

APPROVED
JUN 26 2014

REPORT OF GENERAL MANAGER

NO. 14-170

DATE June 26, 2014

BOARD OF RECREATION
AND PARK COMMISSIONERS

C.D. _____

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ORDINANCE AMENDING SECTION 42.15 D. OF THE LOS ANGELES MUNICIPAL CODE (LAMC) TO PROHIBIT UNLAWFUL VENDING PRACTICES USED TO AVOID COMPLIANCE WITH THE VENDING BAN AND TO ENHANCE THE PENALTY PROVISIONS TO PREVENT VENDORS FROM AVOIDING PROGRESSIVE PENALTIES BY FAILING TO APPEAR OR FORFEITING BAIL

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

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



General Manager

Approved

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Recommend that the Los Angeles City Council (Council) adopt an ordinance amending Los Angeles Municipal Code (LAMC) Section 42.15, Exhibit A as originally transmitted pursuant to Rule 38, and attached to this report (Attachment A), amending LAMC Section 42.15 to restrict vending, regulate performing, and prohibit generating noise on beaches or upon immediately adjacent boardwalks, sidewalks, and public ways;
2. Make the legislative findings stated in Section 42.15 D 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 Section 42.15 D of the draft ordinance in support of its enactment; and,
4. Upon the Council's approval of the draft ordinance, instruct staff to make copies of amended LAMC Section 42.15 available for inspection, and/or copying at the Venice Beach Police Substation or Recreation Office.

REPORT OF GENERAL MANAGER

PG. 2

NO. 14-170

SUMMARY:

At its meeting of October 5, 2011, the Board of Recreation and Parks Commissioners (Board) approved an amended ordinance of LAMC Section 42.15, attached to this Report (Attachment B). LAMC 42.15 restricts vending, regulates performing, and prohibits generating noise on beaches and or upon immediately adjacent boardwalks, sidewalks, and public ways.

After several years of operation and monitoring, RAP staff, the Office of the City Attorney, and the Los Angeles Police Department determined that additional modifications and amendments to the ordinance are necessary to prohibit practices used to avoid compliance with the ban on vending and prevent the avoidance of progressive penalties by failing to appear in court or forfeiting bail.

SUMMARY OF ORDINANCE PROVISIONS:

The proposed ordinance adds new Subdivisions to 42.15.D. The new Subdivision D.4 will bar vendors from “displaying” items that are subject to the vending ban. Undercover law enforcement investigations confirm that vendors are unlawfully violating the existing ban on the sale of commercial, non-first amendment protected items by purporting merely to “display” an unlawful item but, in fact, using the “display” as an advertisement for the sale of the item and selling the banned item to a customer in violation of the ban. New Subsection 42.15.D.4 will ban the display of items that may not be lawfully vended.

Proposed new Subdivision 52.15.D.5 will bar the practice of whereby a vendor provides a customer “free of charge” with an item subject to the vending ban if – and only if – the customer simultaneously buys an item that is not barred by the vending ban because it is a non-commercial, first amendment protected item. The vendor then claims only to be selling an item that is not subject to the ban while “giving away for free” an item that is subject to the ban. New Subdivision LAMC 42.15.D.5 will ban the practice of providing “free of charge” an item that may be not be lawfully vending if the purchase of an item that lawfully may be vended is a condition of receiving the free item.

In addition, the ordinance revises Subsection 42.15 I to enhance the efficacy of the existing progressive penalties for multiple violations of LAMC 42.15. To avoid the progressive penalties for convictions under LAMC 42.15, vendors have been failing to appear to contest citations and forfeiting bail rather than standing trial. Vendors thereby forfeit bail as a “cost of doing business” unlawfully in violation of the vending ban while avoiding progressive penalties aimed to prevent multiple violations. New Subdivision 3 makes a failure to appear in court to contest a citation, and bail forfeiture on a citation under Section 42.15 the equivalent to a conviction under Section 42.15 for purposes of imposing progressive penalties.

