

REPORT OF GENERAL MANAGER

NO. 14-173

DATE June 26, 2014

C.D. Various

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ORDINANCE AMENDING SUBSECTION ~~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

subdivision 3 of

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Withdrawn _____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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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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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.

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 and under the control, operation or management of the Board of Recreation and Parks Commissioners, the Los Angeles County Department of Parks and Recreation, the Los Angeles County Department of Beaches or the Los Angeles Memorial Coliseum Commission. **“Park”** does not include any area

covered by Los Angeles Municipal Code Section 42.15 and does not include any State Historic Park located within the City of Los Angeles.

“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 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.

(b) A Person 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.

(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 may only 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 can Perform.

(g) The City, by and through the Board or Department, may issue a license, permit or contract to a Person 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 with all permitting or contract requirements of the City, Department, Board, 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, luggage, backpacks, kitchen utensils, cookware and similar material); and (b) engaging in one or more of the following: sleeping, making preparations to sleep, 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, luggage, backpacks, kitchen utensils, cookware and similar material); and (b) engaging in one or more of the following: sleeping, making preparations to sleep, 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 of 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 
ANTHONY-PAUL DIAZ
Deputy City Attorney

Date June 20, 2014

File No. _____

EXCERPT FROM THE MINUTES OF THE SPECIAL MEETING
BOARD OF RECREATION AND PARK COMMISSIONERS
July 23, 2014

14-173 – Taken Out of Order

ORDINANCE AMENDING SUBSECTION 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

(Original Date – 6/26/14)

The item was separately described and presented to the Board by Department staff, and the Board further discussed the item in detail. Public comment was invited on the item. Three requests for public comment were received and such comments were made to the Commission.

Vice President Zuñiga recommended the Report be amended to include the following recommendations:

Request 6 month delay in implementation in order to engage in public awareness campaign on changes to LAMC regarding vending. Department should educate public that vending is no longer allowed.

Once implemented, penalties should begin with warning, then proceed with fines, and should have stepped penalties (\$100, \$250, \$500).

In the meantime, 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.

In addition, Commission Task Force on Concessions should explore opportunities and standards for creating a licensing program for vendors at parks. The Task Force will develop criteria for vendors around food safety and health and will explore the following:

- Who can be licensed/permitted
- Process for licensing/permitted
- Creation of food and beverage guidelines- what can be sold. Priorities be given to vendors who sell majority of items under "healthy options" categories.
- Develop categories for vendors
- Guidelines for whether vendors have to be stationary or mobile
- Guidelines for responsibility of keeping area clean

President Alvarez confirmed that Vice President Zuñiga's recommendations would be something that would be expressed to the City Council should it go to the City Council, but not a change to the ordinance itself.

It was moved by Commissioner Sanford, seconded by Commissioner Patsouras that General Manager's Report 14-173 be approved as amended, and that the Resolutions recommended in the report be thereby approved. There being no objections, the Motion was unanimously approved.