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MEMORANDUM OF LAW

DATE: May 19, 2016

TO: Stacey LoMedico, Assistant Chief Operating Officer
Herman Parker, Director, Park and Recreation Department

FROM: City Attorney

SUBJECT: First Amendment Issues Related to the Regulation of Fitness and Yoga Classes in City Parks and Beaches

INTRODUCTION

San Diego Municipal Code section 63.0102 regulates conduct and activities in the City's parks, plazas, beaches and beach areas (parks and beaches). Municipal Code section 63.0102(b)(24) specifically prohibits groups of fifty persons or more from engaging in certain activities in the parks and beaches without prior written consent. The constitutionality of this section was challenged by a yoga instructor, who alleged the large group regulation violated speech rights protected by the First Amendment to the United States Constitution. City staff has requested advice from the Office of the City Attorney about the First Amendment protections available to fitness and yoga classes and what steps the City may take to regulate such classes held in the parks and beaches.

QUESTIONS PRESENTED

1. Are fitness and yoga classes protected by the First Amendment when conducted in the City's parks and beaches?

2. What alternatives are available to the City to address fitness and yoga classes in the parks and beaches?

SHORT ANSWERS

1. No. A reviewing court would likely find fitness and yoga classes to be conduct that is not generally protected by the First Amendment.

2. The City may enforce the permit requirement in Municipal Code section 63.0102(b)(24) for fitness or yoga classes of fifty or more persons in the City's parks and beaches. If the City desires to regulate fitness and yoga classes of a smaller size, the City could adopt regulations or a permitting program applicable to those fitness and yoga classes.

BACKGROUND

The Municipal Code prohibits certain activities in City parks and beaches "in the interests of protecting the enjoyment and safety of the public in the use of these facilities, as well as the natural resources of the City." SDMC § 63.0102(a). Subsection (b)(24) prohibits certain activities by large groups and states:

> (24) Large Groups. Except as otherwise required or permitted by Chapter 2, Article 2, Division 40 of this Code, it is unlawful for any group of persons consisting of fifty or more persons to hold, conduct or participate in any celebration, parade, service, picnic, exercise, or other special event in any park, plaza, or beach without having first obtained a permit from the City Manager.

Written consent for a large group activity is issued, in the form of a permit, by the Permitting Official[1] "if there is capacity for the proposed activity." SDMC § 63.0103; *see also*, City Att'y MS 2015-2 (Feb. 2, 2015).

Municipal Code section 63.0102 was recently challenged with respect to the City's regulation of large group activities in *State of California v. Hubbard*. Mr. Hubbard challenged infractions issued to him for violation of Municipal Code section 63.0102(b)(24), arguing that his conduct was protected by the First Amendment. Y000678 and Y000679, Statement of Decision dated Feb. 6, 2014, (San Diego Superior Court). Mr. Hubbard was cited for conducting yoga classes in a City park that exceeded fifty people without a permit. *Id.* Hearing the infraction trials, the Commissioner found Mr. Hubbard not guilty and found Municipal Code section 63.0102(b)(24) "unconstitutional on its face and as applied" because the ordinance "run[s] afoul of . . . *Long Beach Area Peace Network v. City of Long Beach* (9th Cir. 2008) 574 F.3d 1011 in requiring a permit for gatherings exceeding 50 people." *Id.* at 3. The Commissioner further found Municipal Code section 63.0102(b)(24) unconstitutionally vague and to have a chilling effect as applied to Mr. Hubbard, but did not address whether Mr. Hubbard's conduct was protected by the First Amendment. *Id.*

The Commissioner's findings are conclusive with regard to the specific citations and allegations at issue in Mr. Hubbard's case, but do not apply to future citations issued by the City because they are not binding legal precedent. *See Sanderson v. Niemann*, 17 Cal. 2d 563, 575 (1941); *Sanders v. Walsh*, 219 Cal. App. 4th 855, 869-70 (2013).