REPORT OF GENERAL MANAGER

PG. 3

NO. 14-170

The City Attorney has requested that the City Clerk place the draft ordinance on the first available agenda of the City Council for action on an urgency basis so that unlawful vending practices, more prevalent during the summer tourist season, do not detract from the first amendment artistic and expressive atmosphere the City seeks to engender and protect on the Venice Boardwalk.

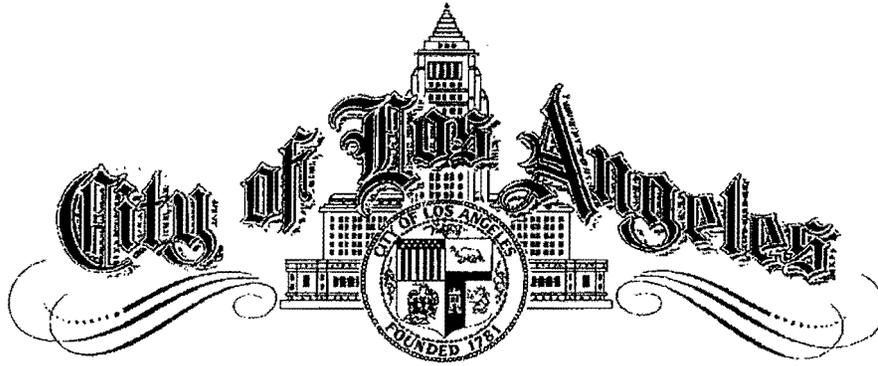
COUNCIL RULE 38 REFERRAL:

A copy of the draft ordinance was transmitted 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.



MICHAEL N. FEUER
CITY ATTORNEY

May 22, 2014

Michael Shull, Acting General Manager
Department of Recreation and Parks
221 N. Figueroa St., Suite 1550
Los Angeles, California 90012

Re: An Ordinance Amending Section 42.15 of the Los Angeles Municipal Code to Prohibit Unlawful Vending Practices and to Enhance the Penalty Provisions

Dear Mr. Shull:

Pursuant to Council Rule 38, this Office transmits a draft ordinance amending Section 42.15.D and I of the Los Angeles Municipal Code (LAMC). The proposed Ordinance adds two new Subdivisions to LAMC Section 42.15.D (Vending and Performing in Designated Spaces), and a new subdivision to LAMC Subsection 42.15.I (Violations).

Please review the ordinance and transmit any comments you may have directly to the City Council.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By

A handwritten signature in black ink, appearing to read 'Laurie Rittenberg', is written over a horizontal line.

Laurie RITTENBERG
Assistant City Attorney

MNF:LR:ac
Transmittal

M:\GENERAL COUNSEL DIVISION\LAURIE RITTENBERG\RULE 38\LAMC 42.15 5-15-14.doc

ORDINANCE NO. _____

An ordinance amending Subsection D and I of Section 42.15, Article 2, Chapter IV of the Los Angeles Municipal Code to prohibit vending, and to make failures to appear in court to contest a citation or forfeiture of bail for citations under this section a conviction under this section.

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

Section 1. Subsection D of Section 42.15 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

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. Vendors may not display items that may not be Vended pursuant to this Subsection.
5. Vendors 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 lawfully Vended pursuant to this Subsection is a condition of receiving the free item.

Sec. 4. 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 of 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 
LAURIE RITTENBERG
Assistant City Attorney

Date May 22, 2014

File No. _____

APPROVED

REPORT OF GENERAL MANAGER

NO. 11-273

OCT 05 2011

DATE September 21, 2011

BOARD OF RECREATION
AND PARK COMMISSIONERS

C.D. 11

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: VENICE BOARDWALK - DRAFT ORDINANCE AMENDING LOS ANGELES MUNICIPAL CODE SECTION 42.15 TO RESTRICT VENDING, REGULATE PERFORMING AND PROHIBIT GENERATING EXCESSIVE NOISE ON BEACHES OR UPON IMMEDIATELY ADJACENT BOARDWALKS, SIDEWALKS AND PUBLIC WAYS

R. Adams
H. Fujita
V. Israel

*K. Regan
M. Shull
N. Williams

[Signature]

[Signature]

