

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 2 7 2
JUL 1 7 2011

REPORT RE:

**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**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 07-2112, 07-2112-S1

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. The draft ordinance amends Los Angeles Municipal Code (LAMC) Section 42.15 and replaces the current language of Section 42.15, aspects of which a United States Federal District Court and Court of Appeals for the Ninth Circuit have held to be unconstitutional. The draft replacement ordinance restricts vending, regulates performing, and prohibits the generation of excessive noise on the Venice Boardwalk and adjacent beach and public spaces in a manner consistent with the courts' rulings.

The Venice Boardwalk is a major tourist attraction in the City. Historically, the Boardwalk has served as a traditional public forum, rich with performance and visual artists, as well as other free speech activity. The amount of space on the Boardwalk available for performing and political advocacy is limited due to the size of the

Boardwalk and the large crowds of visitors that the Boardwalk attracts. During time periods when the City has not regulated the activities on the Boardwalk, there has often been conflict, at times violent, over available vending and performing space, frequently requiring law enforcement to respond. Excessive noise also has created problems. Persons wishing to secure spaces often arrive before dawn and create loud noise in setting up their displays, thereby disturbing the public peace, including the peace of nearby residents, often requiring law enforcement to respond.

Unregulated, the Boardwalk is a place where only the strongest and earliest arrivals can secure space to exercise their rights of free expression without threat of intimidation by others seeking to secure space. Unregulated activities on the Boardwalk adversely affect the historic character of the Boardwalk, hamper rather than encourage a wide-variety of free speech activity, and jeopardize the public safety of visitors to the Boardwalk, resulting in an economic and cultural 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 certain provisions in the current version of LAMC Section 42.15, which had been updated to address court rulings most recently in 2008, including the regulation that 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 that 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 Circuit in *Hunt* held that the City's 2006 version of Section 42.15 was constitutional. The 2006 version of Section 42.15 allowed vending of items that were created by the vendor, were "inherently communicative," and had "nominal utility" apart from their communication, and provided as examples of such items "books, cassette tapes, compact discs, photographs" and other communicative items. The Ninth Circuit found that the 2006 ordinance clearly stated a standard and that the ordinance provided examples that vendors could use to determine whether their merchandise was permitted or banned. The Ninth Circuit also determined that the regulations were a lawful and "reasonable fit" between the "legislature's ends and the means chosen to accomplish those ends."

As is more fully set out below, the draft ordinance presented for your consideration is consistent with the Ninth Circuit's ruling in *Hunt* and with the District Court's preliminary injunction ruling in *Dowd*. Specifically, the draft ordinance amends LAMC Section 42.15 by deleting the "inextricably intertwined" standard for vending and reinstating the "nominal utility" standard. The draft ordinance also deletes the regulations relating to amplified sound in selected areas of the Boardwalk.

Summary of Draft Ordinance and Proposed Legislative Findings

The draft ordinance regulates vending, performing and the generation of excessive noise along the Venice Boardwalk from the City of Santa Monica on the north, to the City of El Segundo on the South.

Except as specified, the draft ordinance prohibits vending on the Boardwalk and adjacent areas. Only a limited exception exists, which permits the vending of expressive items that have nominal utility apart from the vendors' communications, in other words, where the items have no common or dominant non-expressive purposes.

The draft ordinance provides examples of expressive items that may be vended, and includes examples such as newspapers, leaflets, pamphlets, bumper stickers, patches, buttons, books, audio communication materials, videos, paintings, prints, and sculptures. The draft ordinance also includes, as examples of items that have more than nominal utility and thus may not be vended, housewares, appliances, clothing, sunglasses, auto parts, oils, incense, perfume, crystals, lotions, candles, jewelry, toys and stuffed animals.

The draft ordinance designates 205 spaces in which permitted vending may occur on a first come, first-served basis, beginning at 9:00 a.m. and concluding at sunset. In addition to vending items with expressive purpose and no common or dominant non-expressive purpose, the draft ordinance permits persons to perform. Five of the 205 spaces are double-sized. The double-sized spaces are reserved for performances that generate large audiences. The double-sized performance spaces require performers to relinquish the space each hour if another performer is waiting to use the space, in order to encourage a wide-variety of performances.

The draft ordinance also defines and 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, either as an infraction of a misdemeanor.

Also, the draft ordinance requires the City to post signs providing notice of the existence of rules for the Boardwalk, Recreation Area and adjacent areas. The posted signs would direct persons to the co-located Venice Police Substation or Recreation Office for a copy 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 legislative findings in support of its enactment. Although courts do not automatically 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.

CEQA Recommendations

We recommend that prior to adoption of this ordinance you determine that your action 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.

We also recommend that you determine that adoption of the ordinance is 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 park limitations. We also recommend that you find your adoption of the ordinance exempt from CEQA under Guidelines section 15323 in that the ordinance provides for the normal operation of existing facilities for public gatherings. Finally, Council may determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If the City Council concurs, it may comply with CEQA by making one or more of the above determinations prior to or concurrent with its action on the ordinance. Council should thereafter direct staff to cause the filing of a Notice of Exemption.


Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38 to the Department of Recreation and Parks, Department of General Services, Office of Public Safety, and the Police Department asking that they make any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Deputy City Attorney Arletta Maria Brimsey at (213) 978-8156. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:VLF:AMB:fa
Transmittal

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.

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.

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

the Boardwalk, in order 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;

(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. 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.

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.

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.

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 the Ralph M. Brown Act, and

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.

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.

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