

DEPARTMENT OF PARKS & RECREATION

Notice of Opportunity to Comment on Proposed Rule

Revision of §§1-02 and 1-05(b) of Title 56 of the Official Compilation of Rules of the City of New York

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Parks & Recreation (“Parks”) by Sections 389 and 533(a)(9) of the New York City Charter and in accordance with the requirement of Section 1043 of the New York City Charter, that Parks proposes to amend §§1-02 and 1-05(b) of Title 56 of the Official Compilation of Rules of the City of New York.

Written comments regarding the proposed rules may be sent to Alessandro G. Olivieri, General Counsel, Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, by April 23, 2010. A public hearing shall be held on April 23, 2010 at Chelsea Recreation Center, 430 West 25th Street, New York, NY 10010 at 11:00 a.m. Persons seeking to testify are requested to notify Laura LaVelle at (212) 360-1335 or laura.lavelle@parks.nyc.gov. Persons who request that a sign language interpreter or other reasonable accommodation be provided at the hearing are asked to notify Laura LaVelle at the foregoing address by April 8, 2010. Written comments and a tape recording of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m. at The Arsenal, Room 313, telephone number (212) 360-1313.

These amendments were not included in the Parks regulatory agenda because the Department was not aware of the necessity for amendments at the time the regulatory agenda was prepared.

New material is indicated by underlining. Deletions are indicated by brackets.

Section 1. Section 1-02 of Title 56 of the Official Compilation of the Rules of the City of New York is amended to add a new definition to read as follows:

Expressive Matter. “Expressive matter” means materials or objects with expressive content, such as newspapers, books, or writings, or visual art such as paintings, prints, photography, or sculpture.

§ 2. Section 1-05(b) of Title 56 of the Official Compilation of the Rules of the City of New York is amended to read as follows:

§ 1-05

(b) Unlawful Vending.

(1) No person in or on any property under the jurisdiction of the Department [park, or street adjacent to or abutting a park (including all public sidewalks of such abutting streets)] shall sell, offer for sale, hire, lease or let anything whatsoever, or provide or offer to provide services or items in exchange for a donation (hereinafter “vend”), except under and within the terms of a permit, or except as otherwise provided by law. For the purposes of this entire section, persons who vend as defined herein may be referred to as “vendor” or “vendors.”

(2) Persons may vend expressive matter, as defined in section 1-02 of this title, on property under jurisdiction of the Department without a permit, but must comply with all applicable provisions of these rules. However, in the specific locations enumerated in paragraph (3) expressive matter vendors may only vend expressive matter at the specifically designated spots identified by the Commissioner in the accompanying maps and as marked by a numbered Department decal, or other form of marking, on the specific location of the approved vending spot. These spots shall be allocated upon a first come, first serve basis except as otherwise provided by law and any expressive matter vendor may only vend expressive matter directly behind the numbered Department decal. Only one expressive matter vendor is authorized to vend directly behind the numbered Department decal and if multiple expressive vendors attempt to vend expressive matter at any one numbered Department decal, then all such expressive matter vendors at such spot will be in violation of this section and may be directed to leave the area of that numbered Department decal immediately. Any such expressive matter vendor failing to leave the area of the numbered Department decal immediately upon direction as required under the preceding sentence will be in violation of these rules.

(3) Specifically designated spots for expressive matter vendors are located in the following general areas, and are specifically depicted on the accompanying maps:

(i) Central Park at the following locations: (A) the perimeter of the Park between East 85th Street and East 60th Street, (B) the perimeter of the park between West 86th Street and West 60th Street, (C) all of Central Park South, (D) Wien Walk and Wallach Walk, (E) East Drive, (F) Grand Army Plaza, (G) Pulitzer Plaza, and (H) Columbus Circle.

(ii) Battery Park, including all perimeter sidewalks.

(iii) Union Square Park, including all perimeter sidewalks.

(iv) Elevated portions of High Line Park.

(4)(i) No vendor in or on any property under the jurisdiction of the Department shall allow any item or items used or offered in conjunction with vending to touch, lean against or be affixed permanently or temporarily to any street or park furniture installed on public property or any rock formation, tree, shrub or other planting.

(ii) No vendor shall block any patron from using any street or park furniture installed on public property by way of the vending activity.

(iii) No vendor shall vend anything in such a manner that would damage or otherwise injure Department property, including, but not limited to lawns, plants, animals or buildings.

(iv) No vendor shall vend anything that is placed immediately on a sidewalk or park path, or on a blanket or board placed immediately upon such surface or on the top of a trash receptacle or cardboard box.