General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

** amending section 42.15*

1. Recommend that the Los Angeles City Council (Council) adopt an ordinance, either Exhibit A as originally transmitted pursuant to Rule 38 or Exhibit B as amended at the request of Council District 11, copies of each are attached to this report amending Los Angeles Municipal Code Section 42.15 to restrict vending, regulate performing and prohibit generating noise on beaches or upon immediately adjacent boardwalks, sidewalks and public ways;
2. Make the legislative findings stated in Section 42.15B of the draft ordinance in support of its enactment;
3. Recommend that the City Council, if it chooses to enact the draft ordinance, make the legislative findings stated in Section 42.15B of the draft ordinance in support of its enactment; and,
4. Upon Council's approval of the draft ordinance, instruct staff to post signs providing notice of the existence of rules for the allocation and use of the Designated Spaces, Recreation Area and Boardwalk areas outside the Designated Spaces. A complete copy of Section 42.15 shall be available for inspection and copying at the Venice Police Substation or Recreation Office.

REPORT OF GENERAL MANAGER

PG. 3 NO. 11-273

loss to the City. 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, artists, performers, and vendors alike. Due to the unique historical, geographical, and physical characteristics of the Boardwalk, it requires its own set of rules and regulations different from those in effect at other public spaces in the City.

Background of Litigation Regarding Section 42.15

Throughout the years, the City's efforts to regulate vending, performing and excessive noise (including amplified sound) in the Venice Boardwalk area has been the subject of multiple legal challenges alleging that the City's regulatory efforts violated rights protected by the United States Constitution, including the First Amendment and the Due Process Clause.

In October of 2010, in the case of *Dowd, et al. v. City of Los Angeles*, CV09-06731, the United States District Court granted the plaintiffs' motion for preliminary injunction, striking the certain provisions in the current version of LAMC Section 42.15, which had been updated most recently in 2008, including the regulation which restricted amplified sound in selected areas on the Boardwalk.

Additionally, in March of this year, the United States Court of Appeals for the Ninth Circuit addressed various versions of LAMC Section 42.15, including the 2004, 2006 and 2008 versions. *See, Michael Hunt and Matthew Dowd v. City of Los Angeles* No. 09-55750, 09-55765, D.C. No. 2:-06-CV-04691-DDP-SS. In the *Hunt* decision, the Ninth Circuit invalidated several aspects of the 2004 and 2008 versions of Section 42.15, but upheld key provisions in the 2006 version.

In *Hunt*, the Ninth Circuit held unconstitutional the City's 2004 version of LAMC Section 42.15 which banned vending unless the vending was "inextricably intertwined" with merchandise constituting, carrying or making a "religious, political, philosophical or ideological" message or statement. The Ninth Circuit concluded that the 2004 version was unlawfully vague and ambiguous in two respects. First, the ordinance failed to explain when merchandise had a message that was "inextricably intertwined" with the merchandise, leaving unanswered whether the product itself must carry and display the message or whether it was sufficient for the vendor to explain the product's message. Second, the ordinance failed to define what constitutes a "religious, political, philosophical or ideological" message, and held that those terms had amorphous meanings. The Ninth Circuit also faulted the failure of the 2004 ordinance to provide examples of permitted or prohibited vending, noting that examples could have clarified its ambiguities. The current 2008 version of Section 42.15 also utilizes the "inextricably intertwined" standard that the Ninth Circuit found to be unconstitutionally vague.

Despite invalidating provisions in the 2004 and 2008 versions of LAMC Section 42.15, the Ninth

REPORT OF GENERAL MANAGER

PG. 5 NO. 11-273

The draft ordinance also regulates the use of a "Recreation Area" near the Boardwalk, which contains public safety ingress and egress routes, grassy areas, the tourist attraction known as "Muscle Beach," paddle tennis courts, a skate park, a skate plaza and other areas suitable for large-scale events. The draft ordinance provides that 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 other legally permissible allocation system.

Although the draft ordinance deletes the ban on amplified sound in selected areas, the draft ordinance still bans the generation of noise levels beyond certain decibel levels during specified hours of 9:00 a.m. to sunset. The draft ordinance expressly notes that all of the other provisions in the LAMC regulating the use of park property at all hours, including but not limited to noise and sound restrictions, apply to the Boardwalk and adjacent park areas.

