



AGENDA REPORT

Meeting Date: December 20, 2016
Item Number: D-7
To: Honorable Mayor & City Council
From: Nancy Hunt-Coffey, Director of Community Services
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE
REGARDING COMMERCIAL OR PROFESSIONAL
INSTRUCTION IN CITY PARKS

Attachments:

- 1) Ordinance
- 2) Draft Permit Requirements and Rules
- 3) Draft Permit Application

RECOMMENDATION

It is recommended that the City Council move to waive the full reading of the Ordinance and that the Ordinance entitled AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE REGARDING COMMERCIAL OR PROFESSIONAL INSTRUCTION IN CITY PARKS" be introduced and read by title only.

INTRODUCTION

The ordinance is the result of the recommendations of the Recreation and Parks Commission, Council Liaisons, and recent discussion by the Council at the November 15, 2016 Study Session to regulate professional and commercial instruction in the City parks. Staff presented ongoing issues with the increased numbers of personal trainers utilizing park space to conduct for personal profit one-on-one or small group exercise/conditioning or sport training. The issues included the effect such use has on current City authorized contractual vendors, the use of fitness equipment, improper use of park amenities, the safety concerns and liability to the City for those utilizing the private training services, as well as the safety of other park patrons.

DISCUSSION

This ordinance will amend the Municipal Code to address the unlimited and unregulated use of public recreational property in the City by professional instruction or commercial instruction and establishes a permit requirement for such establishments to ensure their compatibility with the use of the public recreation property by the general public. This ordinance is also intended to minimize the burden on the City's related maintenance and safety services. The ordinance defines commercial and professional instruction, outlines the general content of the permit, regulations and issuance of the permit, as well as grounds for denial, suspension, or revocation. Park Rangers, with the support of Community Center supervisory staff will be the primary enforcement of ensuring instruction under this ordinance is followed and unauthorized training is addressed. Based on the egregious level of the misuse, the standard will be a verbal warning, following by a citation based on current Code Enforcement Violation standards. A warning will be The Permit Application and Requirements and Rules to allow such use are attached to this report. Once approved under this new ordinance and application process, professional instructors will be issued a photo ID badge and stand-alone sign that indicates their allowance to instruct. The Ordinance, permits, and rules are not intended to disrupt or limit the use of the park by the general public.

FISCAL IMPACT

The program will generate revenue to offset the costs of the photo ID badge and sign. Permits will be issued by existing City support staff. Staff estimates 7-15 private trainers may have interest to pay the approximate \$500 fee generating \$3,500-\$7,500 in annual revenue, in addition to any code violation fees from unauthorized trainers.


Nancy Hunt-Coffey,
Director of Community Services

Attachment 1

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE
REGARDING COMMERCIAL OR PROFESSIONAL
INSTRUCTION IN CITY PARKS**

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. The City Council hereby adds Article 1 (“General Parks and Recreational Facilities Provisions”) to Chapter 1 (“PARKS AND RECREATIONAL FACILITIES”) of Title 8 (“PARKS, STREETS, AND OTHER PUBLIC PROPERTY”) of the Beverly Hills Municipal Code, and renumbers Sections 8-1-1 through 8-1-7 to be Sections 8-1-101 through 8-1-107 of Article 1. All references in the Beverly Hills Municipal Code to such old section numbers (such as in Section 5-6-1501 and in Title 8, Chapter 1) shall be changed to the new section numbers.

Section 2. The City Council hereby adds Article 2 (“USE OF PUBLIC RECREATIONAL PROPERTY FOR PROFESSIONAL INSTRUCTION”) to Chapter 1 (“PARKS AND RECREATIONAL FACILITIES”) of Title 8 (“PARKS, STREETS, AND OTHER PUBLIC PROPERTY”) of the Beverly Hills Municipal Code to read as follows:

Article 2. USE OF PUBLIC RECREATIONAL PROPERTY FOR PROFESSIONAL
INSTRUCTION

8-1-201: DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Commercial or Professional Instruction” shall mean instruction performed in whole or in part for salability or profit or for any form of consideration, such as time or money.

“Director” shall mean the Director of Community Services or his or her designee.

“Public Recreational Property” shall mean all City parks as designated in Section 8-1-101 of this code, and City-owned or Parking Authority-owned facilities.

8-1-202: PERMIT REQUIRED.

No person shall conduct any Commercial or Professional Instruction such as boot camps, fitness instruction, day camps, yoga classes, youth sports camps, dog training or similar activities on Public Recreational Property without first obtaining a permit pursuant to the provisions of this article. No person shall bring onto any Public Recreational Property

any equipment to be used for Commercial or Professional Instruction except as authorized by a permit issued pursuant to this Article.

