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9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 VENICE JUSTICE COMMITTEE, an
 12 unincorporated association; and
 13 PEGGY KENNEDY, an individual;
 14 Plaintiffs,

15 vs.

16 CITY OF LOS ANGELES; and DOES 1-
 17 10;
 18 Defendants.

CASE NO: CV 16-01115-DDP (SSx)
 [Assigned to Hon. Dean D. Pregerson,
 Courtroom 3]

**DEFENDANT CITY OF LOS
 ANGELES’S NOTICE OF MOTION
 AND MOTION TO DISMISS
 PLAINTIFFS’ COMPLAINT**

[Fed. R. Civ. P. 12(b)(6)]

Date: August 1, 2016
 Time: 10:00 a.m.
 Courtroom: 3

[Concurrently filed with Defendant’s
 Request for Judicial Notice and [Proposed]
 Order]

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 1, 2016 at 10:00 a.m., or as soon
3 thereafter as this matter may be heard in Courtroom 3 of the United States District
4 Court, Central District of California, located at 312 North Spring Street, Los Angeles,
5 CA 90012-4701, Defendant City of Los Angeles will move the court to dismiss
6 Plaintiffs' Complaint on the grounds that the Complaint cannot state a claim upon
7 which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Los
8 Angeles Municipal Code section 42.15 meets constitutional muster and Plaintiffs are
9 not entitled to any of the relief they seek.

10 This motion will be based upon this Notice, the accompanying Memorandum of
11 Points and Authorities, the concurrently filed Request for Judicial Notice, all pleadings
12 and papers on file in this action, and upon such other matters as may be presented to the
13 court at the time of the hearing.

14 This motion is made following the conference of counsel pursuant to L.R. 7-3,
15 which took place on May 27, 2016.

16
17 DATED: June 6, 2016

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By: /s/ Sara Ugaz
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CITY OF LOS ANGELES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3
4 Plaintiffs Peggy Kennedy and Venice Justice Committee (collectively
5 “Plaintiffs”) challenge the constitutionality of Los Angeles Municipal Code (“LAMC”)
6 section 42.15, an ordinance through which Defendant City of Los Angeles (“City”)
7 regulates the time, place, and manner of certain speech-related activities on the Venice
8 Beach Boardwalk (“Boardwalk”). The action arises from two incidents during which
9 officers from the Los Angeles Police Department (“LAPD”) allegedly threatened to cite
10 Plaintiffs for violating LAMC §42.15 when Plaintiffs set up a table in a Designated
11 Space¹ after sunset to distribute literature and solicit donations for political causes.
12 (Complaint at ¶ 25, lines 1-2, ¶ 26, lines 11-17, ¶ 30, lines 8-14.) LAMC §42.15
13 prohibits the setting up of tables in Designated Spaces after sunset. (Defendant’s
14 Request for Judicial Notice (“RJN”), Ex. 1, LAMC §42.15 (E)(9).)

15 Plaintiffs allege that LAMC §42.15 is unconstitutional because (a) it “prohibit[s]
16 all core political speech on the Boardwalk after sunset” (Complaint, “Prayer for Relief”
17 at ¶ 3, lines 12-14) and (b) its restrictions on “vending” unlawfully apply to “requesting
18 donations to support core political activity.” (*Id.* at ¶ 2.) Plaintiffs bring claims under
19 42 U.S.C. §1983; Article I of the California Constitution, §§2, 3; and California Civil
20 Code §52.1 (“Bane Act”).

21 Plaintiffs misread the ordinance. First, LAMC §42.15 does *not* prohibit “core
22 political speech” on the Boardwalk, regardless of the time of day or the content of the
23 message. Rather, “[p]ersons can engage in traditional expressive speech and petition
24 activities” on the Boardwalk at any time,² including after sunset. (*See* RJN, Ex. 1,
25

26 ¹ “Designated Spaces,” are 205 marked spaces on the west side of the Boardwalk. (*See*
27 RJN, Ex. 1, LAMC §42.15 (A)(4).)

28 ² As used in this motion, the phrase “at any time” applies only to the hours the
Boardwalk is open. Plaintiffs do not challenge the closure times of the Boardwalk.

1 LAMC §42.15(D) and §42.15(F).) Second, LAMC §42.15 does *not* prohibit the
2 solicitation of donations on the Boardwalk, regardless of the time of day or the cause.
3 Nor does it equate soliciting donations with “vending”, which is defined as requiring
4 someone to pay a fee *before* providing food, goods, or merchandise. (*See id.*, LAMC
5 §42.15(A)(20).) The only activity LAMC §42.15 prohibits that is relevant to this
6 action—which Plaintiffs expressly admit they engaged in—is to “set up or set down
7 items in . . . a Designated Space between Sunset and 9:00a.m.” (*Id.*, LAMC
8 §42.15(E)(9) (the “Sunset Provision”).) Thus, the only question before this Court is
9 whether the Sunset Provision is constitutional.

