and causes visual blight and clutter; and

WHEREAS, unregulated vending of services can result in activities that are illegal and harmful to human health, including services by unlicensed vendors of services for which a license is required by the State of California, and the application of toxic substances and or merchandise to persons; and

WHEREAS, the unregulated business of selling food, services and merchandise in public parks can result in the sale of stolen, defective or counterfeit items, dangerous services or unsafe food, goods or merchandise thereby defrauding the public, and the sales are contrary to and adversely affects the peace, health, safety and welfare of the City's residents, workers and visitors; and

WHEREAS, the operation of unlicensed or unpermitted vending protects provides little protection for patrons against harmful products, services, or counterfeit items; and

WHEREAS, if the City fails to prohibit the unregulated vending of commercial items and services and the harms that come from unregulated commercial vending, the City may face liability without the indemnity or recourse that is generally available to the City from the operators of an established, licensed or permitted business; and

WHEREAS, it is not the intent of the City to prohibit the licensed and permitted sale of food, services or merchandise pursuant to contract, permit or license; and

WHEREAS, in years past, the City adopted various ordinances to regulate vending, business or trade in City parks and public spaces; and

WHEREAS, in recent years, court rulings have further delineated when and how municipalities can regulate activities in parks, streets, sidewalks and other public places, and this ordinance is intended to amend the City's existing laws to ensure consistency with these court rulings; and

WHEREAS, the City wishes to create uniform rules regarding camping and the use of tents in all City parks and beaches; and

WHEREAS, the City wishes to further define existing restrictions regarding camping within City parks and beaches; and

WHEREAS, the City wishes to restrict the use of tents and other camping activities within City parks and beaches; and

WHEREAS, unregulated camping and tents cause visual clutter and blight in City parks and beaches; and

WHEREAS, unregulated camping and tents in City parks and beaches create unnecessary, excessive and blighted activity which is detrimental to public health, welfare and safety, and contrary to public interest, harms nearby residents and diminishes the public's enjoyment and use of City parks and beaches for recreational purposes; and

WHEREAS, the City wishes to provide for progressive penalties for violation of this section; and

WHEREAS, the City wishes to ensure that, if a court of competent jurisdiction declares any portion of this ordinance to be unlawful, the remaining portions remain valid.

NOW, THEREFORE,

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

Section 1. Subsection A of Section 63.44 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

A. Definitions: As used in this section:

“Beach” shall mean and include public seashore and shoreline areas bordering the Pacific Ocean that are owned, managed or controlled by the City.

“Board” shall mean the Board of Recreation and Parks Commissioners of the City of Los Angeles.

“City” shall mean the City of Los Angeles, a municipal corporation.

“Department” shall mean the Department of Recreation and Parks of the City of Los Angeles.

“Donation” shall mean a gift; a voluntary act which is not required and does not require anything in return.

“Food” shall mean any type of edible substance or beverage.

“Goods or Merchandise” shall mean any items that are not Food.

“Handcrafts” shall mean objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing and beading, including objects such as jewelry, pottery, silver work, leather goods and trinkets. Most handcrafts have more than nominal utility apart from any communicative value they possess. Most commonly, handcrafts do not communicate a message, idea or concept to others, and are often mass produced or produced with limited variation. Handcrafts do not include visual arts.

“Park” shall include every public park, roadside rest area, playground, zoological garden, ocean, beach or other recreational facility area, together with any parking lot, reservoir, pier, swimming pool, golf course, court, field, bridle path, trail, or other recreational facility, or structure thereon, in the City of Los Angeles which is owned, controlled, operated or managed by the Board of Recreation and Parks Commissioners.

“Perform, Performing, Performance or Performances” shall mean to engage in any of the following activities in a public Park: playing musical

instruments; singing; dancing; acting; pantomiming; puppeteering; juggling; reciting; engaging in magic; creating visual art in its entirety; presenting or enacting a play, work of music, work of art, physical or mental feat, or other constitutionally protected entertainment or form of expression. The terms Perform, Performing, Performance or Performances shall not include:

- (i) The provision of personal services such as massage, boot camps, yoga classes or dog training;
- (ii) The completion or other partial creation of visual art;
- (iii) The creation of visual art which is mass produced or produced with limited variation; or
- (iv) The creation of handcrafts.

“Performer” shall mean a person who performs. Performer includes the employers, employees and agents of a performer. Indicia of being a performer include, but are not limited to, setting up performance equipment, staging or orienting the performance towards the public, performing in the same location for an extended period of time, performing in public over multiple days, seeking voluntary contributions through the passing around of a hat or leaving open an instrument case or other receptacle, and soliciting donations after a performance.

“Person or Persons” shall mean one or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two or more individuals (or manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

“Vend or Vending” shall mean to sell or barter food, goods, merchandise or services, or to require someone to pay a fee or to set, negotiate, or establish a fee before providing food, goods, merchandise or services, even if characterized by the vendor as a donation.

“Vendor” shall mean a person who Vends. Vendor includes the employers, employees, and agents of a Vendor.

Sec. 2. Subdivision 3 of Subsection B of Section 63.44 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

3. **Vending Prohibited.** Except as otherwise allowed by law, no Person shall engage in Vending in any public Park except as specifically allowed below:

(a) A Person may engage in traditional expressive speech and petitioning activities, and may Vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches and/or buttons.

(b) A Person may Vend the following items, which have been created, written or composed by the Vendor: books, audio, video or other recordings of their Performances, paintings, photographs, prints, sculptures or any other item that is inherently communicative and is of nominal value or utility apart from its communication.

(c) Although an item may have some expressive purpose, it will be deemed to have more than nominal utility apart from its communication if it has a common and dominant non-expressive purpose. Examples of items that have more than normal utility apart from their communication and thus are subject to the Vending ban under the provision of this section include, but are not limited to, the following: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, crystals, lotions, candles, jewelry, toys and stuffed animals.