8-1-203: CONTENTS OF THE APPLICATION.

(a) An application for a permit shall be on forms as prescribed by the Director. The application shall include:

- (1) The name and address of the applicant, and if the applicant is a corporation, the names of its principal officers, or if the applicant is a partnership, association, limited liability company, organization or fictitious company, the names of the partners or persons comprising the association, organization or company with the address and telephone number of each;
- (2) The proposed dates, hours, and location where the Commercial or Professional Instruction is to be held;
- (3) The number of participants anticipated to participate in the Commercial or Professional Instruction; and
- (4) A list of the number and type of equipment and the weight of the equipment to be used by the applicant.

(b) The application shall be signed by the applicant under penalty of perjury and shall contain an agreement whereby the applicant agrees to defend, indemnify and hold harmless the City and its employees from and against any claims arising from the actions or omissions of the applicant or the applicant's client(s). The agreement shall also require the applicant to fully compensate the City for any damage to public property, as well as to clean and otherwise restore any Public Recreational Property to the condition in which it was found prior to the conduct of the Commercial or Professional Instruction.

8-1-204: INSURANCE REQUIRED.

The permittee shall be responsible to carry, maintain, and keep in full force and effect, a policy or policies of comprehensive general and/or professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence, combined single limit coverage and two million dollars (\$2,000,000.00) in the aggregate against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the permittee, with an endorsement naming the city as an additional insured. In addition, permittee is required to carry workers' compensation and automobile coverage sufficient to meet requirements of the State of California. The insurance shall comply with the provisions of title 3, chapter 4 of this code.

8-1-205: PERMIT ISSUANCE OR DENIAL.

An application for a permit may be denied by the Director for any of the following grounds:

- (1) The applicant fails to include all of the information required by section 8-1-203.
- (2) The Director determines that the instructional activity or equipment proposed by the applicant will unreasonably interfere with the public's use and enjoyment of the Public Recreational Property.
- (3) The instruction proposed in the application is prohibited by other provisions of this Code.
- (4) The proposed instruction or equipment will unreasonably interfere with the activities authorized by another permit.
- (5) The proposed equipment is greater than 25 pounds.
- (6) The proposed instruction equipment will interfere with normal operation of the Public Recreational Property.
- (7) The proposed instruction equipment will damage Public Recreational Property.
- (8) The applicant has not provided evidence of an insurance policy that complies with subsection 8-1-204 of this article.

The Director may impose reasonable terms and conditions concerning the Commercial or Professional Instruction or the equipment authorized by the permit, including the time and location of the activity, the maximum number of participants, the type and number of equipment, the duration of the activity.

8-1-206: REVOCATION OR SUSPENSION OF PERMIT:

A permit issued under this article may be revoked or suspended for any of the following reasons:

- A. Permittee or permittee's client damages public property;
- B. A material false statement contained in the application;
- C. Failure to comply with federal, state or local laws and regulations;
- D. Loss of insurance;
- E. Failure to comply with any conditions imposed by the City on the issuance of the permit;
- F. Conduct of the business or activity in a manner which endangers the public health, welfare or safety.

8-1-207: PROCEDURE FOR SUSPENSION OR REVOCATION:

A. Except as provided in Section 8-1-208, no permit shall be suspended or revoked prior to providing a ten (10) calendar day written notice to the holder of the permit and an opportunity to be heard before the officer considering revocation or suspension of the permit. On determining that grounds for permit suspension or revocation exist, the Director shall furnish written notice of the proposed suspension or revocation to the permittee. Such notice shall set forth the time and place of a hearing, and the grounds upon which the proposed suspension or revocation is based. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be personally delivered to the permittee, at least ten (10) days prior to the hearing date.

B. Hearings shall be conducted in accordance with procedures established by the Director. All parties involved shall have a right to: 1) offer testimonial, documentary and tangible evidence bearing on the issues; and 2) be represented by counsel.

C. The decision of the hearing officer designated by the City to hear the matter shall be rendered within five (5) days of the close of the hearing. The decision shall be in writing, and shall set forth the findings and reasons for the decision, and the permittee shall be notified in writing in accordance with title 1, chapter 5, article 1 of this code. If the hearing officer determines that there are sufficient grounds for disciplinary action, the hearing officer shall impose one of the following penalties:

1. A warning;
2. Suspension of the permit for a specified period not to exceed six (6) months; or
3. Revocation of the permit.