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[1] Municipal Code section 63.0102(b) authorizes the City Manager to grant permission or written consent for certain activities in the parks. Municipal Code section 63.0110 defines "City Manager" as including the City Manager, the Director of the Park and Recreation Department (Department) and any other person designated by the City Manager to carry out and enforce Chapter 6, Article 3, Division 1 of the Municipal Code.

This Memorandum will first provide a general overview of the First Amendment protections available to speech and speech-related conduct and will then discuss whether fitness and yoga classes are protected speech conduct and what legal restrictions apply to the City's ability to regulate fitness and yoga classes in the City's parks and beaches.

ANALYSIS

I. THE FIRST AMENDMENT PROTECTS CERTAIN SPEECH-RELATED ACTIVITIES, BUT SOME "TIME, PLACE AND MANNER" REGULATIONS MAY BE PERMISSIBLE

The First Amendment states "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. These provisions are applicable to actions of the states through the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 1. The California Constitution also protects the right of every person to "freely speak . . . his or her sentiments on all subjects" and provides that no law may "restrain or abridge liberty of speech or press." Cal. Const. art. I, § 2. As a threshold issue, whether a reviewing court would apply federal or state law to a claim challenging the City's regulation of activities implicating the expression of free speech would depend upon the legal theories presented by the plaintiff in the specific case.[2] Generally, the California Constitution and case law construing it gives greater protection to the expression of free speech than the United States Constitution. *Mardi Gras of San Luis Obispo v. City of San Luis Obispo*, 189 F. Supp. 2d 1018, 1025 (2002). California courts draw upon both state and federal law for their state constitutional analyses. *Id.* at 1025-26.

The City's ability to limit speech is dependent, in part, on the type of forum (i.e. the place) where the speech will occur. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). Public parks have frequently been held to be "traditional public forums" where the First Amendment protections are at their greatest. *Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009); 1996 City Att'y MOL 401 (96-42; Aug. 12, 1996); 1994 City Att'y MOL 809 (94-90; Nov. 14, 1994); *compare Kaahumanu v. Hawaii*, 682 F.3d 789, 800 (9th Cir. 2012) (declining to determine that all state beaches are traditional public fora).

A. Content Based and Content Neutral Regulations Compared

"[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). Regulations implicating protected speech are

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[2] A court usually will evaluate whether the conduct merits First Amendment protection if the constitutionality of the regulation as applied to the speaker is challenged. By contrast, if the challenge to a regulation was raised on its face – for example under the First Amendment's vagueness or overbreadth doctrines, discussed in Section II of this Memorandum – "an individual whose own speech or conduct may be prohibited is permitted to challenge a statute on its face" because of the potential chilling effect on legally protected speech. *Board of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 5774 (1987).

subject to different legal standards according to whether the regulation is a "content based" regulation or a "content neutral" regulation. A "content based" regulation is one that distinguishes favored speech from disfavored speech based on the ideas or on the identity of the speaker. *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 448 (2002). By contrast, a regulation is "content neutral" if it is based on something other than the content of the speech. *Long Beach Area Peace Network*, 574 F.3d at 1024. A permit system that is not directed specifically at communicative activity "but rather to *all* activity conducted in a public park" is content neutral. *Thomas v. Chicago Park District*, 534 U.S. 316, 322 (2002).

The City's permitting requirements in Municipal Code section 63.0102 generally address all activity in the parks and beaches and do not distinguish activities that involve protected speech or the individuals requesting permits. In order to obtain a permit, Municipal Code section 63.0103(b) requires the applicant provide information "as to the proposed activity, the sponsoring person or organization, the number of persons expected to attend, the proposed park area to be used, the proposed date and time of the event, the duration in time, and the proposed alternate park areas and dates, if any." Additionally, according to information provided by the Department, the Permitting Official does not inquire into the content of the proposed activity or speech. Therefore, a reviewing court would likely find the permitting requirements in Municipal Code section 63.0102 to be content neutral and directed at all activities conducted in the parks and beaches, similar to the regulations upheld in the *Thomas* decision.

