



CITY OF OAKLAND
Office of the City Administrator

TO: C.N.E. Corbin, Chair, Parks and Recreation Advisory Commission
FROM: Joe DeVries, Director, Interdepartmental Operations, Office of the City Administrator
DATE: August 4, 2020
SUBJECT: **Request for the Parks and Recreation Advisory Commission to 1) Receive An Informational Report On The Summer Activities Occurring At Lake Merritt, The Impact On The Lake and Surrounding Community, And The City's Coordinated Response And Associated Costs, 2) Consider Proposals To Modify Park Rules Regarding Vending, And Implement Traffic Control Measures, 3) Receive Public Comment On Those Proposals, and 4) Schedule An Additional Hearing During Which the Commission Can Make A Formal Recommendation.**

SUMMARY

In the past three years, the number of people visiting Lake Merritt in Summer months has increased dramatically causing parking and traffic safety issues, illegal commercial vending, large amounts of litter clogging storm drains and polluting the lake, and placing an outsized burden on City resources. The major investments made by the taxpayer funded Measure DD have seen significant damage due to this increased use.

The easing of State Shelter-in-place restrictions in late May prompted a significant increase in people visiting the lake in the months of June and July and a corresponding increase in illegal vending, particularly along Lakeshore Avenue between El Embarcadero and Wayne Avenue. Many of these vendors are setting up professional sound systems, selling alcohol and cannabis products to be consumed on site, and operating large unlicensed commercial food operations. Some are advertising on social media inviting customers to essentially come party at the lake, promoting professional DJs along with mixed drinks and prepared food. This is during a time when Oakland leads Alameda County with record numbers of COVID-19 cases and evidence indicated the largest increase in cases in the month of July is from social gatherings. Additionally, the COVID-19 Virus is infecting the Latinx Community in Alameda County at six times the rate of Whites and killing African Americans at twice the rate of Whites.

Additional ongoing problem areas include the Lakeshore cul-de-sac and Bellevue Avenue between Perkins and Grand where visitors consistently congregate late in the evening, disturb the peace with loud music and parties, and leave behind large amounts of litter.

The City has implemented a variety of measures to attempt to support people to use Lake Merritt safely and equitably during the COVID-19 Pandemic by creating safe traffic restrictions and reasonable guidelines for other activities. However, the crowds of people are continuing to be unmanageable with vendor advertisements and products attracting more people which in-turn attracts more vendors.

Some members of the community would like the City to take more aggressive enforcement action, others want to create a safe way for vending to continue at the lake. Staff have some possible solutions that this report will provide but because the area in question falls under the jurisdiction of the Parks and Recreation Advisory Commission (PRAC), staff believes a public forum to allow for input is the most appropriate path forward. It is the recommendation of staff that the PRAC hear testimony and then ask staff to bring back a proposal to the PRAC in September based on that input.

FISCAL IMPACT

Although this report has no fiscal impact, the ongoing efforts at Lake Merritt this summer average out to approximately \$25,000 per week. This includes the cost of Park Ambassadors, Enhanced park maintenance, Police Units, additional traffic control measures, Municipal Code Officers, and outreach materials.

PROJECT / PROGRAM DESCRIPTION

Below is a description of current City efforts to manage the crowds at Lake Merritt and prevent the spread of COVID-19:

Park Ambassadors and Public Messaging about COVID-19: Beginning in April, the Parks, Recreation, and Youth Development Department (OPRYD) deployed Park Ambassadors throughout the City to remind people of the shelter-in-place restrictions and to promote safe distancing. These ambassadors deploy every weekend at Lake Merritt and hand out masks, educational materials about COVID-19 and remind people to socially distance. In recent weeks, City Staff have been reaching out to trusted community partners to also engage in this effort, especially with the new data for July showing the big increases in infections based on social gatherings.

Park Maintenance: The increase in park usage has caused more wear and tear on Lake Merritt park assets. Vendors and park visitors many times park on the lawn, thus breaking irrigation sprinklers and potentially causing the lawn to die. In addition, the overcrowding causes the creation of “new pathways” through shrubbery and planting beds. Park staff must work expanded shifts to mitigate the amount a trash left behind by park attendees. Litter not removed leads to rodent issues.

