

ORDINANCE NO. 181963

An ordinance amending Section 42.15 of the Los Angeles Municipal Code to prohibit vending and excessive noise on beaches or upon immediately adjacent boardwalks, sidewalks and public ways.

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

Section 1. Section 42.15 of the Los Angeles Municipal code is amended to read as follows:

SEC. 42.15. VENDING AND EXCESSIVE NOISE ON BEACHES PROHIBITED.

A. **Definitions.** For purposes of this Section, the following words or phrases shall have the following meanings:

1. **Board.** The Board of Recreation and Park Commissioners of the City of Los Angeles.

2. **Boardwalk.** The Boardwalk is the manmade promenade that runs parallel to the beach and is designated or referred to as "Ocean Front Walk" or just the "Boardwalk." The Boardwalk runs from the City of Santa Monica on the north to the City of El Segundo on the south. A map depicting the Boardwalk is available for inspection and copying at the Police Substation or at the Recreation Office.

3. **City.** The City of Los Angeles, a municipal corporation.

4. **Designated Space or Designated Spaces.** A Designated Space or Designated Spaces are the 205 areas on the Boardwalk designated by the City and located between Navy Street on the north and 17th Avenue on the south. A map depicting the Designated Spaces is available for inspection and copying at the Police Substation or at the Recreation Office.

5. **Department.** The Department of Recreation and Parks of the City of Los Angeles

6. **Donation.** A gift; a voluntary act which is not required and does not require anything in return.

7. **Food.** Any type of edible substance or beverage.

8. **Goods or Merchandise.** Any items that are not food.

9. **Handcrafts.** 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, are often mass produced or produced with limited variation. Handcrafts do not include visual arts.

10. **Pagodas.** The shade structures and seating, plus the area within a ten foot radius around each of the shade structures and seating, located on the Boardwalk at Clubhouse Avenue, Breeze Avenue, Park Avenue, Sunset Avenue and Dudley Avenue. A map depicting the Pagodas is available for inspection and copying at the Police Substation or at the Recreation Office.

11. **Perform, Performing, Performance or Performances.** To engage in any of the following activities on public property: 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:

- a. The application of substances to others' skin, including but not limited to, paints, dyes and inks;
- b. The provision of personal services such as massage or hair weaving, cutting or styling;
- c. the completion or other partial creation of visual art;
- d. the creation of visual art which is mass produced or produced with limited variation; or
- e. the creation of Handcrafts.

12. **Performer.** A Performer is 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 the public over multiple days, seeking voluntary contributions through passing around a hat or leaving open an instrument case or other receptacle, and soliciting donations after a performance.

13. **Person or Persons.** 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 the manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

14. **Police Substation.** The Police Substation is the Los Angeles Police Department office building located at 17th Avenue and Ocean Front Walk.

15. **Program Rules.** Rules adopted by the Board pursuant to its Charter authority and made applicable to use of the public space on and adjacent to the Boardwalk. The Program Rules will be adopted at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, at least ten (10) days prior to implementation. The Program Rules, as may be amended from time-to-time by the Board, shall be available for inspection and copying at the Police Substation or at the Recreation Office.

16. **Pushcart.** Any mobile device that holds Food or Goods or Merchandise, as defined in this Subsection, and is used to vend.

17. **Recreation Area.** The area between Horizon and 20th Avenues that includes the Boardwalk, grassy areas, the Police Substation, which is co-located with an office of the City's Department of Recreation and Parks, Muscle Beach, paddle tennis courts, skate park, skate plaza and other recreational facilities. This does not include the area west of the Boardwalk immediately adjacent to this area. A map of the Recreation Area is available for inspection and copying at the Police Substation or at the Recreation Office.

18. **Recreation Office.** The Recreation Office is an office of the City's Department of Recreation and Parks that is physically co-located with the Police Substation at 17th Avenue and Ocean Front Walk.

19. **Sunset.** Sunset is the time at which the sun's disk descends below the western horizon. The precise moment of Sunset can be determined by reference to various, publicly available almanacs and newspapers of general circulation in Los Angeles.

20. **Vend or Vending.** To sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter Food, Goods or Merchandise, or services in any area from a stand, table, Pushcart, motor vehicle, bicycle, or by a Person with or without the use of any other device or other method of transportation, or to require someone to pay a fee or to set, negotiate, or establish a fee before providing Food, Goods or Merchandise, or services, even if characterized by the Vendor as a Donation.