(v) No vendor shall vend anything over any ventilation grill, cellar door, manhole, transformer vault or subway access grating.

(vi) No vendor shall vend anything whatsoever directly from any parked or double parked motor vehicles except for food vendors with appropriate Department and New York City Department of Health and Mental Hygiene permits.

(5) No vendor shall vend anything whatsoever using a display stand that:

(i) provides less than a twelve (12) foot wide clear pedestrian path measured from the display on the sidewalk or park path to the opposite edge of the sidewalk or park path, except that when there is street or park furniture on the pedestrian path the measurement must be taken from the display to two feet from the street or park furniture in order to determine whether there is less than a twelve (12) foot wide clear pedestrian path;

(ii) is placed on any other part of a sidewalk under the Department's jurisdiction other than that which abuts the curb, unless otherwise authorized;

(iii) is in an unsuitable location because the location is a specialized area including, but not limited to, a zoo, swimming pool, playground, athletic field or court, or skating rink;

(iv) is within any bus stop, carriage horse stand, pedicab stand, or taxi stand;

(v) is within five (5) feet from any street or park furniture, public telephone, disabled access ramp, tree, or from individuals or entities authorized by permit or license by the Commissioner to operate at a specific location;

(vi) is within ten (10) feet from any crosswalk on any path or on any sidewalk under the jurisdiction of the Department;

(vii) is placed within fifty (50) feet from any monument or other public art installation;

(viii) occupies more than eight (8) linear feet of public space parallel to the curb or park path;

(ix) occupies more than three (3) linear feet in depth;

(x) is more than five (5) feet high or less than twenty-four (24) inches above the sidewalk or park path where the display surface is parallel to the sidewalk or park path, and may not be less than twelve (12) inches above the sidewalk or park path where the display surface is vertical;

(xi) where a rack or other display structure is placed on the top or above a table or other base, the size of the base is not less than the size of any rack or display structure placed thereon.

Nothing shall be placed on the base so as to exceed the size limitations contained in this section;

(xii) uses any areas other than that area immediately beneath the surface of the display stand for the storage of items for sale, unless permitted by Department license or permit for the use of a fixed location to store items for sale; or

(xiii) fails to use an opaque covering to shield any items stored beneath the surface of the display stand.

(6) For the purposes of this section a display stand shall mean a movable, portable or collapsible structure, framework, device, container or other contrivance used by a vendor in any property under the jurisdiction of the Department for the purpose of displaying, keeping or storing any goods, wares, merchandise, foodstuffs or expressive matter.

(7) For the purposes of this section, street or park furniture shall mean any City-installed, maintained or approved structure, including but not limited to, benches, newspaper boxes, tree guards, fire hydrants, trash receptacles, telephone kiosks, newsstands, bus shelters, barricades, bollards, traffic signs, traffic lights, walls, water fountains, ornamental fountains, or fences located in any property under the jurisdiction of the Department.

(8) Where exigent circumstances exist and a Department employee or police officer gives notice to a vendor to move temporarily from any location such vendor shall not vend from such location. For the purposes of this section, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, the existence of any obstruction in the park, an accident, fire, or other emergency situation, a parade, special event, demonstration, construction project, maintenance operations, or other such event at or near such location, including periods of set up and take down for such exigent circumstances.

STATEMENT OF BASIS AND PURPOSE

These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the “Commissioner”) under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, governance and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The proposed rules provide reasonable opportunities – by and through limited time, place, and manner restrictions – for expressive matter vendors to display and sell their wares on parkland. These rules not only provide greater clarity for vendors regarding where and how they can operate on parkland, they also ensure that our parks do not become so congested that they do not provide the public with enjoyable and accessible open space.

The Department determined that it was necessary to promulgate these rules to address concerns raised by park visitors, vendors, and other members of the public, as well as Department staff, related to the proliferation, in certain parks, of expressive matter vendors and the impact they can have on parkland and other park visitors. In fact, in the absence of Department rules regarding expressive matter vendors, the number of these vendors combined for Battery Park, Central Park, and Union Square Park has almost tripled since 2001, when the Department ended its old lottery system for vendor permits in these parks pursuant to the New York City Administrative Code. This dramatic increase in the number of vendors has resulted in changed conditions in certain parks, which required the Department to develop regulations in order to strike a balance between expressive matter vendors and other park visitors, and address other concerns related to maintaining and operating open space under the jurisdiction of the Department.

