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DEPARTMENT OF
PARKS AND RECREATION

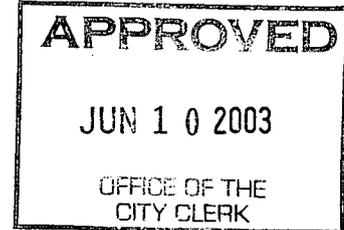
CITY OF SACRAMENTO
CALIFORNIA

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DIRECTOR'S OFFICE

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June 6, 2003
Ref: 6-11



City Council
Sacramento, California

Honorable Members in Session

**SUBJECT: ORDINANCE ADDING SECTION 12.48.090 TO CHAPTER 12.48 OF THE
CITY CODE**

LOCATION AND COUNCIL DISTRICT Citywide

STAFF RECOMMENDATION:

Staff recommends that City Council adopt the attached ordinance add section 12.48.090 to the City Code regarding the existing parade ordinance to ensure public safety. This ordinance is an emergency ordinance, which would take effect immediately pursuant to Section 32 of the City Charter.

CONTACT PERSONS Robert Overstreet
Director

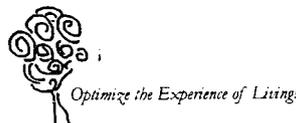
FOR COUNCIL MEETING OF June 10, 2003

SUMMARY

This report provides information on the modification of the Parade Ordinance. Staff is recommending that the City Council authorize the modification of this ordinance that will assist public safety by providing legal authority to intercede before or during events.

COMMITTEE/COMMISSION ACTION

None



BACKGROUND

The City's current parade regulations, which govern parades, demonstrations, rallies and assemblies, were enacted decades ago. Since that time, the statutory and judicial law governing parades, demonstrations, rallies and assemblies has developed and is significantly different than the law as it existed at the time of enactment. Further, the manner in which such events are undertaken, and the nature and level of the activity of those participating in such events, has changed significantly since the enactment of the current regulations.

The City Attorney's Office advises that the courts have recognized the right of jurisdictions to enact reasonable time, place and manner restrictions on parades, demonstrations, rallies and assemblies while at the same time not restricting the First Amendment rights of groups and individuals wishing to express their views. For example, the regulations of the City of Los Angeles restricting the size, nature and shape of sign handles were recently upheld by the Ninth Circuit Court of Appeal.

As the Capitol of California, the City of Sacramento is the host to numerous large-scale events each year. With these events, the potential for violence, distraction, and disorder exist. Our primary concern is to ensure the success, security and safety of: those attending the events; those assigned to work the events; and those neighborhoods and businesses that surround the event.

In the past, widespread violence, distraction, and disorder have erupted in comparable cities such as Oakland, Seattle, San Diego, Los Angeles, San Francisco, Toronto, and St. Louis during various events. Sacramento has been fortunate in recent years not to have suffered the destruction and chaos that other cities have experienced, but the probability and potential are ever present. Groups or individuals have become more sophisticated in their approach to disrupt and create violence than in years past. They are better prepared, better equipped, well trained, and more adequately financed. This is evident based on what has occurred in other cities.

The adoption of this ordinance will enhance public safety by providing law enforcement personnel with additional authority to deal with parades, demonstrations, rallies and/or assemblies that have the potential for erupting into violence, distraction, and disorder.

This ordinance specifically identifies items that individuals cannot have in their possession during such events, when such items have no reasonable connection to the presentation of open demonstration and discourse. The items prohibited are solely those that are used to inflict injury, impede the response of public safety units, or delay or negate conventional law enforcement tactics.

Given the number of parade and related events scheduled for this month, it is appropriate and necessary that these regulations take effect immediately and apply to all future events.

Based on information obtained by the City of Sacramento, it appears that there will be a significant number of groups and individuals attending and participating in parades, demonstrations, rallies and assemblies in Sacramento on a variety of issues during the upcoming months, including a number of events that are planned for later this month. Based on information obtained by the City of Sacramento, it also appears that there is the potential for civil disturbance and unrest during some of these events. It is therefore appropriate to enact this ordinance as an urgency measure to take effect immediately, so that the regulations will be in effect and apply to events that will occur within the next thirty (30) days.

FINANCIAL CONSIDERATIONS

None.

ENVIRONMENTAL CONSIDERATIONS

This activity does not constitute a “project” and is therefore exempt from the California Environmental Quality Act (CEQA), CEQA Guidelines Sections 15061(b) and 15378(b)(3).

POLICY CONSIDERATIONS

The revised ordinance is consistent with the City’s goal to enhance the quality of life in neighborhoods and preserve public safety.

ESBD CONSIDERATIONS

Not applicable.

