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CITY ATTORNEY

REPORT NO. R 1 3 - 0 3 2 6
NOV 12 2013

REPORT RE:

DRAFT ORDINANCE AMENDING SECTION 41.59 OF THE LOS ANGELES MUNICIPAL CODE (LAMC) TO DELETE SUBSECTION (c)(2), AMENDING LAMC SECTION 42.00 TO REVISE THE PROHIBITION ON STREET VENDING, AND AMENDING LAMC SECTION 42.03 TO REVISE CERTAIN PROVISIONS REGARDING THE SALE OF TICKETS

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 Section 41.59 of the Los Angeles Municipal Code (LAMC) to delete subsection (c)(2), amending Section 42.00 of the LAMC to revise the prohibition on street vending, and amending Section 42.03 of the LAMC to revise certain provisions regarding the sale of tickets. The Office requests that the City Clerk place the draft ordinance on the first available agenda of the City Council for action on an urgency basis.

Background and Summary of Ordinance Provisions

The three LAMC sections that the draft ordinance seeks to amend are Section 41.59 (Prohibition Against Certain Forms of Aggressive Solicitation), Section 42.00 (Regulation of Soliciting and Sales in Streets), and Section 42.03 (Selling of Tickets to Admission to Places of Public Assemblage in Public Places and Places Open to the Public Prohibited – Exceptions). The draft ordinance will revise these sections of the LAMC to ensure that their provisions are consistent with court rulings that have further

delineated when and how municipalities can regulate vending and solicitation in City streets and sidewalks, and the sale of tickets in streets, sidewalks and public places.

The adoption of this draft ordinance will not impede in any way your consideration and adoption of the Council Motion introduced on November 6, 2013, seeking a study and report on recommendations of possible regulations that would allow commercial vending on the sidewalks on a permit basis as allowed in certain other cities (Council File 13-1493). The adoption of this draft ordinance at this time is needed to ensure that the City's current laws are consistent with court rulings and in no way precludes future revisions to the City's regulation of street and sidewalk vending.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Department and the Department of Public Works, asking that they make any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Chief Assistant City Attorney David Michaelson at (213) 978-7178. He 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:pj
Transmittal

ORDINANCE NO. _____

An ordinance amending Section 41.59 of the Los Angeles Municipal Code to delete subsection (c)(2), amending Section 42.00 of the Los Angeles Municipal Code to add certain definitions and revise the prohibition on street vending, and amending Section 42.03 of the Los Angeles Municipal Code to revise certain provisions regarding the sale of tickets.

WHEREAS, the City of Los Angeles is home to more than 3.5 million residents and the availability of first class urban facilities, services and entertainment make the City a very desirable place to work and visit. Population density and congestion present threats to the quality of life in the City, particular in the City's many business and entertainment districts; and

WHEREAS, governmental regulation of street and sidewalk safety is a legitimate exercise of the police power of the City; and

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

WHEREAS, to protect the public health and safety and ensure safe pedestrian and motorist traffic, the City needs equitable, uniform vending regulations. The City seeks to adopt regulations in a manner that respects and protects the constitutional rights of people using streets and sidewalks which are quintessential public fora; and

WHEREAS, unregulated vending in City streets and sidewalks contributes to congestion in City streets and on City sidewalks and thereby impedes the orderly movement of pedestrian and motorist traffic. The unregulated use of congested streets and sidewalks by vendors can make the streets and sidewalks unsafe for pedestrians, motorists and vendors; and

WHEREAS, unregulated vending can result in the sale of stolen, defective or counterfeit merchandise and causes visual clutter/blight on City streets and sidewalks; 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, physical assaults and the application of toxic chemicals to persons; and

WHEREAS, the business of selling tickets of admission other than from regularly established ticket offices in public places can result in the sale of counterfeit tickets thereby defrauding the public and is contrary to and adversely affects the peace, safety and welfare of the City's residents, workers and visitors; and

WHEREAS, selling tickets of admission from regularly established ticket offices in public places reduces the occurrence of counterfeit tickets by allowing the customer the ability to return to the ticket office if there are any problems with the ticket. That recourse generally is not available with itinerant commercial ticket sellers; and

WHEREAS, it is not the intent of the City to prohibit the occasional ticket sale by a person not in the business or practice of selling tickets; and

WHEREAS, in years past, the City adopted various ordinances to regulate vending and aggressive solicitation in City streets and sidewalks, and the sale of tickets in streets, sidewalks and public places; and

WHEREAS, in recent years, court rulings have further delineated when and how municipalities can regulate activities in 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.