10 This Court has already answered that question. In *Dowd v. City of Los Angeles*,
11 2013 U.S. Dist. LEXIS 111435 (C.D. Cal., Aug. 7, 2013), a case brought by “street
12 performers who engage[d] in traditional expressive speech,” this Court held that the
13 Sunset Provision in the 2008 version of LAMC §42.15, which banned all activities in
14 Designated Spaces³ after sunset, was a content-neutral reasonable time place manner
15 restriction. *Id.* at *39-40, (RJN, Ex. 2). The same conclusion should apply here
16 because the present version of the Sunset Provision is identical to the 2008 version with
17 one exception—it is even *less* restrictive in that it bans only certain specified activities
18 (*e.g.*, the setting up or taking down of equipment), not *all* activities like its 2008
19 predecessor. Plaintiffs do not contend that *Dowd* was incorrectly decided or allege any
20 facts that would render this Court’s analysis in *Dowd* inapplicable to this action. Thus,
21 the Court should reach the same conclusion here that it did in *Dowd*, and dismiss the
22 Complaint.

23
24 ³ In the 2008 version of the Ordinance, the areas that are now called Designated Spaces
25 were divided into zones: the P-Zone for performance, expression, and vending of
26 certain expressive items; and the I-Zone for all P-Zone activities plus vending of
27 additional items that were “inextricably intertwined” with the vendor’s message. (RJN,
28 Ex. 2; *Dowd*, 2013 U.S. Dist. LEXIS at *5-6; *see also* RJN, Ex. 3, Ordinance No.
179807, §42.15(B)-(C).)

STATEMENT OF FACTS

I. Venice Beach Boardwalk

The Boardwalk is a major tourist attraction in the City of Los Angeles, hosting 16 million tourists each year. (RJN, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *2; *see also* RJN, Ex. 1, LAMC §42.15(B)(1).) Historically, visitors and tourists have been drawn to the Venice Beach area and the Boardwalk for its performance and visual artists, as well as other free speech activity. (*Id.*, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *2; *see also* Ex. 3, Ordinance No. 179807, §42.15(A).) The Boardwalk, which is only 2.5 miles long and 10 to 50 feet wide, is located in a narrow, linear park that is bounded by the beach and the Pacific Ocean to the west and commercial businesses and private property/residences to the east. (*Id.*, Ex. 1, LAMC §42.15(B)(1); *see also* Ex. 3, Ordinance No. 179807, §42.15(A).) The Boardwalk also serves as an emergency ingress and egress route. (*Id.*; RJN, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *4; *see also* Ex. 3, Ordinance No. 179807, §42.15(A).)

II. Los Angeles Municipal Code Section 42.15 and Related Litigation

In 2004, the City passed LAMC §42.15, which imposed time place manner regulations on certain activities on the Boardwalk, including performing, petitioning, and vending. The main purpose of the ordinance was (and continues to be) to preserve the unique historic character of the Boardwalk as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the local merchant economy, and ensure the safety and enjoyment of residents, visitors, advocates, artists, performers, and vendors alike. (RJN, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *2-3, *22; *see also* Ex. 1, LAMC §42.15(B)(2)-(4).)

Partly in response to First Amendment challenges,⁴ the City amended LAMC §42.15 on several occasions, including in 2006, 2008, 2012, and 2014. Most recently,

⁴ *See, e.g., Hunt v. City of Los Angeles*, 601 F. Supp. 2d 1158, 1170-72 (C.D. Cal. 2009); *Hunt v. City of L.A.*, 638 F.3d 703, 716, 718 (9th Cir. 2011).

1 this Court considered the constitutionality of the 2008 version of LAMC §42.15 in
 2 *Dowd*, 2013 U.S. Dist. LEXIS at *2-8 (C.D. Cal. Aug. 7, 2013). (RJN, Ex. 2.) The
 3 2008 version regulated the Boardwalk by dividing the Designated Spaces into zones
 4 (*see* fn. 4) and imposed a lottery system for space allocation. (RJN, Ex. 2, *Dowd*, 2013
 5 U.S. Dist. LEXIS at *5-6; *see also* Ex. 3, Ordinance No. 179807, LAMC §42.15(A)(2)-
 6 (C).) Importantly, the 2008 version of LAMC §42.15 also contained a Sunset Provision
 7 that stated: “No person shall set up or take down or use a designated space between
 8 sunset and 9:00 a.m.” (*Id.*, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *5-6, Ex. 3,
 9 Ordinance No. 179807, LAMC §42.15(G)(2)(f).) In *Dowd*, this Court upheld as
 10 constitutional numerous provisions of the 2008 ordinance, including the Sunset
 11 Provision. (*Id.*, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *39-40.)