B. Content Neutral Time, Place and Manner Regulations

A content neutral time, place, and manner regulation is permissible if the following four criteria are satisfied: (1) the government interest in adopting the regulation is substantial; (2) the regulation is narrowly tailored to meet that government interest; (3) the regulation leaves open ample alternatives for communication; and (4) the regulation does not confer "unbridled discretion" on the permitting official. *Long Beach Area Peace Network*, 574 F.3d at 1024-25. "Regulations of the use of a public forum that ensure the safety and convenience of the people are not 'inconsistent with civil liberties but . . . [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend." *Thomas*, 534 U.S. at 323 (quoting *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941)). Consistent with case law, this Office previously has determined that the City may generally require permits to regulate use of the parks and beaches. *See* 1996 City Att'y MOL 401 (96-42; Aug. 12, 1996); 1994 City Att'y MOL 809 (94-90; Nov. 14, 1994) (addressing limitations on City regulation of sales and solicitation protected by the First Amendment).

1. The City Must Have a Substantial Government Interest in Regulating Parks and Beaches

The City's regulation of conduct in the parks and beaches must address a government interest that is "substantial and 'unrelated to [the] suppression of expression.'" *Long Beach Area Peace Network*, 574 F.3d at 1024 (citation omitted). Governments have a substantial interest in regulating competing interests and overlapping uses of parks and in the preservation of park facilities. *Thomas*, 534 U.S. at 322. Maintaining the orderly movement of crowds and protecting

the safety and convenience of persons in a public forum has also been upheld as a substantial government interest. *Heffron,* 452 U.S. at 650-51. Similar to the interests in the *Thomas* case, the City's stated intent in adopting Municipal Code section 63.0102 is "to regulate and prohibit certain activities in public parks and beaches within the City of San Diego *in the interests of protecting the enjoyment and safety of the public in the use of these facilities, as well as the natural resources of the City of San Diego*." SDMC § 63.0102(a) (emphasis added).

2. The City Must Narrowly Tailor Its Ordinances to Achieve the City's Interests in Adopting the Ordinances

Narrowly tailored ordinances are those that do not "burden substantially more speech than necessary to achieve [the ordinance's] important goals." *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1038 (9th Cir. 2006). A regulation is narrowly tailored if it "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). Although the regulation "'need not be the least restrictive or least intrusive means' available to achieve the government's legitimate interests, the existence of obvious, less burdensome alternatives is 'a relevant consideration in determining whether the 'fit' between ends and means is reasonable.'" *Berger*, 569 F.3d at 1041 (internal citations omitted). Courts frequently have upheld permit requirements for large group gatherings even when implicating protected speech activities in public parks because of the significant government interest in the safety and convenience of the public. *See Thomas*, 534 U.S. at 323 (upheld permit requirement for assemblies, parades, and other events involving fifty or more persons). To be considered narrowly tailored by the courts, these "permit requirement[s] must maintain a *close relationship between the size of the event and its likelihood of implicating government interests*." *Santa Monica Food Not Bombs*, 450 F.3d at 1040 (emphasis added). Generally, the government's interest in regulating use of public parks is implicated only for "quite large groups." *Id.* at 1042. Similar to the regulation at issue in *Thomas*, Municipal Code section 63.0102(b)(24) requires a permit for groups of fifty or more persons and was enacted to protect the public and the City's natural resources.[3]

3. The City Must Ensure that Its Ordinances Provide Ample Alternatives for Communication

A valid time, place, and manner regulation "must leave open ample alternatives for communication." *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). "[T]he First Amendment requires only that the government refrain from denying a 'reasonable opportunity' for communication." *Santa Monica Food Not Bombs*, 450 F.3d at 1045 (quoting *Menotti v. City of Seattle*, 409 F.3d 1113, 1141 (9th Cir. 2005)). Regulations that require advance

[3] The Commissioner's ruling, by reference to *Long Beach Area Peace Network*, suggests that Municipal Code section 63.0102(b)(24) may not satisfy the narrow tailoring requirement for permits imposed on large groups because of its application to groups of fifty people. *Hubbard*, Statement of Decision at 3. The court in *Long Beach Area Peace Network* upheld a permit requirement applicable to groups of seventy-five people but found it to be "a close question" whether a group of that size was large enough to warrant an advance notice and permitting requirement. 574 F.3d at 1034. As discussed here, in *Thomas*, the Supreme Court upheld a permit requirement applicable to groups of fifty people.

