

City Council Meeting August 24, 2021

Santa Monica, California

ORDINANCE NUMBER 2680 (CCS)

(City Council Series)

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA AMENDING SANTA MONICA MUNICIPAL CODE SECTION 4.08.780 TO PROMOTE THE PUBLIC SAFETY AND WELFARE BY PROHIBITING CERTAIN ITEMS AT PUBLIC ASSEMBLIES AND COMMUNITY EVENTS

WHEREAS, the City Council supports peaceful protests, public assemblies, and community events, and the rights of individuals under the First Amendment to the United States Constitution and the Liberty of Speech Clause of the California Constitution to engage in expressive activities in public forums such as the City's sidewalks, streets, and public parks; and

WHEREAS, the City Council seeks to promote the safety and welfare of those who engage in peaceful protests, public assemblies, and community events, as well as the safety and welfare of City residents, City businesses, and City visitors who encounter and are affected by such peaceful protests, public assemblies, and community events; and

WHEREAS, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as the City's sidewalks, streets, and public

parks and does not intend by this ordinance to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place, and manner regulations that address the need to prevent violent, dangerous, and hazardous situations from arising during peaceful protests, public assemblies, and community events, and so promote the public safety and welfare of those engaging in such peaceful protests, public assemblies, and community events, as well as those City residents, City businesses, and City visitors who encounter and are affected by such peaceful protests, public assemblies, and community events; and

WHEREAS, it is the intent of the City Council in issuing this ordinance to ensure that protests, public assemblies, and community events are conducted in ways that permit those assembling to engage in expressive activities intended to convey their message to the public while at the same time ensuring that the protests, public assemblies, and community events are peaceful and safe; and

WHEREAS, there is an increasing concern about violence at public events and about violent clashes at such events between those with opposing views, and numerous public protests, demonstrations, and rallies conducted throughout the nation in cities such as Washington, D.C.; Charlottesville, Virginia; St. Louis, Missouri; and Portland, Oregon, and throughout California, in cities such as Berkeley, Laguna Beach, Long Beach, Los Angeles, and Oakland have erupted in violence between demonstrators and counter-demonstrators and violence against law enforcement personnel; and

WHEREAS, at these events, devices such as wooden sticks, plastic and metal pipes, bats, chains, and various types of projectiles (such as rocks, concrete, pellets, glass bottles, and ball bearings), as well as certain types of containers, including, but not limited to, glass bottles, metal containers, balloons, super soakers, and toy or replica guns, filled with flammable or noxious substances (such as gasoline or urine), as well as aerosol sprays deployed to cause flames or attack olfactory systems, and other items have been used as improvised weapons resulting in injuries and property damage. Demonstrators, counter-demonstrators, and others have also carried shields, worn gas masks, helmets, and body armor, thrown objects at police, used fire accelerant to light fires, and used large sticks as weapons to threaten bodily harm and to attack businesses; and

WHEREAS, in light of these circumstances and to protect the public safety and welfare, a number of California cities, including Berkeley, Laguna Beach, Los Angeles, Modesto, and Oakland, have put in place ordinances prohibiting, or authorizing the issuance of regulations prohibiting, the carrying at protests, public assemblies, and community events of items such as those listed above that can readily be used as weapons; and

WHEREAS, as an example, the adoption of such an ordinance in Charlottesville, Virginia, was predicated on an after-action report that found that weapons carried by Alt-Right demonstrators and those in Charlottesville to oppose them increased both the quantum and seriousness of violence and recommended the adoption of the ordinance because if the individuals engaged in the acts of violence had been unarmed, there would have been fewer and less dangerous encounters; and

WHEREAS, as another example, the adoption of such an ordinance in Berkeley was an effort to prevent violence and injuries of the type that occurred at a protest where some participants arrived with metal pipes, baseball bats, lengths of 2" x 4" lumber (some with nails in them)), bricks, pepper spray, mace, daggers, combat shields, poles, axe handles, hatchets, and similar items; and

WHEREAS, in issuing this ordinance, the City Council takes notice of the principles and decisions regarding the regulation of public assemblies, including but not limited to the following:

1. Public streets, sidewalks, and parks are the archetypes of a traditional public forum where the government cannot favor one speaker over another based on the viewpoint of the speaker. *See Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); *see also Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828 (1995). The government may regulate First Amendment activities in traditional public fora, such as streets, sidewalks, and parks when such restrictions are reasonable time, place, and manner restrictions that are: content neutral; narrowly tailored to serve a significant government interest; and leave open ample alternative channels of communication. *See Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 799-800 (1985); *see also Klein v. San Diego County*, 463 F.3d 1029, 1037 (9th Cir. 2006); *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990).
2. The First Amendment does not protect violence. *See N.A.A.C.P v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982).

3. In response to potential angry or inflammatory speech, the City may increase its police presence; enact security measures to ensure the safety of the public; arrest those who actually engage in violent conduct; and enact time, place, and manner regulations to maintain safety during public events. See *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996); see also *Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1024 (9th Cir. 2009).