21. **Vendor.** A Vendor is a Person who Vends. Vendor includes the employers, employees, and agents of a Vendor.

22. **Westside of the Boardwalk.** The area on the ocean-side of the Boardwalk. A map depicting the Westside of the Boardwalk is available for inspection and copying at the Police Substation or at the Recreation Office.

B. **Findings and Purposes.** The City Council of the City of Los Angeles finds and declares as follows:

1. The Boardwalk and Recreation Area constitute a major tourist attraction in the City, hosting approximately 16 million visitors annually. The Boardwalk and Recreation Area are limited spaces geographically, located in a narrow, linear City park that is bounded by the beach to the West and private property to the East. The total width of the Boardwalk is only ten feet in certain sections and only as wide as 50 feet in other limited areas. The space is further constrained by the fact the Boardwalk and Recreation Area serve as emergency ingress and egress routes.

2. Historically, visitors, including tourists, have been drawn to Venice beach because, the Boardwalk and Recreation Area served as a traditional public forum for performance and visual artists, as well as other free speech activity. Vendors of Food, Goods and Merchandise viewed the large crowds of visitors to the Boardwalk and Recreation Area as a pool of potential customers and Vending proliferated. As the numbers of commercial Vendors increased, the number of Performers and persons engaging in free speech activities decreased both because of the limited amount of space and because of the change in atmosphere from a vibrant center of art and expression to a commercial "flea market" atmosphere. Competing interests for space on the Boardwalk and Recreation Area intensified and physical altercations for space and disturbances of the peace resulted in law enforcement responses and arrests.

3. Unregulated Vending and Performances adversely affect the historic character of the Boardwalk, hamper rather than encourage a wide-variety of performances, visual artists and other free speech activity, as well as jeopardize the public safety of visitors to the Boardwalk, resulting in an economic and cultural loss to the City. Therefore, the Boardwalk requires reasonable time, place, and manner restrictions to retain its unique historic character as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the commercial life of the Boardwalk, and ensure the safety and enjoyment of residents, visitors, advocates, artists, performers, and Vendors alike. Due to its unique historical, geographical, and physical characteristics, the Boardwalk requires its own set of rules and regulations different from other public parks in the City.

4. Unregulated Vending and Performing harms the Boardwalk, and therefore must be regulated because:

(a) Tourists are deterred from visiting or shopping at the Boardwalk as they are constantly approached, solicited, and sometimes harassed by unregulated Vendors and Performers. Regulation is therefore necessary to manage the time, place, and manner of Vending on the Boardwalk, in order to ensure that tourists are not deterred from visiting or shopping at the Boardwalk;

(b) The amount of space on the Boardwalk that is available for performing and visual artists and for political advocacy is limited due to the size of the Boardwalk and the large crowds of visitors that the Boardwalk attracts. Due to the limited amount of space, unregulated Vending along the Boardwalk prevents many Persons from engaging in performance, art, advocacy or other expressive activities. The lack of regulations for Vending, Performing and noise has resulted in conflicting claims for the available spaces. Numerous altercations occurred, in competition for locations and amounts of space, during time periods in which the City lacked regulations for noise and a system for allocating available space for Vending and Performing. Frequently, the altercations became violent requiring law enforcement response to preserve the public peace. Persons wishing to secure spaces often arrive prior to dawn and create loud noise in setting up their displays, thereby disturbing the public peace, including the peace of the residents on and near the Boardwalk, and requiring a law enforcement response. Unregulated, the Boardwalk became a place where only the strongest and earliest arrivals could secure space to exercise their rights of free expression without threat of intimidation. Regulation is necessary, therefore, to manage the use of the limited space on the Boardwalk to prevent conflicting claims for the space and to allocate the limited space available fairly to all who desire to use it for lawful purposes;

(c) Tables, Pushcarts, stands, and certain equipment of Vendors and Performers impede the orderly movement of pedestrian traffic along the narrow Boardwalk and may make the Boardwalk unsafe for pedestrians by limiting the City's ability to effect crowd management and control. Certain equipment of Vendors and Performers contributes to visual clutter and blight, especially when it impacts the ability of Boardwalk visitors to see the Pacific Ocean. Regulating the use of equipment by Vendors and Performers therefore is necessary to manage the orderly movement of pedestrian traffic. Regulation also is necessary to avoid injuries to pedestrians as well as ensure the existence of emergency and non-emergency ingress and egress between the beach and the Boardwalk;

