

ORDINANCE NO. _____

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:

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

A. Except as specifically allowed in this section, no person shall engage in vending upon any public beach lands or beach 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.

1. Findings and Purpose. The City Council of the City of Los Angeles finds and declares as follows:

(a) The Venice Beach Boardwalk (Boardwalk) is a major tourist attraction in the City of Los Angeles. The Boardwalk is historically significant as a traditional public forum for its performance and visual artists, as well as other free speech activity. Unregulated vending adversely affects the historic character of the Boardwalk resulting in an economic and cultural loss to the City. Therefore, the Boardwalk requires reasonable time, place, and manner restrictions to restore its unique historic character as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the local merchant economy, 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;

(b) Unregulated vending harms the Boardwalk, and therefore must be regulated because:

(i) Tourists are deterred from visiting or shopping at the Boardwalk as they are constantly approached, solicited, and sometimes harassed by unregulated vendors. It is therefore necessary to regulate 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;

(ii) 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. Prior to the City's Board of Recreation and Parks Commission establishing a program for assignment of spaces, unregulated vending resulted in conflicting claims for the available space. There were numerous altercations over the locations and amounts of space that any one person or organization could use. Frequently, the altercations became violent requiring law enforcement response to preserve the public peace. Persons wishing to secure spaces often arrived prior to dawn and created loud noises in setting up their displays, thereby disturbing the public peace 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. It is, therefore, necessary to regulate 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.

(iii) Tables, pushcarts, stands, or equipment of persons engaged in vending impedes the orderly movement of pedestrian traffic and may make the Boardwalk unsafe for pedestrians by limiting the City's ability to effect crowd management and control. It is therefore necessary to regulate the use of equipment by vendors to manage the orderly movement of pedestrian traffic and avoid injuries to pedestrians;

(iv) The vendors and their equipment may 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. It is therefore necessary to regulate vendors and their use of equipment to avoid interference with emergency response vehicles that provide assistance to individuals with medical needs and victims of criminal activity;

(v) Unregulated vending undermines the Boardwalk's commercial life by reducing sales by local merchants operating on private property abutting and adjacent to the Boardwalk, thereby eroding the City's tax revenues due to unfair competition, and by offering additional opportunity for the sale of stolen, defective or counterfeit merchandise. It is therefore necessary to regulate vending to protect the local merchant economy and revitalize the Boardwalk, which requires a

vibrant and stable merchant, artist, performer and free speech advocacy community;

(vi) 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. It is therefore necessary to regulate the number of vendors, the size of their equipment, and displays, and the location of vending activity;

(vii) 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, businesses 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. It is therefore necessary to establish restrictions on noise at the Boardwalk;

(viii) The Recreation Area between Horizon Avenue and 20th Avenue is a site that frequently holds special events. It is the location of a police substation where vehicles require the ability for unobstructed ingress and egress. It is also where many people engage in skateboarding, paddle tennis, and other sports and exercise. The Recreation Area between Horizon Avenue and 20th Avenue, therefore, requires a special permit system to regulate activity in that area, and prevent incompatible uses of space.

2. Action. To address these findings and purposes, the City has created reasonable time, place, and manner restrictions on vending. 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 between performers, advocates, artists, and those vending expressive items inextricably intertwined with a political, philosophical, religious or ideological message. Therefore, the City has:

(a) Created areas where persons can perform, engage in traditional expressive speech, and petitioning activities, and vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches, buttons, or books created by the vendor or recordings of the vendor's own performances (P-Zones);

(b) Created areas where persons may engage in activities permissible in the P-Zone, and also engage in vending of expressive items created by the vendor, or the vending of expressive items that are inextricably intertwined with the vendor's message (I-Zones); and

(c) Created reasonable time, place, and manner restrictions on activities outside those areas.

B. P-Zones.

1. Vending any item in the P-Zones not exempted by Subdivision 2 of this subsection is a violation of this section and is subject to the penalties described in Subsection H.

2. P-Zone Exemptions. Subject to the permit requirements of Subdivision 4 of this subsection:

(a) Any person may:

(i) Vend newspapers, leaflets, pamphlets, bumper stickers, patches, or buttons; and

(ii) Vend books created by the vendor.