For example, expressive matter vendors at Union Square Park have increased, and continue to increase, in number to the point where they occupy almost the entire south-west corner of the park. This not only presents a concern regarding potential hazardous and unsafe

conditions stemming from undue congestion and pedestrian gridlock, it also detracts from the experience of those park visitors who wish to experience and enjoy the park in other ways.

Therefore, to accommodate the interests of a broad range of park visitors, including the interests of expressive matter vendors who wish to operate on parkland, the proposed rules establish general park locations where vendors may operate and minimum requirements regarding vending activity, such as the set-up and size of display stands. These rules follow many of the provisions of the New York City Administrative Code that regulate vendors who operate on the City's streets, but have been adapted to address the unique use and nature of property under the Department's jurisdiction.

The proposed rules also include additional regulations in and around the three parks most impacted by expressive matter vendors (certain designated areas of Central Park, Union Square Park and Battery Park), and the park most likely to also be significantly affected by expressive matter vendors due to its unique use and character (High Line Park). Specifically, the Department has identified locations within these areas where expressive matter vendors can operate. In these locations, the general rules concerning vending, as proposed by this amendment, are not sufficient to properly regulate expressive matter vending so as to avoid such areas from being overwhelmed by vendors in a manner that significantly interferes with the experience and comfort of those members of the public visiting the parkland in question. The Department has, therefore, established specific spots within these locations that demark the only spaces that expressive matter vendors can use. These spots are indicated on the maps accompanying these rules and will be further indicated by a numbered Department decal on the specific location of the approved vending spot. The Department contemplated, among other considerations, the following factors before determining these designated vending spots:

- 1) accommodation of park visitors, given the number of people who regularly use the park in and around the location;
- 2) competing uses by other park visitors, including but not limited to active and passive recreation, performances, demonstrations, and the viewing of historical monuments and public art exhibits;
- 3) the presence of park elements, including but not limited to trees, tree pits, benches, or park entrances;
- 4) the presence of street furniture, including but not limited to bus stops, fire hydrants, cross walks, or subway entrances;
- 5) the integrity of the overall design of the park, including but not limited to the need to preserve particular landscapes or scenic views; and
- 6) the presence of any Department facilities or Department concessions near the location.

Below is a description of the parks that require additional vending regulations and the conditions that led to the Department's designation of specific vending spots therein.

Central Park

Central Park is one of the most visited parks in the City. In fact, more than twenty-five (25) million visitors enjoy Central Park each year, which makes congestion and pedestrian flow along the perimeter of the park a foremost concern. Indeed, congestion at the park is amplified in certain areas by, among other sources, the many streetscape and park features in an around the park, the presence of historical monuments and public art exhibits along the southern perimeter of the park, and the number of hotels and other attractions proximate to the park.

Streetscape features include subway entrances in the park near Grand Army Plaza at the southeast corner of the park and at Columbus Circle at the southwest corner of the park and at 60th Street on the perimeter of the park. Also, horse carriages and pedicabs compete for customers all along Central Park South, from Grand Army Plaza to Columbus Circle.

Park features include the numerous benches along the park-side of the sidewalk, frequently interspersed with street trees, and additional street trees are also found along the curbside of the street. Other park features include the many monuments interspersed throughout the park. For example, at Columbus Circle there is a 100-foot column topped by a statue of Christopher Columbus, as well as a monument to the sailors lost in the explosion of the battleship “Maine.” In addition, the plaza where the Avenue of the Americas meets Central Park South features three monumental sculptures of Simon Bolivar, Jose de San Martin and Jose Marti. At Grand Army Plaza, Fifth Avenue and Central Park South, there is a sculpture by Augustus Saint-Gaudens of Civil War General William Tecumseh Sherman, facing the Pulitzer Fountain. In addition, at Doris Freedman Plaza there are temporary displays of contemporary sculptures on a continuous basis. Furthermore, the area between Central Park West between 60th Street and 79th Street, as well as Wien and Wallach Walks and the East Drive experience large crowds because of their proximity to the Central Park Zoo and Wollman Rink. Finally, Central Park West between 60th Street and 86th Street is congested around the entrances to the park, particularly at 72nd Street, because of the large number of visitors to Strawberry Fields.

Nearby City attractions serve as contributing factors to congestion at the park in certain areas. The many museums along Fifth Avenue, such as the Metropolitan Museum of Art, attract a number of visitors and cause crowded conditions in the area from East 85th Street to East 79th Street. Moreover, nearby hotels accommodate a large number of tourists who tend to make a point of visiting the park during their stay.