(d) The Vendors, Performers and their equipment impede the ingress and egress of emergency and public safety vehicles by creating physical obstacles to emergency response and administration of aid to those in need of immediate medical attention and to victims of criminal activity. Regulation is therefore necessary to ensure that Vendors, Performers and their equipment do not interfere with emergency response vehicles that provide assistance to individuals with medical needs and victims of criminal activity;

(e) Unregulated Vending has resulted in the sale of stolen, defective or counterfeit merchandise. Regulation therefore is necessary to protect the public and the Boardwalk commercial life;

(f) Unregulated Vending of personal services has resulted in activities that are illegal and harmful to human health, including the offering of services by unlicensed Vendors of services for which a license is required by the State of California, physical assaults and the application of toxic chemicals to Persons;

(g) Unregulated Vending causes visual clutter/blight along the Boardwalk, impedes views of the beach and the Pacific Ocean, and threatens the City's ability to attract tourists and preserve businesses along the Boardwalk. Regulation therefore is necessary to manage the number of Vendors, the size of their equipment and displays, and the location of Vending activity;

(h) Unregulated Vending creates unnecessary, excessive and annoying noise on the Boardwalk, is detrimental to the public health, welfare and safety and contrary to the public interest, harms residents, the commercial life of the Boardwalk and the historic character of the Boardwalk, and diminishes the quality of life for those who visit, live or work on or near the Boardwalk. Regulation therefore is necessary to establish restrictions on noise at the Boardwalk; and

(i) The Recreation Area is a site that is uniquely suitable to and frequently used for events that require pre-planning and advanced notice. The Recreation Area is the location of the Police Substation where vehicles require the ability for unobstructed ingress and egress. Due to the size, shape, and physical attributes of the Recreation Area (including a skate park and plaza, paddle tennis courts and exercise equipment), it is also a site uniquely suitable to and used by many Persons for skateboarding, paddle tennis, and other sports and exercise. The Recreation Area is the home of historic "Muscle Beach," a popular tourist attraction. Muscle Beach is world renowned as home of physical fitness advocates and body builders, including Jack La Lanne (considered to be

the father of the modern fitness movement), Arnold Schwarzenegger, Franco Columbo and Dave Draper.

C. **Beach Vending Prohibition.** Except as specifically allowed in this Section, no Person shall engage in Vending upon any public beach lands or properties adjoining the waterfront of the Pacific Ocean, or upon any immediately adjacent Boardwalk, sidewalk or public way between the southerly boundary of the City of Santa Monica and the northerly boundary of the City of El Segundo and between the northwesterly boundary of the City of Santa Monica and the northwesterly boundary of the City of Los Angeles.

D. **Vending and Performing on Designated Spaces.** To address the findings and purposes set forth in this Section, the City has created reasonable time, place, and manner restrictions on Vending and noise, as well as to facilitate Performing. To preserve the Boardwalk's rich history of fostering new artists, performance, and other free speech activity, the City has divided the available space on the Boardwalk into 205 areas, known as Designated Spaces, where:

1. Persons can engage in traditional expressive speech and petitioning activities, and can Vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches and/or buttons.

2. Persons can Vend the following items, which have been created, written or composed by the Vendor or Performer: 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.

3. 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 nominal utility apart from their communication and thus are subject to the Vending ban under the provisions 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.

4. Performers can Perform.

5. Any Vendor conducting lawful Vending under Subsections D.1 and D.2, above, must comply with applicable tax and licensing requirements.

E. **Allocation and Use of Designated Spaces.** The City's Board of Recreation and Parks Commissioners shall designate a total of 205 spaces on the Boardwalk, referred to as the "Designated Spaces." The Designated Spaces will be available for use in accordance with a first-come, first-served system or any other

legally permissible allocation system adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, posted at the Recreation Office for at least ten (10) days prior to implementation.

The 205 Designated Spaces shall be made available for the activities described in Subsection D above. Five of the Designated Spaces shall be double-sized, large act spaces for Performers whose number of Performers plus audience can be anticipated to exceed 25 Persons. Two of the regular-sized Designated Spaces shall be made available for Persons engaging in any activity that is described in Subsection D and who are predominantly giving away Food. The remainder of the regular-sized, Designated Spaces shall be made available for Persons engaging in any exempt activity described in Subsection D.