(b) Performers may vend audio, video, or other recordings of their performances; and

(c) Any person may give away food, goods, merchandise, services, or performances, free of charge, and may ask for a donation subject to the condition that they shall display, visible to the public, a placard provided by the City stating: "Donations appreciated. No contribution required." A person giving away items may limit the items given away to no less than one item per person per day.

3. P-Zone Spaces. The Board will designate spaces on the Boardwalk for allocation in the P-Zones according to rules promulgated by the Board consistent with this section. There shall be at least 105 spaces designated in the P-Zones.

4. P-Zone Permit System. The allocation of spaces shall be determined according to the following permit system:

(a) Permits required for assigned spaces in the P-Zones during Peak Season. During the "peak season," defined as the Saturday before Memorial Day through November 1 of each year, any person desiring to occupy an assigned space shall obtain a permit, and, spaces shall be assigned to persons possessing a permit according to the rules promulgated by the Board consistent with this section. P-Zone permits shall not be valid in the I-Zones.

(b) Exception: During peak season after 12:00 p.m. (noon), any person, whether or not a permit holder, may use any unoccupied space in the P-

Zones subject to all other provisions of this section; provided that if the permit holder to which the space was assigned arrives after noon and asks to use his/her assigned space, the person not assigned the space shall immediately relinquish the space to the assigned permit holder.

(c) Permit Applications for the P-Zones during Peak Season. An application requesting a non-transferable peak season permit for the P-Zones shall only require the applicant's name.

5. Unassigned Spaces in the P-Zones. Ten of the 105 designated P-Zone spaces shall be made available on a first-come, first-served basis for persons engaged in activity that is not vending and does not use amplified sound. Two of those spaces shall be made available for persons giving away food.

C. I-Zones.

1. Vending any item in the I-Zones not exempted by Subdivision 2 of this subsection is a violation of this section and is subject to the penalties described in Subsection G.

2. I-Zone exemptions. Subject to the permit requirements of Subdivision 4 of this subsection:

(a) All activities permissible in the P-Zones are also permissible in the I-Zones; and

(b) Any person may vend the following items: expressive items, which have been created, written or composed by the person, or are expressive items inextricably intertwined with the message of the person vending the items. These items may include, but are not limited to, books, cassettes tapes, compact discs, digital video discs, paintings, photographs and sculptures. For purposes of this paragraph, expressive items shall be deemed to have been created by the vendor only if they have been predominantly authored, performed, recorded, filmed, or otherwise made or assembled by the vendor.

3. I-Zone Spaces. The Board will designate spaces on the Boardwalk for allocation in the I-Zones according to rules promulgated by the Board consistent with this section. There shall be at least 100 spaces designated in the I-Zones.

4. I-Zone Permit System. The allocation of spaces shall be determined according to the following permit system:

(a) Permits required for use of space in the I-Zones. I-Zone permits shall not be valid in P-Zones to vend items only permitted to be vended in the I-Zones. However, I-Zone permits may be used in P-Zones for any

permissible P-Zone purpose. No person shall occupy space in the I-Zone unless that person possesses a valid permit issued by the Department of Recreation and Parks. After 12:00 p.m. (noon), any I-Zone permit holder may use an unoccupied space in the I-Zone subject to all other provisions of this section; provided that if the permit holder to which the space was assigned arrives after noon and requests to use his/her assigned space, the person not assigned the space shall immediately relinquish the space to the assigned permit holder.

(b) Permit Applications for the I-Zones. Any person desiring to occupy an assigned space to vend items in the I-Zones shall file an application for a non-transferable permit with the Department of Recreation and Parks. The application shall require:

(i) The applicant's name and a mailing address at which the City may provide notice to the applicant;

(ii) A description of the goods or merchandise for which the applicant seeks a permit;

(iii) A declaration that the goods or merchandise for which the applicant seeks a permit are expressive items of the applicant's own creation or are inextricably intertwined with the message of the applicant.

D. Special Rules for Areas on the Boardwalk Outside the P-Zones and I-Zones.

1. Areas Outside the P-Zones and I-Zones.

(a) Activities allowed without equipment on the Boardwalk outside the P-Zones, I-Zones and pagodas. The following activity may occur in all areas covered by this section outside the P-Zones, I-Zones and pagodas, 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 A except as provided in Paragraph b of this subdivision:

(i) Any person may vend newspapers, leaflets, pamphlets, bumper stickers, patches, or buttons, and books or recordings created by vendor.