Parking Restrictions: Since May, the City implemented no parking surrounding the entire Lake on weekends with signage indicating it as a tow away zone to reduce the amount of people using the lake. This was in line with the closing of all parking lots at City Parks, the closing of basketball courts, playgrounds, and other facilities to stop the spread of COVID-19. Bellevue Avenue from the entrance of Fairyland to Perkins was closed with the same intent and Bellevue from Perkins to Grand is marked as No Through Traffic as part of the Oakland Slow Streets initiative. On weekends OPD has restricted access and parking on the Lakeshore cul-de-sac with some limited success but late-night gatherings still disrupt residents on a regular basis. Although some restrictions have been eased citywide, and recently the City reopened Bellevue, the City has attempted to maintain the enforcement at the lake to create a greater amount of space for pedestrians and bicyclists around the lake and to mitigate other traffic safety concerns.

Traffic Control Measures: Beginning in mid-July, the City closed El Embarcadero completely on weekends and closed southbound traffic on Lakeshore from MacArthur to East 18th street in an effort to create more space for pedestrians and bicyclists. Significant traffic problems created by people disobeying parking rules such as parking in the center turn lane and exhibiting aggressive driving behavior have created a serious public safety hazard that these measures also addressed. While well

received, this effort requires extraordinary resources to maintain each weekend. The City is considering placing barriers in the center turn lane in this area that would remain throughout the summer to both prevent the illegal parking during the week and to allow police resources to be directed to other important concerns at the lake. Although this would allow for better traffic control, the two potential disadvantages would be the inconvenience Lakeshore residents would experience unable to make a left turn into their driveway, and the possibility that drivers would sometimes still try to park in the center lane which could completely stop traffic.

Engagement with Vendors: Last summer and for several months this summer the City’s Municipal Code Enforcement Officers have been engaged with vendors and providing information about how to legally vend in the City and about current restrictions. In late July, in partnership with the Oakland Fire Department’s Prevention Bureau, the team issued warnings for municipal and fire code violations, passed out information from the Alameda County Environmental Health Department and informed vendors that enforcement would take place the following weekend through issuance of administrative penalties. On the first weekend in August, the number of vendors setting up was significantly reduced with a majority of previously known vendors not coming to the lake. However, on both days, some vendors remained in place and were critical of the City’s enforcement efforts. After staff left in the afternoon, new vendors appeared to sell a variety of items including mixed alcoholic drinks, and also set up professional sound systems. On August 4, 2020 Council Member Fortunato-Bas facilitated a meeting with vendors and staff and many of the vendors expressed an interest in creating a safe, licensed, regulated system and acknowledged the current situation is not acceptable.

Regulatory Landscape: Currently, any vending in City parks requires permits from OPRYD with oversight by the PRAC. Due to the pandemic, no permits for any event, gathering, or vending are being issued. However, vending can be allowed at swap meets, flea markets, and potentially on City streets with an encroachment permit and business tax license.

Food Vendors must obtain a permit from the Alameda County Environmental Health Department to ensure food safety for any sale or give-away of food to the public anywhere in Alameda County at all times. These permits include Fire Inspections to ensure the fire code is met. Currently, food trucks and push carts can maintain their license and continue to vend on City streets if they abide by the permit rules to promote safe distance from each other, from brick and mortar restaurants, and with up-to-date inspections and insurance. Food “Booths” also known as temporary food facilities such as what is occurring on Lakeshore where barbeques and deep fryers are being set-up under canopies in the Park, are only allowed by the County in conjunction with a special event, and with proper fire safety inspections. During the pandemic, no special event permits are being issued. In summary, the food vendors in the park are illegal and cannot become legal during the pandemic.

Alcohol Sales: Any Police Officer or Special Agent of the ABC can conduct compliance checks of vendors to determine if alcoholic beverages are being sold or furnished in violation of 23300 B&P. According to Business and Professions Code, Sec. 23300, it is a misdemeanor to sell alcoholic beverages at any place in the State of California without a proper license issued by the California State Department Of Alcoholic Beverage Control (ABC). Selling alcoholic beverages without a license may result in a citation which could include punitive damages as determined by a court of law. Additionally, alcoholic beverages offered for sale can be seized as evidence.

Enforcement Challenges: Staff from all City departments that have been involved in this effort have been faced with harsh criticism while attempting to perform their assigned duties, including accusations of racism and bias, verbal slurs, and threats of violence. County Environmental Health staff have been reluctant to conduct enforcement activity at the lake due to staff concerns about safety as well. Even the simple act of writing a parking ticket for a vehicle parked in a travel lane has been met with aggressive and abusive behavior.