The hearing officer shall, in conjunction with the issuance of a warning or the suspension of a permit, order the permittee to take appropriate corrective action.

8-1-208: EMERGENCY TEMPORARY SUSPENSION OF PERMIT:

Certain types of Commercial or Professional Instruction may create an imminent peril to public health or safety. Where the conduct or activity of the permittee creates an imminent peril to the public health or safety, the permit may be summarily suspended upon notice to the permittee, provided further, that the permittee shall be entitled to a hearing within two (2) weeks thereafter and a decision within two (2) days after the hearing.

8-1-209: VIOLATIONS; ENFORCEMENT:

A violation of any provision of this article is punishable as provided for in title 1, chapter 3 of this code.

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 4. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 5. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

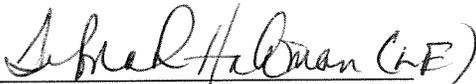
Adopted:
Effective:

JOHN A. MIRISCH
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

Attachment 2



CITY OF BEVERLY HILLS
PROFESSIONAL AND COMMERCIAL INSTRUCTION PERMIT REQUIREMENTS AND RULES

Permit Requirements

Applicant must provide documentation of the following prior to Permit execution:

- Completed and signed application form, including "Defense, Indemnity, and Hold Harmless Agreement".
- Proof of insurance as stated under Instructor Insurance Requirements. "Additional Insured Endorsement Form must be provided.
- Workers' Compensation Coverage Exemption Form, if applicable
- Copy of current City of Beverly Hills Business License
- Payment of required permit fee.

A City authorized permit is required to conduct fitness, athletic or recreational instruction or dog training, for compensation in parks pursuant to Ordinance _____.

Permit Rules

1. Definitions:
 - Individual /Small Group: Not more than two (2) participants excluding instructor(s) and one (1) dog per instructor.
 - Approved Instructor: An instructor, approved by the City that works as an employee or contractor, under the supervision and responsibility of the Permittee.
2. Individual/Small Group fitness, athletic, or recreational instruction or dog training, may be conducted in the following parks:
 - La Cienega Park
 - Roxbury Park
 - Coldwater Canyon Park (Monday thru Friday only)
3. No professional or commercial instruction may occur in the following parks and facilities: Arnaz Mini Park, Crescent Drive Mini Park, Hamel Mini Park, Maltz Mini Park, Oakhurst Mini Park, Reeves Mini Park, Rexford Mini Park, or Beverly Canon Gardens, Beverly Gardens Park, Greystone Park, La Cienega Tennis Center, Will Rogers Memorial Park or Beverly Hills Community Dog Park.
4. Permits are issued on a calendar year basis. (January 1 – December 31)
5. A maximum of 3 Approved Instructors are allowed per permit, in addition to the Permittee.
6. Permits issued shall become invalid if the permittee fails to:
 - pay all applicable City fees and charges;
 - maintain a current and valid general liability insurance as required by the City;
 - execute a required Indemnity and Hold Harmless Agreement; and
 - maintain a current and valid City of Beverly Hills Business License
 - abide by permit and park rules.



7. Permittees and/or Approved Instructors must visibly wear a City-issued badge and display issued free standing sign at all times while conducting professional or commercial fitness, athletic or recreational instruction or dog training and have the City issued Permit available for immediate inspection by City staff upon request. *(Permits and City-issued badges and signs are non-transferable.)*
8. Permittees must stay within a restricted amount of space as designated by the City permit and cannot use any equipment that would extend their area such as but not limited to, long ropes, cones or obstacle courses, agility ladders, etc.
9. Permittees and/or Approved Instructors shall follow City staff instructions in siting or relocating commercial fitness or athletic instruction in order to avoid damage to City facilities or turf areas, and to avoid interference with maintenance activities and closures including but not limited to closures related to inclement weather
10. Permittees, Approved Instructors and participants shall not store or place fitness equipment or personal belongings within 10 feet of any tree trunk.
11. Permittees and/or Approved Instructors must site professional or commercial instruction, classes or camps at least 200 feet away from all City operated or sanctioned activities such as American Youth Soccer Organization, Little League, and Adult Sports League Programs.
12. Permittees and/or Approved Instructors shall not use amplification equipment, boom boxes, bull horns or whistles.
13. Permittees and Approved Instructors shall not conduct professional or commercial instruction, in any City park between 9pm and 6am.
14. Permittees and/or Approved Instructors shall not require park users to relocate to accommodate instruction except as permitted.
15. Permittees and/or Approved Instructors shall relocate to accommodate City permitted activities, including City approved Community Events and City approved Filming.
16. No Permittee or Approved Instructor shall display, place or distribute, or cause the display, placement or distribution of, any commercial advertising or signage, including but not limited to cards, flyers, brochures, signs or banners, in any City park, park facility, or park parking lots.
17. Park equipment and installations, including but not limited to light poles, drinking fountains, public art, bleachers, picnic tables, benches, railings, fencing, signs, bike racks, and barbeque grills, playground equipment, steps, or stairs, trees, bushes, and foliage shall not be used for exercise activity.
18. Permittees and and/or approved instructors and clients shall under no circumstances use outdoor exercise equipment, exercise machines, or the exercise equipment area to conduct instruction.
19. Pursuant to Ordinance, no person shall place any equipment or object used for fitness or athletic activity weighing more than twenty-five pounds within any City park without prior authorization by the Director.
20. A City-issued field permit, consistent with the City's field permitting guidelines, is required for use of a field.