12 LAMC §42.15 was most recently amended in 2014. Like its 2008 predecessor, it
 13 divides the Boardwalk into areas—(1) Designated Spaces on the west side of the
 14 Boardwalk; (2) undesignated spaces on the west side of the Boardwalk; and (3) an
 15 undesignated area on the east side of the Boardwalk. (*See id.*, Ex. 1, LAMC §42.15(E)-
 16 (F).)⁵

17 In Designated Spaces, “[p]ersons can engage in traditional expressive speech and
 18 petitioning activities, and can Vend⁶ the following expressive items: newspapers,
 19 _____

20 ⁵ In addition to these three areas, there are also “Pagodas” and the “Recreation Area,” as
 21 to which there are special restrictions under the ordinance. (*See* RJN, Ex. 1, LAMC
 22 §42.15(A)(10), (18) (defining Pagodas and Recreation Area).) Plaintiffs do not allege
 23 that they tried engage in expressive activities in those areas on the Boardwalk, and do
 24 not challenge those restrictions. The term “Boardwalk” in this motion refers only to the
 three (designated and undesignated) areas described above.

25 ⁶ Vending” is defined as: “[t]o sell, offer for sale, expose or display for sale, solicit
 26 offers to purchase, or to barter Food, Goods or Merchandise, or services in any area
 27 from a stand, table ... or to require someone to pay a fee or to set, negotiate, or establish
 28 a fee before providing Food, Goods or Merchandise,⁶ or services, even if characterized
 by the Vendor as a Donation.” (*Id.*, LAMC §42.15(A)(12)).

1 leaflets, pamphlets, bumper stickers, patches, and/or buttons” and engage in other
2 expressive activities not relevant here. (*Id.*, LAMC §42.15(D).) Like its 2008
3 predecessor, the 2014 version also includes a Sunset Provision for Designated Spaces,
4 but rather than prohibiting all activity, it now prohibits only “set[ting] up or set[ting]
5 down items in, tak[ing] down items from or block[ing], or attempt[ing] to reserve a
6 Designated Space between Sunset and 9:00 a.m.” (*Id.*, LAMC §42.15(E)(9).)

7 In the undesignated spaces on the west side of the Boardwalk, a person may
8 engage in all the same activities as in Designated Spaces, except vending, and may “set
9 up a display table, easel, stand, equipment or other furniture . . . subject to reasonable
10 size and height restrictions . . . provided the equipment or activity associated with the
11 equipment does not materially impede or obstruct pedestrian or vehicular traffic or
12 areas designed for emergency ingress or egress.” (*Id.*, LAMC §42.15(F)(1)(b).)

13 In the undesignated area on the east side of the Boardwalk, a person may engage
14 in all the same activities as in Designated Spaces but may not “set up a display table,
15 easel, stand, equipment or other furniture, use a Pushcart or other vehicle” at any time.
16 (*Id.*, LAMC §42.15(F)(1)(a).)

17 **III. Plaintiffs’ Alleged Activity on The Boardwalk**

18 Plaintiffs’ action is based on two alleged incidents on the Boardwalk in 2015.
19 According to the Complaint, on February 2, 2015, Plaintiffs set up a table in a
20 Designated Space after sunset to obtain petition signatures, collect donations, and
21 distribute informational leaflets for Plaintiff Venice Justice Committee, a civil rights
22 organization. (Complaint at ¶ 24, lines 22-26; ¶ 25, lines 27-28.) Two LAPD officers
23 allegedly approached Plaintiffs and informed them that they could not “vend” in
24 Designated Spaces after sunset, (*id.* at ¶ 25, lines 1-2), to which Plaintiffs allegedly
25 responded that they were “not selling or vending anything” (*id.* at ¶ 25, lines 3-5).
26 According to Plaintiffs, the LAPD officers “threatened [Plaintiffs] with a citation.” (*Id.*
27
28

1 at ¶ 26, lines 6-14.) Although it is not clearly alleged, Plaintiffs apparently left the
2 Designated Space to avoid receiving a citation. (*Id.* at ¶ 26, lines 14-17.)

3 On September 25, 2015, Plaintiffs allegedly again set up a table in a Designated
4 Space. Plaintiffs allege that approximately 15 minutes after sunset, two LAPD officers
5 approached, informed Plaintiffs that they were in violation of LAMC §42.15, but
6 advised Plaintiffs that they could still collect signatures and donations and distribute
7 leaflets “if [they] kept moving, walking up and down the middle of the Boardwalk.”
8 (*Id.* at ¶ 30, lines 8-13.) To avoid a citation, Plaintiffs left the Designated Space, but
9 chose not to walk up and down the Boardwalk to continue soliciting donations. (*Id.* at
10 ¶ 30, lines 13-16.)