Given the above, and taking into consideration all relevant factors, the Department designated specific locations for expressive matter vendors located at the perimeter of the park along Fifth Avenue between East 85th Street and East 60th Street, all of Central Park South, Wien Walk and Wallach Walk, the East Drive, Central Park West between 60th Street and 86th Street, Grand Army Plaza, Pulitzer Plaza, and Columbus Circle. For all other areas of the park, the general vending regulations that are set forth under the proposed rules would apply.

Union Square Park

Union Square Park is a congested and heavily used park that is one of only three parks located within the Manhattan midtown business district. It is accessible by multiple subway lines, and located within a commercial and residential area that has become increasingly busy. Indeed, during the summer season, up to 200,000 people visit the park a day. Because Union Square Park is one of the City's most popular destinations, despite its relatively modest size, there are particular challenges that the Department faces when seeking to address undue congestion while, at the same time, ensuring that the park is open and accessible to a broad range of park visitors, including expressive matter vendors.

Streetscape features include three subway entrances located in the southeast, southwest, and northwest corners of the park, all of which serve one of the busiest subway stations in the City. In fact, the Union Square subway station, which is home to the L, N, Q, R, W, 4, 5 and L lines, is one of the busiest transportation hubs in the City, serving over 35 million passengers a year. Moreover, the park is flanked by busy traffic thoroughfares, including Broadway, Park Avenue, and 14th Street.

Park features include the steps of the South Plaza, which were designed as a "Spanish Steps" to allow visitors to sit and congregate. Park features also include two monuments in the southern section of the park, a large equestrian statue of George Washington, which faces the South Plaza, and a statue of Mohandas Gandhi that is located at the southern end of the West Plaza. In addition, the traffic island southeast of the main body of the park is frequently programmed with temporary public art exhibits, which attract significant crowds of park visitors to the South Plaza. The North Plaza, meanwhile, is currently undergoing renovations and is otherwise home to a popular Greenmarket that has operated four days a week since 1979. The North Plaza is also heavily used for recreation and other activities when the Greenmarket is not in operation.

Given the unique conditions at the park and taking into consideration all relevant factors the Department designated spots for expressive matter vendors on the west side of the park, from 14th Street to 15th Street, and on the east side of the park, from 14th Street to 15th Street. Other areas of the park, however, are reserved for other park uses, such as passive recreation, musical performances, and other park activities.

Battery Park

Battery Park is home to many unique streetscape and park features. These features, combined with the fact that more than four (4) million people visit the park annually, contribute to the Department's concerns over congestion and the ability to accommodate multiple park uses and visitors.

Streetscape features include the busy bus, subway and ferry stops located in and around the park. A subway entrance is located just inside the northeast corner of the park. Bus stops for tour, local, and express busses, meanwhile, are located along the north and east perimeters of the park. Moreover, long lines tend to queue within the park itself for the ferry service to Ellis and Liberty Islands.

Park features include the park's multiple benches, tree pits, and gardens. Park features also include the numerous monuments within the park, such as the East Coast War Memorial, American Merchant Marine Monument, Korea War Memorial, the memorial to the World Trade Center tragedy, and the historic Clinton Castle.

Given these conditions and taking into consideration all relevant factors, the Department designated spots for expressive matter vendors along the perimeter of the park. In addition, because of the extensive construction work that is currently occurring in the park, the Department has established temporary locations for these vendors, which will eventually be replaced with permanent spaces upon the completion of the work in the park.

High Line Park

High Line Park is one of the newest, and most unique, properties in the park system. Originally constructed in the 1930s to lift dangerous freight trains above Manhattan's busy streets, the High Line is now an elevated public park, which will, when complete, serve as a promenade extending through the West Side neighborhoods of the Meatpacking District, West Chelsea, and Clinton/Hell's Kitchen.

Streetscape features include the limited street-level access points to the elevated park. Park features include the delicate plantings, fixed and movable seating options, and narrow walkways therein, all of which prevent the High Line from accommodating uses that would be appropriate for other parks, such as active recreation. Indeed, the overall design of the park emphasizes passive recreation and the unobstructed views that can be enjoyed from the unique, elevated vantage point that the park provides.

Given its particular use and design, and taking into consideration all relevant factors, the Department has designated a limited number of spaces appropriate for vending in High Line Park. These spots ensure that vendors do not unduly interfere with the flow of visitors to the park, or cause dangerous levels of congestion and pedestrian gridlock around park entrances.