21. A court reservation permit is required for use of basketball, volleyball or greens for instruction.
22. No person shall store athletic, sports or other equipment within any park nor left unattended.
23. Permittees and Approved Instructors shall at all times be respectful of park users, city staff, other instructors and their clients, residents and businesses.
24. City will issue permits on a first-come, first-serve basis and reserves the right to limit the number of permits issued.

Conditions for Issuance of the Permit and Procedure for Suspension or Revocation will be pursuant to Ordinance No. _____ of the BHMC.

Destruction, removal or injury to any park facility or park foliage may require restitution in an amount necessary to reimburse the Department for investigative costs and for the value of the item or material destroyed, defaced, removed or damaged as well as labor required to replant or restore the area, item or material affected.

The City may revoke, suspend or deny the issuance of a permit if the permittee or applicant has violated applicable Federal, State, or City laws, or rules or regulations.

I have read the permit requirements and rules and will abide by them, as will any approved instructor under my responsibility.

Name _____ Signature _____ Date _____

Staff initial: _____

Attachment 3



PROFESSIONAL OR COMMERCIAL INSTRUCTION PERMIT APPLICATION

City of Beverly Hills
Community Services Department, Recreation Division
455 N. Rexford Drive, Room 260, Beverly Hills, CA 90210
Phone: 310.285.6850 Fax: 310.274.9571

Submission Dates:

Applications will be accepted beginning January 3, 2017 and will be valid upon issuance until December 31, 2017 (calendar year). Permit valid only as assigned at Roxbury Park, La Cienega Park, or Coldwater Canyon Park. Instruction at any other park facility is not permitted.

Permit will be issued and valid for Individual/Small Group instruction (no more than 2 students excluding instructor for any session).

PERMIT FEE: Payment of a permit fee is required prior to issuance of an annual permit. Fee is \$250 per calendar year. Fees are not pro-rated or refundable.

APPLICANT INFORMATION

Business Name: Contact Person:

Type of Instruction Youth (5-17 years) Adults (18+ years)

Address: City & Zip code:

Phone/Cell: Email address:

Website Address:

Location of Instruction Designate one park ONLY

Roxbury Park
471 S. Roxbury Drive
Beverly Hills, CA 90212
Monday - Sunday, 6am-dusk

La Cienega Park
8400 Gregory Way
Beverly Hills, CA 90211
Monday - Sunday, 6am-dusk

Coldwater Canyon Park
1100 N. Beverly Drive
Beverly Hills, CA 90210
Monday - Friday 6am - dusk

Estimated average number of hours per month you intend to conduct business:

Type of equipment to be used:

List Instructors for this business (maximum of 3 plus permittee)

1. 2. 3.

Completed applications are to be submitted to the address below: (Monday-Friday, 9am - 4pm)
City of Beverly Hills
455 N. Rexford Drive, Room 260
Beverly Hills, CA 90210

I, representing the Permittee, certify the information on this application is correct and that I have read and agree to abide by the Professional and Commercial Instruction Permit Rules and Requirements and all other conditions as outlined in Ordinance # _____

Signature

Date

Print name

Title

For Office Use Only:

APPLICATION RECEIVED BY _____

DATE: _____

- Proof of Insurance: Expiration Date _____
- Additionally Insured Endorsement: Expiration Date _____
- Workers' Compensation Coverage Exemption Form, if applicable
- Defense, Indemnity and Hold Harmless Agreement
- Beverly Hills Business License: Business Name _____
- Permit Fee: Amount: \$ _____ Check _____ Credit Card _____ Date _____

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