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CALIFORNIA



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MICHAEL A. SHULL
GENERAL MANAGER

July 31, 2014

Los Angeles City Council
City of Los Angeles
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Attention: Holly L. Wolcott, Interim City Clerk

RE: Los Angeles Municipal Code Section 63.44 – Proposed Amendment

Honorable Members:

At its meeting of July 23, 2014, the Board of Recreation and Park Commissioners (Board) adopted Report of the General Manager No. 14-172, thereby recommending that the Los Angeles City Council (Council) adopt an ordinance (attached) amending Los Angeles Municipal Code (LAMC) Section 63.44, amending Subsection A and Subdivision 3 of Subsection B of Section 63.44 of Chapter VI of LAMC 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 LAMC 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.

Board also recommends that Council, if it chooses to enact the draft ordinance, make the legislative findings stated in the above mentioned Code sections of the draft ordinance in support of its enactment.

The Board further recommended that Council consider the following actions:

- Request 6 month delay in implementation in order to engage in public awareness campaign on changes to LAMC regarding vending.
- Once implemented, penalties should begin with warning, then proceed with fines, and should have stepped penalties (\$100, \$250, \$500).
- Request the Department work with citywide effort on addressing sidewalk vending so that park regulations are in line with any changes made to citywide sidewalk vending.

BY _____
DEPUTY
M.V.
CITY CLERK

2014 JUL 31 PM 2:50

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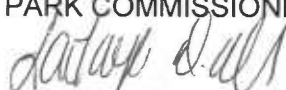
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Also, attached for your review is Board Report No. 14-173, adopted by the Board of Recreation and Park Commissioners at its meeting of July 23, 2014.

If you have any questions concerning this matter, please contact Asst. General Manager Kevin Regan, Operations Branch at (213) 202-2633.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS



LATONYA D. DEAN
Commission Executive Assistant

Enclosures

cc: Kevin Regan (w/out enclosure)

REPORT OF GENERAL MANAGER

APPROVED

NO. 14-173

DATE June 26, 2014

JUL 23 2014

C.D. Various

**BOARD OF RECREATION
& PARK COMMISSIONERS**

BOARD OF RECREATION AND PARK COMMISSIONERS

subdivision 3 of

SUBJECT: ORDINANCE AMENDING SUBSECTIONS A AND ~~B.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

R. Adams _____
R. Barajas _____
H. Fujita _____

V. Israel _____
*K. Regan _____
N. Williams _____


General Manager

Approved _____

Disapproved _____

Withdrawn _____

*As amended
see attached*

RECOMMENDATIONS:

That the Board:

1. Recommend that the Los Angeles City Council (Council) adopt an ordinance amending Los Angeles Municipal Code (LAMC) Section 63.44, as originally transmitted pursuant to Rule 38, and attached to this report (Attachment A), amending Subsection A and Subdivision 3 of Subsection B of Section 63.44 of Chapter VI of the Los Angeles Municipal Code (LAMC) 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 LAMC 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;
2. Make the legislative findings stated in the above referenced Code sections of the draft ordinance in support of its enactment; and,
3. Recommend that the Council, if it chooses to enact the draft ordinance, make the legislative findings stated in the above mentioned Code sections of the draft ordinance in support of its enactment; and,

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NO. 14-173

4. Upon the Council's approval of the draft ordinance, direct the General Manager to create uniform standards for posting of appropriate signs in parks making public notice of the vending and camping ban, and to instruct staff to implement them.

SUMMARY:

For many years, the City of Los Angeles has had an ordinance in place which prohibited conducting any trade, occupation, business, or profession within a City park, without having a concessions contract with, or permit issued by, the City of Los Angeles. It was also recognized that expressive items may be sold in City parks without a concessions contract or permit if they were the seller's own expression, and provided that they met the legal standard known as "nominal utility." The City has also had an ordinance in place for many years prohibiting camping in City parks except in designated areas and unless allowed by permit.

For a time, the City's vending ordinance was suspended due to several cases of litigation filed against the City regarding vending in Venice Beach. Now that these cases have been resolved by judicial determination, it is prudent to lift the suspension of this long-standing ordinance, make appropriate corrective and informative amendments, and after approval, begin enforcement of the ordinance provisions.

This draft ordinance will amend various subsections within LAMC 63.44, which sets forth regulations applicable to City parks, including beach parks. Specifically, the draft Ordinance amends Subsection A of LAMC 63.44 to add certain operational definitions. This 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 a new Subsection R to LAMC 63.44 to specify the penalties for violations of LAMC 63.44.

Should the Board approve this draft Ordinance, the Office of the City Attorney has requested that the City Clerk place the draft ordinance on the first available agenda of the City Council for action.

ORDINANCE PROVISIONS:

This draft Ordinance reinstates a ban on commercial vending in public parks by replacing the previously suspended vending ban in Subdivision 3 of Subsection B of LAMC 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 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*

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NO. 14-173

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 Subsection A and Subdivision 3 of Subsection B of the LAMC 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 of 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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT RECOMMENDATIONS:

The Board's actions in this matter are 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.

COUNCIL RULE 38 REFERRAL:

A copy of the draft ordinance was transmitted by the Office of the City Attorney, pursuant to Council Rule 38, to the Department of Recreation and Parks.

FISCAL IMPACT STATEMENT:

There is no fiscal impact to the Department's General Fund.

Report prepared by Kevin Regan, Assistant General Manager, Operations Branch.

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); 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 and it'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, business or trade can result in activities that are illegal and harmful to human health, including the provision of unsafe or illegal merchandise and services by unlicensed vendors for which a license is required by the State of California; 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, and unsafe food, goods or merchandise thereby defrauding and endangering the public, and the sales are contrary to and adversely affect the peace, health, safety and welfare of the City's residents, workers and visitors; and

WHEREAS, without restrictions against the operation of unlicensed or unpermitted vending, patrons are not protected against harmful products, services, or counterfeit items;

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.