Persons using the 205 Designated Spaces are subject to, and shall comply with, the following restrictions and the Program Rules adopted by the Board:

1. The five double-sized, large act Performer spaces historically have been used by Performers (such as acrobats) whose performances require more space than is available in a single-sized, Designated Space, and have been used by Performers who attract large crowds due to the nature of their performances. The five, double-sized, large act Performer spaces are the only spaces able to safely accommodate large scale performances or a large audience and, therefore, in order to facilitate a variety of Performances in these double-sized spaces, the Performer spaces are subject to a rotation requirement, whereby each Performer using one of the five Performer spaces shall relinquish the space on the hour, every hour, whenever another Performer is waiting to use the Performer space in which the Performer is Performing.

2. No Person shall Vend any item in a Designated Space, except as expressly authorized by Subsection D.

3. No Person shall place or allow anything in any Designated Space to extend beyond the boundaries of the Designated Space nor place anything adjacent to the Designated Space nor obstruct or impede the access areas between the Designated Spaces.

4. No Person shall Vend in, Perform in, or place or allow any item to extend into a designated emergency ingress and egress area. A map depicting the emergency ingress and egress areas is available for inspection and copying at the Police Substation or at the Recreation Office.

5. The City desires to balance the goal of avoiding visual clutter and blight against the need of Performers and Vendors exempt pursuant to Subsection D, above, to have shade from the sun. Additionally, the City desires to balance the goal of avoiding visual clutter and blight against the desire of

Performers and Vendors exempt pursuant to Subsection D, above to use equipment common to exempted Performing and Vending activities. Accordingly, the following rules relating to shade, Performing and Vending equipment: are adopted as follows: No Person shall place or allow any item (except an umbrella, sun shade, easel, display board or microphone stand) exceeding four feet above ground in any Designated Space, nor shall any Person cause or allow a Designated Space to be enclosed. An umbrella or sun shade shall not exceed 8 feet above ground and shall be open on all sides. An easel, display board or microphone stand shall not exceed 6 feet in height. Persons shall not hang objects of any nature on or from any umbrella, sun shade, easel or display board.

6. No Person occupying a Designated Space shall leave that Designated Space for a period longer than 45 consecutive minutes without first removing all items from the Designated Space.

7. No Person shall occupy more than one single regular-sized or double-sized Designated Space at any given time, nor shall any Person solicit another Person to obtain or occupy a Designated Space on his or her behalf.

8. No Person shall purchase, sell, barter or exchange any Designated Space with any other Person.

9. No Person shall set up or set down items in, take down items from or block, or attempt to reserve a Designated Space between Sunset and 9:00 a.m.

10. Any umbrella used in connection with the activities authorized in the Designated Spaces must be adequately secured in an upright position with a diameter no greater than 8 feet.

11. Designated Spaces must be kept clean and free of litter and debris. No permanent markings shall be made in any Designated Space. Any temporary marking made in any Designated Space must be removed from the Designated Space when the Person using the Designated Space vacates the Designated Space or by Sunset, whichever is earlier.

12. No open flames combustible fuel or gasoline-fueled generators are allowed in any Designated Space. Electric cords may not be connected outside the assigned space or to any City or private power source.

F. Special Rules for Other Areas of the Boardwalk.

1. Areas Outside of the Designated Spaces, Pagodas, and Recreation Area.

(a) Areas where use of equipment is prohibited. The activities described in Subsection D may occur in all areas covered by this Section outside the Designated Spaces, Pagodas, and Recreation Area, provided that no Person may set up a display table, easel, stand, equipment or other furniture, use a Pushcart or other vehicle or place any item on the property defined in Subsection C except as provided in Paragraph (b) of this Subdivision.

(b) Areas where limited use of equipment is permitted. The activities described in Subsection D, but not including Vending, may occur on the Westside of the Boardwalk outside the Designated Spaces, Pagodas, Recreation Area and other areas designed as access points for or constitute routes for emergency ingress and egress. In connection with permissible activities in the area on the Westside of the Boardwalk, outside the Designated Spaces, Pagodas, Recreation Area and other areas designated for emergency ingress and egress, a Person may set up a display table, easel, stand, equipment or other furniture, a Pushcart or other vehicle, or place an item on the ground in the areas where limited use of equipment is permitted, subject to reasonable size and height restrictions set forth in paragraph E.5., herein, provided the equipment or the activity associated with the equipment does not materially impede or obstruct pedestrian or vehicular traffic or areas designed for emergency ingress and egress. Nothing in this paragraph shall be construed to allow a person to use or set up equipment in connection with Vending.