Respectfully submitted:

Ken Harder

for Robert Overstreet
Director

RECOMMENDATION APPROVED:

Ken Nishida for

for ROBERT P. THOMAS
City Manager

RO/dls

Table of Contents

- 1. Attachment A-Revised Ordinance

ORDINANCE NO. 2003-024

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____



AN ORDINANCE ADDING SECTION 12.48.090 TO CHAPTER 12.48 OF TITLE 12 OF THE CITY CODE RELATING TO AND ESTABLISHING REASONABLE TIME, PLACE AND MANNER REGULATIONS CONCERNING MATERIALS AND OBJECTS THAT MAY BE POSSESSED, CARRIED OR USED BY THOSE PARTICIPATING IN PARADES AND DEMONSTRATIONS, AND DECLARING THE ORDINANCE AN EMERGENCY ORDINANCE TO TAKE EFFECT IMMEDIATELY PURSUANT TO SECTION 32 OF THE CITY CHARTER

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section One

Recitals

1. The City of Sacramento, as California's capital city, has a rich history of parades, demonstrations, rallies and assemblies on a wealth of issues.
2. The City's current parade regulations, which govern parades, demonstrations, rallies and assemblies, were enacted decades ago. Since that time, the statutory and judicial law governing parades, demonstrations, rallies and assemblies has developed and is significantly different than the law as it existed at the time of enactment. Further, the manner in which such events are undertaken, and the nature and level of the activity of those participating in such events, has changed significantly since the enactment of the current regulations. In recent years, civil unrest and disturbance has occurred at events held in a number of cities, such as Oakland, Seattle, San Diego, Los Angeles, San Francisco, Toronto and St. Louis, accompanied in some instances by significant personal injuries and property damage, including injuries and damage caused by the use of various weapons and

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projectiles, including some or all of those specified in Section 3 of this ordinance.

3. The courts have recognized the right of jurisdictions to enact reasonable time, place and manner restrictions on parades, demonstrations, rallies and assemblies while at the same time not restricting the First Amendment rights of groups and individuals wishing to express their views. For example, the regulations of the City of Los Angeles restricting the size, nature and shape of sign handles were recently upheld by the Ninth Circuit Court of Appeal. See: Vlasak v. Superior Court, 2003 U.S. App. LEXIS 9230. See also: Edwards v. City of Coeur D'Alene, 262 F.3rd 856 (9th Cir. 2001); Foti v. City of Menlo Park, 146 F.3d 629 (9th Cir. 1998).
4. The City of Sacramento wishes to ensure the safety and security of those viewing, attending, or participating in parades, protests, demonstrations, rallies and assemblies in Sacramento, the residents and businesses of Sacramento, and the public officials and employees responsible for handling or overseeing such events on public property; and to reduce or avoid the possibility of personal injury and property damage. At the same time, the City of Sacramento recognizes the First Amendment rights of those wishing to express their views, both individually and collectively, on issues addressed at or in future parades, protests, demonstrations, rallies and assemblies in Sacramento.
5. Based on information obtained by the City of Sacramento, it appears that there will be a significant number of groups and individuals attending and participating in parades, demonstrations, rallies and assemblies in Sacramento on a variety of issues during the upcoming months, including a number of events that are planned for later this month.
6. Based on information obtained by the City of Sacramento, it appears that there is the potential for civil disturbance and unrest during the events referenced in Subsection 5 above. It is therefore appropriate to enact this ordinance as an urgency measure to take effect immediately, so that the regulations will be in effect and apply to events that will occur within the next thirty (30) days.

Section 2

Purpose and Intent

It is the purpose and intent of the City of Sacramento, in enacting the regulations set forth in Section 3 of this ordinance, to establish reasonable time, place and manner restrictions for parades, demonstrations, rallies and assemblies to ensure the safety and

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well-being of individuals and property, while at the same time ensuring the First Amendment rights of those wishing to associate and to express their views, both individually and collectively. In enacting these regulations, the City is cognizant of recent court decisions, including those cited in Section 1 of this ordinance, that authorize the enactment of reasonable time, place and manner restrictions; the City is also cognizant of its obligation not to improperly restrict the First Amendment rights of individuals and groups wishing to associate and to express their First Amendment views on any and all issues, and to do so in a robust, vigorous manner. The regulations in Section 3 of this ordinance restrict only the types of materials that those participating in parades, demonstrations, rallies and assemblies may have in their possession, and do not interfere with their rights of association and expression. The materials restricted or prohibited by Section 3 of this ordinance have the potential to be used as weapons and to inflict personal and property damage, or to provide protection for those participating in the use of such weapons and the infliction of personal and property damage, and have been used for this purpose in events in other jurisdictions. There is no First Amendment right to cause such personal and property damage through use of these materials, and it therefore and reasonable and appropriate to restrict possession of such materials as a prophylactic, reasonable time, place and manner regulation.

Section 3

Section 12.48.090 is added to Chapter 12.48 of Title 12 of the Sacramento City Code to read as follows:

Section 12.48.090 Parade and Demonstration Equipment Prohibited

The following prohibitions shall apply to all parades.

1. It shall be unlawful for any person to carry or possess any weapon, as defined herein, notwithstanding any other definition of the term "weapon" set forth in this City Code.