(ii) Any person may vend any other expressive item that is inextricably intertwined with the vendor's message.

(iii) Any person may engage in any activity permissible in the P-Zones.

(b) Activities allowed with limited equipment on the Westside of the Boardwalk outside the P-Zones, I-Zones or pagodas. Any activity permitted in the P-Zones may occur on the Westside of the Boardwalk outside of the P-Zones, I-Zones or pagodas so long as the activity is not vending and does not substantially impede or obstruct pedestrian or vehicular traffic, subject to reasonable size and height restrictions on any table, easel, or other furniture in connection with that activity, as set forth in the Program Rules.

2. Special Permit System for the Recreation Area between Horizon Avenue and 20th Avenue.

(a) A permit is required for any activity in the Recreation Area that is engaged in by and/or attracts a crowd of 15 or more people.

(b) No permit is required for an activity in the Recreation Area that is engaged in by and/or attracts a crowd of fewer than 15 people. The activity shall not interfere with any other activity in the Recreation Area.

(c) No vending, no amplified sound, and no display tables, easels, stands, equipment, pushcarts or other vehicles, or structures shall be allowed in the Recreation Area without a permit.

E. Use of City Property for Vending, Performance, or Display Prohibited. No person shall use or obstruct access to any City-owned or maintained street furniture or structure, including any pagoda, for vending, performance, or display of anything whatsoever, including but not limited to, use of any bench, planter or trash receptacle installed on public property.

F. Noise Regulation for all property on or immediately adjacent to the Boardwalk.

1. No person, group or business 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 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 relating to noise. At all times, the

provisions of Chapter 11 of the Los Angeles Municipal Code, Sections 111 through 115, inclusive, and Los Angeles Municipal Code Sections 41.42, 41.57, 53.63, 63.44 relating to noise shall apply.

3. No person or business shall interfere with or resist the taking of any noise measurement authorized by this section.

4. Amplified sound may be generated in designated P-Zone spaces subject to the other requirements of this section, and as long as any speaker or sound reproduction system is placed on the ground and is no more than three feet in height:

- (a) Between 17th Avenue and Horizon Avenue;
- (b) Between Breeze Avenue and Park Avenue.

5. Amplified Sound is prohibited on the Boardwalk in the following areas:

- (a) At the intersection of every street;
- (b) Between Horizon Avenue and Breeze Avenue;
- (c) Between Park Avenue and the southerly boundary of the City of Santa Monica;
- (d) All pagodas.

6. Notwithstanding the regulations regarding amplified sound, the City may issue special event permits.

G. Enforcement.

1. Conduct subject to administrative enforcement. The Board may adopt rules consistent with this section for space allocation and reasonable time, place and manner regulation of the I-Zones and the P-Zones. Except as provided in Subsection H and Subdivision 2 of this subsection, violations of rules promulgated by the Board shall be subject to administrative enforcement by the City as follows:

- (a) A permit may be revoked in accordance with the Program Rules adopted by the Board for violations of any provision of this section or the Program Rules. Revocation shall occur upon a third violation of a Program Rule, a third violation of the conditions set forth in this section, or a combination of any three violations of the Program Rules or conditions set forth in this section. A notice of violation of the Program Rules may be appealed to the Department of Recreation and Parks District Supervisor.

Revocation of a permit may be appealed to the Panel of Vending Permit Appeals. No action of the Panel of Vending Permit Appeals may be taken by less than a majority of its members. The conclusion of the applicable appeal process shall constitute an exhaustion of administrative remedies pursuant to California Code of Civil Procedure Section 1094.5.

(b) Only those persons who obtain I-Zone permits may invoke the administrative appeals process described in Subparagraph (a) of this subdivision. Persons vending without a permit in the I-Zones shall be subject to the penalties described in Subsection H.

2. Conduct subject to criminal penalties. Conduct in the P-Zones or the I-Zones that is prohibited by the following paragraphs shall be subject to the penalties described in Subsection H:

(a) No person shall place or allow anything in any designated space that extends beyond the boundaries of the designated space.

(b) No person shall place or allow any item (except an umbrella or other sun shade) exceeding four feet above ground in any designated space, nor shall any person cause or allow a designated space to be enclosed on more than two sides.

(c) No person occupying a space shall leave that space for a period longer than 45 minutes without first removing all items from the space.