In the current environment, the City does not want to appear heavy handed in enforcement activity but to enforce laws against selling alcohol, for example, which could entail confiscation of products while dozens of intoxicated bystanders surround staff, could evolve into a dangerous situation. An incident on the evening of July 4th is a reminder of this challenging environment: a fire engine that was attempting to navigate Lakeshore Avenue to respond to a medical call for service, was surrounded by crowds, some of whom proceeded to climb onto the engine and ignite fireworks from its roof. Lives were placed at risk and an alternate engine provided a delayed response to the medical call. In the aftermath of the death of George Floyd, there is a broad public outcry to defund police departments and in Oakland specifically, a City Council policy directive has established a Reimaging Public Safety Task Force with a stated goal to reduce the department's share of the City's General Purpose Fund by 50%. In this environment, officers are reluctant to take enforcement action for minor crimes, instead prioritizing serious and violent offenses with their limited resources.

BACKGROUND / LEGISLATIVE HISTORY

Lake Merritt is a large tidal lagoon and is historically significant as the United States' first official wildlife refuge, designated in 1870, and has been listed as a National Historic Landmark since 1963, and on the National Register of Historic Places since 1966. The lake features grassy shores; several artificial islands intended as bird refuges; the interpretive Rotary Nature Center at Lakeside Park; the boating center where sailboats, canoes and rowboats can be rented, and classes are held; and Children's Fairyland. It was not designed to sustain ongoing commercial activity, or the associated crowds of the type seen on Lakeshore, El Embarcadero, and Grand Avenue in recent months.

However, some would suggest a pilot program to allow vending at Lake Merritt or any City park could safely and equitably assist entrepreneurs and other seeking to enjoy park space during the COVID-19 emergency, however, the pilot would need to address the following issues:

1. *Public Health:* Given that we are in midst of a pandemic, public health needs to be addressed first and foremost. Accordingly, any vending that takes place needs to comply with all local and state Health Orders and take additional measures to prevent further infections of COVID-19. This should include protocols to ensure vendors and customers practice physical distancing and utilizing face coverings and hand sanitizer.
2. *Waste Management:* A vending pilot must include the disposal of trash generated by customers and those attracted to the area. Likewise, the pilot should also provide sufficient bathrooms and hand washing facilities to address hygiene and to prevent customers and others from relieving themselves on neighboring properties.
3. *Sound:* The vending pilot should avoid excessive noise from amplified sound both to balance the interests of others utilizing the park and to avoid creating a social gathering that would be inconsistent with local and state public health guidelines.
4. *Insurance:* The vending pilot needs to be insured and include the City of Oakland within its coverage.

5. *Additional Requirements:* The vending pilot also needs to comply with Americans with Disability Act requirements, such as maintaining six feet of clear space on sidewalks, Alameda County Environmental Health requirements for any food or beverage sales, and Revenue Management Bureau requirements by ensuring that all vendors have a current business tax certificate.
6. *Organization:* To ensure that all of the above issues are addressed, there needs to be one person or entity that takes responsibility for the entire vending pilot. This will encourage consistency and compliance across the vending pilot.

There is potential to use the closed Lakeview Library parking lot, El Embarcadero, and East Shore Park to spread out vending under such a model.

Staff asks that the PRAC allow for public comment on the above items and schedule an additional hearing during which the commission can make a formal recommendation. Among the questions that should be considered by the public and the PRAC are:

- Should the City continue with the current traffic control and parking measures?
- If so, should it consider more permanent barriers along Lakeshore to prevent illegal parking every day?
- Should the City allow a pilot vending program in parks, or should vendors be redirected to currently permitted locations such as flea markets, swap meets, online, and other commercial locations?
- If a parks pilot is developed, what type and amount of vending should be allowed?
- Should a pilot be implemented during the COVID-19 Emergency or postponed?
- What level of enforcement does the PRAC support in gaining compliance with Oakland's laws and park restrictions? Any other recommendation brought forward by the public or the PRAC


While this dialogue unfolds, staff will continue the current effort, resources permitting, and may continue to increase enforcement action to achieve compliance with existing law.

RECOMMENDATION

Staff recommends the PRAC:

- 1) Receive this informational report on the summer activities occurring at Lake Merritt, the impact on the lake and surrounding community, and the city's coordinated response and associated costs,
- 2) Consider proposals to modify park rules regarding vending, and implement traffic control measures,
- 3) Receive public comment on those proposals, and
- 4) Schedule an additional hearing during which the commission can make a formal recommendation.

Respectfully submitted,



Joe DeVries, Director, Interdepartmental Operations
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