notice and permits for large groups engaged in protected expression in public forums are generally scrutinized with respect to their impact on spontaneous speech. *Long Beach Area Peace Network*, 574 F.3d at 1036-37. "[A] permitting ordinance must provide some alternative for expression concerning fast-breaking events." *Santa Monica Food Not Bombs*, 450 F.3d at 1047. Certain large group activities traditionally associated with spontaneous speech, including parades and special events, are excepted from the large group permit requirement.[4] SDMC § 63.0102(b)(24); § 63.0103(i). All other activities conducted by groups of fifty or more persons would be required to apply for a permit "not less than ten (10) days" before the proposed activity; however, the Permitting Official may consider late filed permit applications.[5] SDMC § 63.0103(a).

4. The City Must Ensure that Permitting Officials do not have Unbridled Discretion in Regulating Protected Speech

A valid permit regulation imposed on protected speech generally does not delegate overly broad discretion to the permitting official or allow the permitting official to decide whether to restrict speech. *Long Beach Area Peace Network*, 574 F.3d at 1022. Permitting regulations may not "confer unbridled discretion on a permitting or licensing official" and should, instead, contain "narrow, objective, and definite standards" to guide the permitting decision and require an explanation of the permitting official's decision. *Id.* at 1025. The California Supreme Court explained that "ordinances requiring the issuance of permits for the exercise of First Amendment rights . . . 'will not offend the Constitution if they regulate only the time, place, manner and duration [of such expression] and if they are fairly administered by officials within the range of narrowly limited discretion.'" *People v. Fogelson,* 21 Cal. 3d 158, 166 (1978) (quoting *Dillon v. Municipal Court*, 4 Cal. 3d 860, 869-70 (1971) (alteration in original). Large group permits are issued pursuant to the procedure established in Municipal Code section 63.0103 and will be issued "if there is capacity for the proposed activity" at the requested location. SDMC § 63.0103(d). When there is not capacity for the proposed activity, the Permitting Official may propose an alternate date, time or location. SDMC § 63.0103(h).

II. THE CITY'S REGULATION OF SPEECH RELATED ACTIVITIES MUST BE WRITTEN IN A MANNER THAT IS NOT VAGUE OR OVERBROAD

The Due Process Clause of the Fifth Amendment to the Constitution requires a law prohibiting conduct be written in a manner that a "person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited" and provides "explicit standards for those who apply them" to prevent arbitrary and discriminatory enforcement. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined . . . Vague laws may trap the innocent by not providing fair warning." *Id.* When a statute interferes with the right of free

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[4] These types of events must comply with the Special Events Ordinance (Chapter 2, Article 2, Division 40), which contains certain exceptions for expressive activity. *See* City Att'y MS 2011-16 (Nov. 8, 2011).

[5] This Office has not reviewed any administrative guidelines or regulations governing late filed permits, but recommends clarification of the method by which the Permitting Official decides to accept late filed permits.

speech, a more stringent vagueness test applies and a greater degree of specificity and clarity is required. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). However, "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Ward*, 491 U.S. at 794. Generally, a statute is not vague if an "ordinary person exercising ordinary common sense can sufficiently understand and comply with its language." *City of Costa Mesa v. Soffer*, 11 Cal. App. 4th 378, 387 (1992). "A statute will be upheld against a claim of vagueness if its terms can be made reasonably certain by reference to other definable sources." *Id.* (citations omitted).