(d) No person, business or group shall occupy more than a single space at any given time, nor shall any person, business or group solicit another person to obtain or occupy a space on their behalf.

(e) No person shall purchase, sell, barter or exchange any assigned space with any other person.

(f) No person shall set up or take down or use a designated space between sunset and 9:00 a.m.

3. No person shall alter or reproduce any permit issued pursuant to this section, nor shall any person possess an altered, reproduced or falsified permit document. A violation of this paragraph shall be subject to the penalties described in Subsection H.

H. Violations. Except for the administrative enforcement provided in Subdivision 1 of Subsection G, any person violating a provision of this section shall be subject to the following penalties:

1. First offense. Infraction.

2. Second offense. Infraction.

3. Subsequent offenses. Misdemeanor. The violation of any provision, which would otherwise be an infraction, shall be a misdemeanor if the person who has violated that provision has previously been convicted of two or more violations of this section within the 24-month period immediately preceding the current offense. For purposes of this subsection, a bail forfeiture shall be deemed to be a conviction of the offense charged.

I. Opening and Closing Hours. No person shall engage in activities not otherwise prohibited by this section between the hours of 10:30 p.m. and 9:00 a.m.

J. Posted Notice. The City shall post signs in the P- Zones and the I-Zones providing notice of the rules of use of each Zone consistent with this section.

K. Severability. If any provision or application of a provision of this section is held invalid, the remainder of the section and application of its provisions will not be affected.

L. Definitions. For purposes of this section, the following words or phrases shall have the following meanings:

1. Performance/Free Speech Zones (P-Zones). Areas on the Boardwalk designated by the City, located south of Clubhouse Avenue and north of 17th Avenue, south of Park Avenue and north of Wavecrest Avenue, and south of Paloma Avenue and north of Sunset Avenue in which the City will allocate spaces for performers and speakers. Vending shall be prohibited in this area except as provided in Subdivision 2 of Subsection B of this section.

2. Inextricably Intertwined Speech Zones (I-Zones). Areas on the Boardwalk designated by the City, located south of Wavecrest Avenue and north of Clubhouse Avenue, south of Sunset Avenue and north of Park Avenue, and south of Navy Street and north of Paloma Avenue, in which the City will allocate spaces for the vending of expressive items that are created by the vendor or inextricably intertwined with speech. Vending shall be prohibited in this area except as provided in Subdivision 2 of Subsection C of this section.

3. Amplified Sound. Sound produced with sound amplifying equipment as defined in Los Angeles Municipal Code Section 111.01 (j), and shall not include sound produced solely by acoustical musical instruments.

4. Board. The City's Board of Recreation and Park Commissioners.

5. City. The City of Los Angeles, a municipal corporation, acting by or through any of its officers, employees or agencies, including, but not limited to, the City's Department of Recreation and Parks.

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. Pagodas. The structures, including the ten foot area fronting each structure, located on the Boardwalk at Clubhouse Avenue, Breeze Avenue, Park Avenue, Sunset Avenue and Dudley Avenue.
10. Panel of Vending Permit Appeals. A three-person board consisting of: a representative from the Park Advisory Board designated by the Board of Recreation and Park Commissioners; a Boardwalk community member designated by the City Councilmember of the district in which the Boardwalk is located; and the General Manager of the Department of Recreation and Parks or the General Manager's designee.
11. Person. An individual or an organization composed of two or more individuals.
12. Program Rules. Rules adopted by the Board consistent with this section.
13. Pushcart. Any non-motorized mobile device that holds food, goods or merchandise as defined in this subsection, and is used to vend.
14. Recreation Area between Horizon Avenue and 20th Avenue. This is the area that includes a police substation, Muscle Beach, paddle tennis courts, and other recreational facilities. This does not include the Westside of the Boardwalk immediately adjacent to this area.
15. Vend or Vending. To sell, offer for sale, expose for sale, solicit offers to purchase, or to barter food, goods, 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 goods or services, even if characterized by the vendor as a donation.
16. Vendor. A person who vends. This includes a vendor who is an employee or agent of another.
17. Westside of the Boardwalk. The area on the ocean-side of the Venice Beach Boardwalk.

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 _____.

KAREN E. KALFAYAN, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By _____
MARK L. BROWN
Sr. Assistant City Attorney

Date _____

File No. CF # 07-2112