For purposes of this chapter, and notwithstanding any other provision of this code, "weapon" means any pistol, rifle, shotgun or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap(s), knife, hatchet, ax, slingshot, slungshot, blackjack, metal knuckles, mace, iron buckle, baseball bat, ax, ax handle, chains, crowbar, hammer, shovel, stick, pole or other club or bludgeon or any other instrumentality customarily used or intended for probable use as a dangerous weapon.

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2. It shall be unlawful for any person to carry or possess any sign, poster, plaque or notice unless such sign, poster plaque, or notice is constructed solely of a cloth, paper or cardboard material no greater than one-quarter inch in thickness.
3. It shall be unlawful for any person to carry or possess any length of lumber, wood or wood lath unless it is one-fourth inch or less in thickness and two inches or less in width or if not generally rectangular in shape, such object shall not exceed three-quarters inch in its thickest dimension. Both ends of the length of lumber, wood or wood lath shall be blunt and shall not be pointed.
4. It shall be unlawful for any person to carry or possess any length of metal, plastic or other similar hard or stiff material, whether hollow or solid; provided that hollow plastic pipe that does not exceed three-quarters inch in its thickest dimension, does not exceed one-eighth inch (1/8") in wall thickness and is not filled with any material, liquid, gas or solid, may be used to support a sign, banner, placard or other similar display; however, both ends of the length of plastic material shall be blunt, and not pointed.
5. It shall be unlawful for any person to carry or possess glass bottles, glass jars or glass containers of any kind.
6. It shall be unlawful for any person to carry or possess balloons filled with any material or substance other than air, oxygen or helium. Prohibited materials and substances include, but are not limited to water, paint, or any other liquid, solid, or other gas.
7. It shall be unlawful for any person to carry or possess solid golf balls, ball bearings, marbles, paint balls, solid balls or other solid shapes made of rubber, plastic, metal, wood or any other similar hard substance, including batteries; provided that nothing is intended to prohibit the possession of bicycles, wheelchairs and other similar devices that include ball bearings or other as part of their structure; and, provided further, that nothing is intended to prohibit the possession of electronic, electrical or other devices that are battery-operated. The purpose of this subsection is to prohibit the possession of materials or devices that can be thrown or projected and can or may cause, or have the potential for causing, significant personal or property damage.

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8. It shall be unlawful for any person to carry or possess bricks, stones, rocks, pieces of asphalt or concrete or pieces of other similar hard materials or substances that are capable of being thrown or projected.
 9. It shall be unlawful for any person to carry or possess spray paint cans.
 10. It shall be unlawful for any person to carry or possess any projectile launcher or other device which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, including but not limited to supersoakers and watercannons. Nothing in this subsection is intended to prohibit or restrict those participating in parades, demonstrations, rallies or assemblies from possessing sufficient amounts of water or other liquids designed and intended for human consumption during such events.
 11. It shall be unlawful for any person to carry, possess or wear any gas mask or similar device designed to filter all air breathed and that would protect the respiratory tract and face against irritating, noxious or poisonous gases.
 12. It shall be unlawful for any person to carry, possess or wear a body vest as that term is defined in Penal Code Sec. 12022.2.
- B. Nothing in this section shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker, or similar device necessary for providing mobility so that the person may participate in a parade.
- C. Nothing in Subsection A is intended to authorize the possession or use of materials, weapons or devices that are otherwise prohibited by any other local, state or federal ordinance, statute or regulation. The purpose of Subsection A is to prohibit the carrying or possession of items and materials that have the potential to be used as weapons to cause physical or personal damage, and whose possession might not otherwise be prohibited by local, state or federal law.

Section 4

This Ordinance is declared to be an emergency ordinance to be effective immediately pursuant to Section 32(g)(2) of the City Charter. The facts constituting the emergency are as follows: the City's current parade regulations, which govern parades, demonstrations, rallies and assemblies, were enacted decades ago. Since that time, the statutory and judicial law governing parades, demonstrations, rallies and assemblies has developed and

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is significantly different than the law as it existed at the time of enactment. Further, the manner in which such events are undertaken, and the nature and level of the activity of those participating in such events, has changed significantly since the enactment of the current regulations. The City has recently learned that significant parades, demonstrations, rallies and assemblies are planned for the upcoming months, including a number of events that are planned for later this month, and that there are serious and legitimate concerns about the potential for civil unrest and disturbance, including the potential for personal injury and property damage. The City recognizes the importance of accommodating, protecting and fostering the First Amendment rights of those wishing to assemble and express their views on the issues to be presented at the June events; however, the City also recognizes its right and authority to enact appropriate time, place and manner regulations to address, and as appropriate, to eliminate or restrict, the potential for personal and property damage at such events. To be effective, it is necessary and appropriate that the amendments effectuated by this ordinance take effect now, so that they will be in full force and effect and applicable to events occurring within the next thirty (30) days. The regulations established by this ordinance shall be incorporated into the City Code and shall apply to all future parades taking place on or after the effective date of this ordinance.

Section 5

Severability: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

ATTEST:

MAYOR

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