Even if a law is clearly and precisely written, the law may still be unconstitutionally overbroad if it prohibits or punishes constitutionally protected conduct. *Grayned*, 408 U.S. at 114. "The overbreadth doctrine is based on the observation that 'the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court.'" *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108, 1112 (9th Cir. 1999) (quoting *Forsyth County, Ga.*, 505 U.S. at 129). The phrase "chilling effect" generally refers to the impact of a law that is written so broadly that enforcement would not only result in the intended regulation, but also "deter or 'chill' constitutionally protected speech." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

III. APPLICATION OF LAW TO MUNICIPAL CODE SECTION 63.0102(b)(24)

A. As Applied –Fitness and Yoga Classes Would Not Likely be Considered Speech Protected by the First Amendment

The First Amendment generally protects expressive conduct that "'convey[s] a particularized message' and is likely to be understood in the surrounding circumstances," but not all conduct is protected by the First Amendment. *Kaahumanu*, 682 F. 3d at 798 (quoting *Spence v. Washington*, 418 U.S. 405, 409-411 (1974)); *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177, 1189 (6th Cir. 1995). "The linchpin of the inquiry is . . . the extent to which the speech advances an idea transcending personal interest or opinion which impacts our social and/or political lives." *Id.* The courts have found that conduct such as recreational dancing and beach activities are not speech activities protected by the First Amendment. *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989); *Daly v. Harris*, 215 F. Supp. 2d 1098, 1109 (D. Haw. 2002). In holding the recreational activities of dance hall patrons not protected by the First Amendment, the United States Supreme Court stated "[i]t is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one's friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." *Daly*, 215 F. Supp. 2d at 1108. Similar to dancing, fitness and yoga are recreational and social activities. Yoga, for example, is defined as "a system of stretching and positional exercises . . . to promote good health, fitness and control of the mind." The American Heritage Dictionary of the English Language (5th ed. 2011). There is currently no case law specifically addressing the First Amendment protections that may be available to fitness and yoga classes; however, a court could reasonably conclude that fitness and yoga classes are similar to the activities at issue in *Stanglin* and *Daly* and not protected by the First Amendment.

B. On its Face –Vagueness and Overbreadth

In ruling on Mr. Hubbard's infraction trials, the Commissioner found Municipal Code section 63.0102(b)(24) unconstitutionally vague with respect to the terms "service" and "exercise." *Hubbard*, Statement of Decision at 3. In so ruling, the Commissioner stated the ordinance was unclear as to when a permit was required. *Id.* As discussed above, courts will generally uphold an ordinance against a vagueness challenge if an ordinary person can, using ordinary common sense, understand and comply with its language. *Soffer*, 11 Cal. App. 4th at 387. If the ordinance interferes with the right of free speech, courts will generally apply a more stringent vagueness test. *See Village of Hoffman Estates*, 455 U.S. at 499. Additionally, an ordinance will be read as a whole and the words construed "in context, keeping in mind the statutory purpose." *MacIsaac v. Waste Management Collection and Recycling, Inc.*, 134 Cal. App. 4th 1076, 1083. It is this Office's opinion that the Commissioner's decision is inconsistent with these legal principles.

In Municipal Code section 63.0102(b)(24), the terms "service" and "exercise" are two of several specifically identified activities that require a permit when conducted by groups of fifty or more persons in the parks and beaches. The dictionary contains several definitions of "service." Based on the context of the ordinance, the most relevant definition is "a religious ceremony or rite." Webster's II New College Dictionary, 1033 (2005); *see Village of Hoffman Estates*, 455 U.S. at 500-01 (relying on dictionary definition of terms of statute). "Exercise" is defined as an "activity requiring physical or mental exertion, [especially] when performed to maintain or develop fitness" and as "[s]omething practiced so as to increase one's skill." Webster's II New College Dictionary, 400 (2005). Based on the language in Municipal Code section 63.0102(b)(24) – prohibiting fifty or more persons from holding, conducting or participating in "any celebration, parade, service, picnic, exercise, or other special event" – a court could reasonably conclude that "exercise" refers to group exercise or fitness activities, including yoga.[6]