4. The City has a substantial interest in safeguarding its citizens against violence and in protecting demonstrators, the public, and the police alike. See *Hill v. Colorado*, 530 U.S. 703, 724-25 (2000); see also *Vlasak v. Superior Court*, 329 F.3d 683, 689 (9th Cir. 2003). Specifically, case law has confirmed that the City may enact regulations to restrict at demonstrations and other public assemblies and community events the possession of objects that may be used as weapons. The City takes legislative notice of the City of Los Angeles's regulations, codified at Los Angeles Municipal Code Section 55.07, restricting certain objects at demonstrations, and has modeled this Supplement in keeping with these regulations and the predecessor Los Angeles provisions validated by the Ninth Circuit in *Vlasak*, 329 F.3d at 689. See also *Edwards v. City of Coeur D'Alene*, 262 F.3d 856, 863 & 866 (9th Cir. 2001).

WHEREAS, it is imperative that individuals engaging in peaceful expressive public activity, as well as members of the public and law enforcement personnel who encounter such activity, do so without fear of violence and without suffering injury; and

WHEREAS, this ordinance provides a narrowly tailored content-neutral mechanism to reduce the risk of violence at demonstrations, rallies, protests, counter-protests, picket lines, marches, community events, or public assemblies in the City of Santa Monica by, among other things: limiting items (such as wooden sticks, metal and plastic pipes, baseball bats, aerosol sprays, weapons, glass bottles, metal contains, shields, gas masks, helmets, body armor, bricks, and rocks) that can, and have been weaponized at protests, public assemblies, and community events, while still allowing for peaceful expressive activity; and

WHEREAS, the restrictions on use of specified items during public assembly and community events adopted in this ordinance are necessary in order to protect the public health, safety and welfare by providing a mechanism to limit and prevent violence and promote peaceful assembly. These are content-neutral time, place, and manner restrictions that allow for peaceful public expressive activity and are narrowly tailored to address the City's interest in safety and preventing violence and to the extent they burden expressive activity they leave ample alternatives for communication. The regulations make protests, public assemblies, and community events safer by banning objects that can readily be weaponized without depriving people of the opportunity to demonstrate, rally, protest, counter-protest, picket, march, assemble or otherwise engage in peaceful free speech activities; and

WHEREAS, this ordinance is presented for adoption as an emergency ordinance, to be introduced, adopted, and immediately effective upon its passage by at least five affirmative votes, pursuant to City Charter Section 615, because of an anticipated protest and counter-protest on August 29, 2021 involving groups that have previously engaged

in targeted violence against each other in connection with similar protests and counter-protests in the very recent past, as well as the uncertainty and unpredictability of when one or more individuals may choose to seize the opportunity of an otherwise peaceful protest or public assembly to engage in violent conduct of the type intended to be addressed and mitigated by this ordinance; and

WHEREAS, on August 24, 2021, the City Council held a public meeting during which it considered the adoption of this emergency ordinance pursuant to California Government Code Section 36937 and Santa Monica City Charter Section 615, both of which allow the adoption of emergency ordinances to take effect immediately to ensure the immediate preservation of the public peace, health, safety, and general welfare in the City of Santa Monica; and

WHEREAS, the City Council hereby finds that: the revisions to the Santa Monica Municipal Code implemented by this emergency ordinance are immediately necessary as an emergency measure in order to preserve the public health, safety, and welfare by promoting peaceful protests, public assemblies, and community events while preventing violence and property destruction at such protests, public assemblies, and community events;

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Section 4.08.780, Prohibition against using dangerous sticks and poles, is hereby amended to read as follows:

**4.08.780 Restrictions on use of specified items during community events and public assemblies.**

(a) The following terms as used in this Section have the following meanings:

(1) "Community event" means any activity, assembly, gathering, meeting, event, protest, counter-protest, demonstration, picket line, parade, rally, or march for which a permit is required under Santa Monica Municipal Code Section 4.68.040 and any administrative regulations promulgated thereunder.

(2) "Community Events Committee" means the Community Events Committee, as defined by Santa Monica Municipal Code Section 4.68.020.

(3) "Public assembly" means any activity, assembly, gathering, meeting, event, protest, counter-protest, demonstration, picket line, parade, rally, or march for which a permit is not required under Santa Monica Municipal Code Section 4.68.040 and any administrative regulations promulgated thereunder.