(c) The areas in which use of equipment is prohibited and areas in which limited use of equipment is permitted is available for inspection and copying at Police Substation or Recreation Office.

2. The Recreation Area.

(a) The Recreation Area is a limited space containing a confluence of public safety ingress and egress routes, and at which pre-planned events, recreation activities and tourism occur. The City's Board of Recreation and Parks Commissioners may allocate use of the Recreation Area through the adoption of Program Rules detailing an advance reservation system or any other legally permissible allocation system, and the advance reservation system or other legally permissible allocation system contained in the Program Rules will be adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, and made effective after reasonable public notice by posting at the Recreation Office for at least ten (10) days prior to implementation. A copy of the Program Rules shall be available for inspection and copying at the Police Substation or the Recreation Office.

(b) No Vending, and no display tables, easels, stands, equipment, Pushcarts or other vehicles, or structures shall be allowed in the Recreation Area except as may be expressly authorized by the Board in connection with the Board's pre-approval of the use of the Recreation Area.

(c) No Person shall use the Recreation Area or any part of the Recreation Area while the Recreation Area or that part of the Recreation Area has been reserved, set aside, is being used, set up, maintained or designed for a specific recreational purpose, park purpose or event authorized by the City through the Department or Board. When the City, through the Department or Board, has reserved, intends to use, set up, maintain or designate the Recreation Area or any part of the Recreation Area for a specific recreational purpose, park purpose or event, the Department will make available for inspection and copying at the Police Substation or Recreation Office information describing the nature of the authorized park purpose or event, the location of the park purpose or event and the times during which the park purpose or event will take place.

G. Use of City Property for Vending, Performing, or Display Prohibited.
No Person shall use or obstruct access to any City-owned or maintained property or equipment, including, but not limited to, street furniture, benches, planters, trash receptacles, Pagodas or other structures or equipment installed on public property, for Vending, Performing, or display of anything whatsoever.

H. Noise Regulation for all Property on or Abutting the Boardwalk.

1. No Person whether on the Boardwalk or on private or public property abutting the Boardwalk shall create any noise, or allow the creation of any noise, which causes the noise level to exceed the following Lmax levels between 9:00 a.m. and Sunset:

(a) 75 dBA, when measured at a minimum distance of 25 feet from the source of the noise; or,

(b) 96 dBA, when measured at a minimum distance of one foot from the source of the noise.

When Lmax levels are measured for noise emanating from a building located on private property adjacent to the Boardwalk, the measurement shall be taken from the property line dividing the private property and the Boardwalk.

2. Nothing in this Section shall be construed as prohibiting the City from enforcing other provisions of this Code regulating noise and sound levels. At all times, the noise and sound provisions of Chapter 11 of the Los Angeles

Municipal Code, Sections 111 through 115, inclusive, and Los Angeles Municipal Code Sections 63.44B.6, 41.42, 41.57, 53.63 shall apply.

3. No Person shall interfere with or resist the taking of any noise measurement authorized by this Section.

I. **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 L.A.M.C, 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 \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

3. Nothing in this Section shall be construed as prohibiting the City from enforcing any and all other provisions of this Code or other applicable laws. At all times, Los Angeles Municipal Code Section 63.44, which regulates the use of park and recreational facilities, shall apply.

J. **Other Applicable Opening and Closing Hours.** Nothing in this Section amends or extends the opening or closing hours otherwise established by law for any area subject to this Section.

K. **Posted Notice.** The City shall post signs providing notice of the existence of rules for the allocation and use of the Designated Spaces, Recreation Area and Boardwalk areas near the entrances to the Designated Spaces and the Recreation Area. A complete copy of this Section shall be available for inspection and copying at the Police Substation or at the Recreation Office.

L. **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. 2. 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 DEC 13 2011.

JUNE LAGMAY, City Clerk

By 
Deputy

Approved DEC 16 2011


Mayor

Approved as to Form and Legality

CARMEN TRUTANICH, City Attorney

By 
VALERIE L. FLORES
Assistant City Attorney

Date December 12, 2011

File No. CF # ~~07-2112~~ 11-1131