The draft ordinance provides that a first violation of LAMC Section 42.15 shall be an infraction, punishable by a fine in the amount of \$100. A second or subsequent violation may be prosecuted pursuant to Section 11.00 in the LAMC, as either an infraction or a misdemeanor.

Also, the draft ordinance requires the City to post signs providing notice of the existence of rules for the allocation and use of the Designated Spaces, Recreation Area and Boardwalk areas outside the Designated Spaces. The posted signs would direct persons to the Venice Police Substation or Recreation Office for inspection and copying of LAMC Section 42.15.

In addition, the draft ordinance contains a number of proposed legislative findings regarding the disturbance of public peace that results when vending, performing and the generation of noise on the Boardwalk is unregulated. By adoption of the ordinance, the Council will make those findings in support of its enactment. Although courts do not necessarily defer to legislative findings, such findings can provide an important tool in defense of a challenge to the legality of an ordinance that implicates the First Amendment. *Santa Monica Beach, Ltd. v. Santa Monica Rent Control Board* (1999) 19 Cal.4th 952, 973, n.4.

California Environmental Quality Act

The City Attorney's Office and Department staff have determined that adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378 since the ordinance is not a project in that it represents general policy and/or procedure making. Adoption of the ordinance is also exempt pursuant to State CEQA Guidelines Section 15301 (City CEQA Guidelines Article III, Section 1.a), in that the ordinance involves negligible or no expansion of use of existing facilities; and State CEQA Guidelines Section 15305 (City CEQA Guidelines, Article III, Sec. 1.e) in that the ordinance implements a minor change in land use limitations. Additionally, adoption of the ordinance is also exempt from CEQA under State CEQA Guidelines Section 15323 (City CEQA Guidelines, Article III.

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. **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, acting by or through any of its officers, employees or agencies, including, but not limited to, the City's Department of Recreation and Parks.
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.

18. **Sunset.** Sunset is the time at which the sun's disk descends below the western horizon. The precise moment of Sunset is listed in almanacs and newspapers of general circulation in Los Angeles.

18. **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.

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

20. **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 is a major tourist attraction in the City.** Historically, the Boardwalk is significant as a traditional public forum for its performance and visual artists, as well as other free speech activity. 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.

2. **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

(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 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;

(g) 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

(h) 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, 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.

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. 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. No Person shall place or allow any item (except an umbrella, sun shade, easel or display board) 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. An umbrella or sun shade shall not exceed eight feet above ground. An easel or display board shall not exceed 68 inches in height.

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

7. No Person shall occupy more than a 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 eight feet.

11. Designated Spaces must be kept clean and litter, debris, or any marking must be removed from the Designated Space by the later of Sunset or when the Person vacates the Designated Space.

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.

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 in connection with the pre-approval of the Board.

(c) No Person shall use the Recreation Area or any part of the Recreation Area while the Recreation Area or any 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 Immediately Adjacent to the Boardwalk.

1. No Person 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.

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 _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality:

CARMEN A. TRUTANICH, City Attorney

By Arletta M. Brimsey (ABE)
ARLETTA MARIA BRIMSEY
Deputy City Attorney

Date July 12, 2011

File No. CF # 07-2112

9. 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.

10. Perform, Performing, Performance or Performances. To present or enact a play, work of music, work of art, physical or mental feat, or other constitutionally protected entertainment or form of expression.

11. Performer. A Performer is a Person who Performs. Performer includes the employers, employees, and agents of a Performer.

12. 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.

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

14. 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.

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

16. 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.

17. 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.

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 arrived prior to dawn and created 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 equipment of Vendors and Performers impede 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. 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;

3. 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 has nominal value apart from its communication.

Deleted: 2

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.

3. Performers can Perform.

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, which will be referred to as the "Designated Spaces." The Designated Spaces will be available for use in accordance with a first-come, first-served allocation 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, and made effective by posting 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 are the only spaces able to safely accommodate a large audience and, therefore, in order to facilitate a variety of Performers on and proximate to these 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.

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

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. 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 outside the Designated Spaces. 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 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.