(b) While participating in any community event or public assembly, no person shall use, carry, or possess any of the following items or articles:

(1) If affixed to and being used to support a sign, poster, banner, placard, notice, puppet, or other expressive display, any length of lumber, wood, wood lath, or plastic pipe, whether hollow or solid, if that object is sharpened on either end or has affixed to either end any sharpened item of any material;



(2) If not affixed to and being used to support a sign, poster, banner, placard, notice, puppet, or other expressive display: (i) any length of lumber, wood, or wood lath, excluding only a pencil or other wooden writing instrument; and (ii) any length of plastic pipe, whether hollow or solid, excluding only a plastic pen or other plastic writing instrument;

(3) Any length of metal pipe, whether hollow or solid, excluding only a metal pen or other metal writing instrument;

(4) Any baseball or softball bat, regardless of composition or size;

(5) Any aerosol spray, including tear gas, mace, pepper spray, smoke canister, or bear repellent;

(6) Any projectile launcher or other device, such as a catapult or wrist rocket, that is commonly used for the purpose of launching, hurling, or throwing any object, liquid, material, or other substance, whether through force of air pressure, spring action, or any other mechanism;

(7) Any chain greater than 20 inches in length or greater than ¼ inch in diameter;

(8) Any knives, daggers, swords, sabers, other bladed devices, axes, axe handles, hatchets, billy clubs, ice picks, razor blades, nunchucks or other martial arts weapons of any kind, box cutters, pellet or BB guns, improvised explosive devices (IEDs), dynamite, conducted electrical weapons (CEWs) including, but not limited to, tasers or stun guns, metal/composite/wooden knuckles, or toy or replica firearms.

- (9) Any container, including, but not limited to, balloons, bottles, water cannons, super-soakers, or toy or replica firearms, filled with any flammable, biohazard, or other noxious matter that is injurious, or nauseous, sickening, or irritating to any of the senses;
- (10) Any glass bottles or metal containers, whether empty or filled;
- (11) Any open flame torches, lanterns, or other devices that utilize combustible materials such as gasoline, kerosene, propane, or other fuel sources;
- (12) Any shields made of metal, wood, hard plastic, or any combination thereof;
- (13) Any bricks, rocks, pieces of asphalt or concrete, metal pellets, or ball bearings;
- (14) Any gas masks or similar breathing devices;
- (15) Any impact-resistant helmet, including, but not limited to, motorcycle or bicycle helmets (unless being worn while riding a motorcycle or bicycle), sports helmets, or ballistic helmets;
- (16) Any laser pointers or laser-style devices emitting any color beam, milliwatt output level, intensity class level or any visibility level, including infrared, or nonvisible;
- (17) Any umbrellas in the absence of rain; during rainy weather, an umbrella shall not exceed 16 inches in its longest dimension when fully collapsed and shall have a blunt end;

(18) Any professionally manufactured or personally fabricated equipment or clothing designed to be bullet-resistant, fragment-resistant, stab-resistant, or impact-resistant, including, but not limited to, riot control gear, sports equipment, bullet-resistant vests, flak jackets, or stab-resistant vests; and

(19) Load-bearing or similar tactical vests commonly used by law enforcement or military personnel and designed to carry weapons, tactical equipment, or armor plates.

(c) Any person violating subsection (b) shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding \$500, by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment.

(d) When feasible, excluding exigent circumstances, a warning shall be issued before enforcement of subsection (b). Such warning shall be sufficient if provided orally, by posted signs, or by amplified announcement.

(e) Law enforcement personnel, firefighting personnel, emergency health care providers, and employees, agents, or representatives of the City shall be exempt from the provisions of subsection (b) when engaged in official business of or on behalf of the City.

(f) Nothing in this Section shall prohibit a person from carrying a cane or using a walker or other similar device necessary for providing mobility so that the person may participate in a community event or public assembly.

(g) Nothing in this Section shall prohibit the imposition of specific conditions for activities expressly authorized under a permit for a community event issued

pursuant to Chapter 4.68 of this Code or prohibit the modification of the restrictions in subsection (b) for such permits issued pursuant to Chapter 4.68 of this Code upon a finding by the Community Events Committee that such modifications will not impair or threaten public safety.

(h) This Section is not intended to violate and shall not be applied or enforced in a manner that violates the United States or California Constitutions and applicable state or federal statutes.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. Pursuant to Sections 615 and 619 of the City Charter, for the reasons stated in the recitals above, the City Council declares this

ordinance to be necessary as an emergency measure for preserving the public peace, health, and safety, with the result that this ordinance shall be introduced and adopted at the same meeting and shall become effective immediately upon its adoption. This ordinance shall sunset and shall have no force and effect after February 28, 2022.

APPROVED AS TO FORM:

DocuSigned by:  
*George S. Cardona*  
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George S. Cardona  
Interim City Attorney

Approved and adopted this 24<sup>th</sup> day of August, 2021.

DocuSigned by:  
  
823148D999FF4F3...  
Sue Himmelrich, Mayor

State of California )  
County of Los Angeles ) ss.  
City of Santa Monica )

I, Denise Anderson-Warren, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2680 (CCS) had its introduction and adoption at the Santa Monica City Council meeting held on August 24, 2021, by the following vote:

AYES: Councilmembers Brock, de la Torre, Negrete, Parra, Mayor Pro Tem McCowan, Mayor Himmelrich

NOES: Councilmember Davis

ABSENT: None

ATTEST:

DocuSigned by:  
  
E2F85B056A714C3...  
Denise Anderson-Warren, City Clerk

9/15/2021  
Date

A summary of Ordinance No. 2680 (CCS) was duly published pursuant to California Government Code Section 40806.