(d) A Vendor only may display items that may be Vended pursuant to this subsection.

(e) A Vendor may not provide free of charge any item that may not be Vended pursuant to this subsection if the purchase of an item that may be Vended lawfully pursuant to this subsection is a condition of receiving the free item.

(f) A Performer may Perform.

(g) The City, by and through its Board or Department, may issue a license, permit or contract with a Person or organization to Vend or to conduct or operate an authorized event, concession, business or trade in a Park.

(h) Any Vendor conducting lawful Vending under this subsection must comply with applicable tax and licensing requirements and comply with all permitting or contract requirements of the City, Department of Recreation and Parks, its Board, Commission or their authorized representatives.

Sec. 3. Subdivision 4 of Subsection D of Section 63.44 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

4. Camp or engage in Camping in a Park, except in locations designated for such purposes, or erect, maintain, use or occupy any Tent, excluding Umbrellas or Sun Shades.

(a) **Definitions:** For purposes of this subdivision, the following words or phrases shall mean:

(i) **“Camp” or “Camping”** means using a Park for living accommodation purposes, as evidenced by: (a) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of a Park, with one's personal possessions or belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, pillow, luggage, backpacks, kitchen utensils, cookware and cooking equipment); and (b) engaging in one or more of the following: sleeping, storing personal possessions or belongings as defined above, making a fire, cooking, or consuming meals. The combined activities of (a) and (b) constitute camping when it reasonably appears, in light of all the circumstances, that a person is using a Park as a living accommodation regardless of his/her intent or the nature of other activities in which the person might also be engaged.

(ii) **“Tent”** means any shelter or structure, made of any material, that is not open on all sides and which lacks an unobstructed view into the Tent, shelter or structure from the outside.

(iii) **“Umbrella or Sun Shade”** means any canopy or cover that is open on all sides, consists of pliable tent-like material such as canvas, nylon or other synthetic fabric, and that is maintained in an upright position by one or more supporting metal, plastic, or wooden poles. No Umbrella or Sun Shade shall exceed eight feet in height and ten feet in diameter or length or width. All Umbrellas or Sun Shades shall be dismantled and removed from the Park before the Park is closed.

Sec. 4. Subdivision 9 of Subsection I of Section 63.44 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

9. No person shall Camp or engage in Camping on a Beach, except in locations designated for such purposes, or erect, maintain, use or occupy any Tent, excluding Umbrellas or Sun Shades. Nor shall any person fasten or maintain any wire, rope or exterior bracing or support of any kind between such Umbrella or Sun Shade or any portion thereof, and any structure, stake, pole, tree, rock, fence, or thing outside of such Umbrella or Sun Shade.

(a) **Definitions:** For purposes of this subdivision, the following words or phrases shall mean:

(i) **“Camp” or “Camping”** means using a Beach for living accommodation purposes, as evidenced by: (a) remaining for prolonged or repetitious periods of time, not associated with ordinary recreational use of a Beach, with one's personal possessions or belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, pillow, luggage, backpacks, kitchen utensils, cookware and cooking equipment); and (b) engaging in one or more of the following: sleeping, storing personal possessions or belongings as defined above, making a fire, cooking or consuming meals. The combined activities of (a) and (b) constitute camping when it reasonably appears, in light of all the circumstances, that a person is using a Beach as a living accommodation regardless of his/her intent or the nature of other activities in which the Person might also be engaged.

(ii) **“Tent”** means any shelter or structure, made of any material, that is not open on all sides and which lacks an unobstructed view into the Tent, shelter or structure from the outside.

(iii) **“Umbrella or Sun Shade”** means any canopy or cover that is open on all sides, consists of pliable tent-like material such as canvas, nylon or other synthetic fabric, and that is maintained in an upright position by one or more supporting metal, plastic, or wooden poles. No Umbrella or Sun Shade shall exceed eight feet in height and ten feet in diameter or length or width. All Umbrellas or Sun Shades shall be dismantled and removed from the Beach before the Beach is closed.

Sec. 5. A new Subsection R is added to Section 63.44 of the Los Angeles Municipal Code to read as follows:

R. Violations. Any Person violating a provision of this section shall be subject to the following penalties:

1. **First violation.** A first violation of this section shall be an infraction punishable by a fine in the amount of \$100.

2. **Second and subsequent violations.** A second violation and all subsequent violations shall be subject to the provisions of Section 11.00 of the Los Angeles Municipal Code, including prosecution as an infraction punishable by a fine in the amount of \$250, or prosecution as a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

3. The following constitute violations for purposes of this Subsection:
A conviction for violation of this section, a conviction under California Penal Code Section 853.7 for failure to appear in court to contest a citation for violation of this section, or a forfeiture of bail.

Sec. 6. A new Subsection S is added to Section 63.44 of the Los Angeles Municipal Code to read as follows:

S. Severability. If any portion, subsection, sentence, clause or phrase of this section is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this section and each portion or subsection, sentence, clause and phrase herein, irrespective of the fact that any one or more portions, subsections, sentences, clauses or phrases be declared invalid.

Sec. 7. **URGENCY CLAUSE.** The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health and safety for the following reason: In order for the City of Los Angeles to protect its residents and visitors using Parks from the dangers caused by excessive congestion and the attendant crime and fraud associated with unregulated vending in Parks and to ensure that these City code sections are consistent with recent court decisions, it is necessary that the amendments to the Los Angeles Municipal Code as reflected in this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles City Charter Section 253.

Sec. 8. 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, **by a vote of not less than three-fourths** of all its members, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
VALERIE L. FLORES
Assistant City Attorney

Date July 31, 2014

File No. _____