NOW, THEREFORE,

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

Section 1. Subsection (c)(2) of Section 41.59 of the Los Angeles Municipal Code is deleted in its entirety, and the remainder of the section shall be re-lettered accordingly.

Sec. 2. Subsections (a), (b) and (c) of Section 42.00 of the Los Angeles Municipal Code are amended in their entirety to read as follows:

SEC. 42.00. REGULATION OF SALES IN STREETS.

(a) In this section, unless the context or subject matter otherwise requires:

"Business" shall mean any enterprise, profession or trade conducted or engaged in with the object of gain, benefit or advantage, whether direct or indirect, to any person. The term shall include operations of subsidiary or independent entities conducted for the benefit of others whether or not at any profit to themselves, nonprofit businesses and trade associations.

"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.

“News racks” shall mean any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers, news periodicals or other news publications.

“Newsstand” shall mean any stand, shelter, case, cabinet, box or other structure installed, used, or maintained for the display, sale or storage of newspapers, news periodicals or other news publications which is attended by the owner or his employee while making sales therefrom.

“Parkway” shall mean that area between the edge of the roadway and the adjacent property line excluding that area occupied by the sidewalks. Parkway shall also include any area within a roadway which is not open to vehicular travel.

“Perform, Performing, Performance or Performances” shall mean to engage in any of the following activities in the street: 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 or hair weaving, cutting or styling;
- (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.

“Roadway” shall mean that portion of a street improved, designed, or ordinarily used for vehicular travel.

“Sidewalk” shall mean any surface in the public right-of-way provided for the exclusive use of pedestrians.

“Street” shall mean all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

“Ticket” shall mean a ticket, license, voucher, coupon or any other indicia of a transaction granting admission or permission to enter or access an activity, an event, a tour or a place of business.

“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.

(b) **Street Vending Prohibited.** Except as otherwise allowed by law, no Person shall engage in Vending upon any Street except as specifically allowed below:

(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: 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. 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.

(3) Performers can Perform.

(4) Any Vendor conducting lawful Vending under Subsections (b)(1) and (b)(2), above, must comply with applicable tax and licensing requirements.

(c) **Street Sales of Tickets in Conjunction with Operation of a Business Prohibited.** Except as otherwise allowed by law, no Person upon any Street shall sell, exchange or provide Tickets in connection with the operation of a Business.

Sec. 3. Subsection (d) of Section 42.00 of the Los Angeles Municipal Code is deleted in its entirety, and the remainder of the section shall be re-lettered accordingly.

Sec. 4. Section 42.03 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

SEC. 42.03. SELLING OF TICKETS OF ADMISSION IN PUBLIC PLACES AND PLACES OPEN TO THE PUBLIC PROHIBITED – EXCEPTION.

(a) No Person upon any Street, park or public property shall engage in the Business of selling or re-selling Tickets.

(b) No Person upon any Place Open to the Public shall engage in the Business of selling or re-selling Tickets.

(c) The provisions of Subsections (a) and (b) of this section shall not include or apply to the sale of any Ticket at or from any office, booth or other similar place regularly and permanently established and maintained therefor with the express permission and authorization of the person or governmental agency in charge, care or control of the property on which such office, booth or place is located.

(d) For purposes of this section, the definitions in Section 42.00 and the definition of the following phrase shall apply:

“Place Open to the Public” shall mean every place of public amusement or entertainment, stadium, auditorium, theater, athletic field, concert hall or arena and the property upon which such place is located or any other property contiguous thereto which is under the same care, management or control.

Sec. 5. **SEVERABILITY.** Pursuant to the provisions of Los Angeles Municipal Code Section 11.00 (k), if any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Sec. 6. **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 City streets, sidewalks, parks and public places from the dangers caused by excessive congestion and the attendant crime and fraud associated with unregulated vending and ticket sales in these public places 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. 7. 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  _____

DAVID MICHAELSON
Chief Assistant City Attorney

Date November 12, 2013

File No. _____