The Commissioner also found Municipal Code section 63.0102(b)(24) had a "chilling effect" and applied broadly to protected speech based on Mr. Hubbard's alleged attempt to limit class size. *Hubbard*, Statement of Decision at 3. According to the Statement of Decision, Mr. Hubbard issued tickets to the first forty-nine people arriving at the park to participate in yoga class and announced that those individuals without a ticket were excluded from his class. *Id.* at 2. Mr. Hubbard argued that he had no authority to forcibly remove anyone who lingered in the area of his yoga class or who engaged in yoga in the area without a ticket. *Id.* When a law is challenged as overbroad, the courts generally will look to whether the law reaches a substantial amount of constitutionally protected conduct. *Village of Hoffman Estates*, 455 U.S. at 495. If it does not, the overbreadth challenge fails. *Id.* A finding of overbreadth pursuant to the First Amendment is an exceptional remedy, requiring a "showing that a law punishes a 'substantial'

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[6] Even if a court found the term "exercise" or "service" to be unconstitutional, the remainder of Municipal Code section 63.0102(b)(24) could be enforced and the invalid portion severed from the remainder of the ordinance. *See Hotel Employees and Restaurant Employees Int'l Union v. Davis*, 21 Cal. 4th 585, 613 (1999); SDMC § 11.0205.

amount of protected free speech, 'judged in relation to the [law's] plainly legitimate sweep.'" *Hicks*, 539 U.S. at 118-20 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). Municipal Code section 63.0102(b)(24) applies to large groups recreational activities in the parks and beaches.[7] Since the First Amendment does not protect general recreational activities, a court could reasonably conclude that engaging in the activities listed in Municipal Code section 63.0102(b)(24) are not protected by the First Amendment and, therefore, section 63.0102(b)(24) is not unconstitutionally overbroad. *See Stanglin*, 490 U.S. at 25; *Daly*, 215 F. Supp. 2d at 1109.

IV. OPTIONS TO REGULATE FITNESS AND YOGA CLASSES IN THE CITY'S PARKS AND BEACHES

The City may adopt regulations for the use and protection of the City's parks and beaches. San Diego Charter § 55. There are several ways the City could address fitness and yoga classes in the parks and beaches including an ordinance specifically addressing fitness and yoga classes in the parks and beaches.[8] Such an ordinance could require all such classes obtain a permit without a minimum size requirement. Any such ordinance should be supported by factual findings setting forth the City's rationale for regulating the activities in the parks and beaches. Alternatively, the City could designate certain areas in the parks and beaches where fitness and yoga classes could be held. To address the Commissioner's concerns, Municipal Code section 63.0102(b)(24) could be amended to require a permit for all groups exceeding fifty persons without reference to specific activities or a requirement for controlling the behavior of others. For example, the City of Manhattan Beach requires any group of fifty or more using a park to obtain a permit and defines "group" as "individuals affiliated with each other either formally or informally using the park for a common purpose including but not limited to families, teams, associations, clubs, classes or instructional groups or other similarly affiliated collections of individuals." City of Manhattan Beach Municipal Code § 12.48.040.

CONCLUSION

The City may legally regulate the time, place, and manner of protected speech activities in the City's parks and beaches; however, based on First Amendment case law, a court would likely find yoga and fitness classes are recreational activities, not protected expressive conduct. Additionally, if the permit requirement in Municipal Code section 63.0102(b)(24) were challenged again on similar grounds, a court could reasonably conclude that the ordinance is not unconstitutionally vague or overbroad. If desired, the City may adopt reasonable regulations to specifically address fitness and yoga classes in the parks and beaches. This Office is available to

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[7] Parades and special events subject to the Special Events Ordinance are exempt from Municipal Code section 63.0102(b)(24).

[8] Several jurisdictions have adopted permit requirements for fitness instruction in public parks or beaches. *See* Encinitas Municipal Code § 6.14.010 - 6.14.100 (permit requirement for commercial or professional instruction in public property); Santa Monica Municipal Code § 4.55.030 (permit requirement for fitness or athletic instruction for compensation in parks or beaches); Los Angeles County Code of Ordinances, § 17.12.345 (permit requirement for physical fitness, exercising, yoga instruction in county beaches); City of Oceanside Municipal Code § 30B.1 – 30B.9 (permit requirement for commercial or professional instruction on public recreational property).

assist with any desired revisions to the Municipal Code or the adoption of any administrative regulations to address yoga and fitness classes in the City's parks and beaches.

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By /s/ *Heather M. Ferbert*
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