11 LEGAL STANDARD

12 A court may grant a motion to dismiss under Federal Rule of Civil Procedure
13 12(b)(6) when a plaintiff fails to allege sufficient facts to state a claim that is plausible
14 on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569 (2007). “A claim has
15 facial plausibility when the plaintiff pleads factual content that allows the court to draw
16 the reasonable inference that the defendant is liable for the misconduct alleged.”
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Dismissal is appropriate based either on
18 the lack of cognizable legal theories or the lack of pleading sufficient facts to support
19 cognizable legal theories.” *Schneider v. Amador Cnty.*, 2013 U.S. Dist. LEXIS 32646,
20 *11 (E.D. Cal. Mar. 8, 2013), citing *Balistreri v. Pacific Police Dep’t*, 901 F.2d 696,
21 699 (9th Cir. 1990). In deciding a motion to dismiss, courts may also consider matters
22 of public record and facts which may be judicially noticed. *Mack v. South Bay Beer*
23 *Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).
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ARGUMENT

I. Plaintiffs Fail To State A Claim Because LAMC §42.15 Does Not Prohibit Them From Engaging In “Expressive Activity” Or Soliciting Donations.

LAMC §42.15 does not prohibit any of the activities in which Plaintiffs seek to engage. According to the Complaint, Plaintiffs wish to do three things after sunset: (1) “inform the public,” (2) “solicit donations on the Boardwalk,” and (3) “table.” (Complaint at ¶ 35, lines 17-18.) As to the first two activities—informing the public and soliciting donations—Plaintiffs are free to do those activities anywhere on the Boardwalk after sunset. Both of Plaintiffs’ misconceptions about the ordinance are discussed further below.

The only activity in which Plaintiffs wish to engage that LAMC §42.15 restricts after sunset is to “table.” But, as discussed in Section II below, those restrictions are limited and constitutional. Plaintiffs may set up tables in Designated Spaces between 9:00 a.m. and sunset. (RJN, Ex. 1, LAMC §42.15(E)(9).) Plaintiffs may also set up tables, subject to certain size and space limitations, in the undesignated spaces on the west side of the Boardwalk at any time, including after sunset. (*Id.*, LAMC §42.15(F)(1)(b).)

A. LAMC §42.15 Does Not Prohibit “Expressive Activity” Anywhere On The Boardwalk At Any Time.

Plaintiff is incorrect that LAMC §42.15 “prohibit[s] all core political speech on the Boardwalk after sunset.” (Complaint, “Prayer for Relief” at ¶ 3, lines 12-14.) In fact, the ordinance expressly states that anyone can engage in free expression, anywhere on the Boardwalk, at any time. Subsection (D)(1) of the ordinance states, in relevant part, that “[p]ersons can engage in traditional expressive speech and petitioning activities, and can Vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches and/or buttons.” (RJN, Ex. 1, LAMC §42.15 (D)(1).) The Sunset Provision, which applies only to Designated Spaces, does not

1 affect a person’s ability to engage in any of these activities after sunset, because it
 2 regulates only certain conduct, not speech. It states that “[n]o person shall set up or set
 3 down items in, take down items from or block, or attempt to reserve a Designated Space
 4 between Sunset and 9:00 a.m.” (*Id.*, LAMC §42.15(E)(9).)

5 Subsection (F)(1)(a), which applies to “Areas Outside of the Designated Spaces,”
 6 provides that “the activities that are [permitted in Designated Spaces] may occur . . .
 7 outside the Designated Spaces.” (*Id.*, LAMC §42.15(F)(1)(a).) Subsection (F)(1)(b)
 8 likewise provides that “[t]he activities that are [permitted in Designated Spaces], but not
 9 vending, may occur on the Westside of the Boardwalk outside the Designated Spaces.”
 10 (*Id.*, LAMC §42.15(F)(1)(b).) These subsections impose certain restrictions, not on
 11 speech, but on the equipment that can be used in these undesignated areas: “a Person
 12 may set up a display table, easel, stand, equipment or other furniture, a Pushcart or other
 13 vehicle, or place an item on the ground . . . subject to reasonable size and height
 14 restrictions . . . provided the equipment . . . does not materially impede or obstruct
 15 pedestrian or vehicular traffic or areas designated for emergency ingress or egress.”
 16 (*Id.*) Importantly, the Sunset Provision does not apply to the Areas outside the
 17 Designated Spaces.

18 As these provisions make clear, LAMC §42.15 does not prohibit core political
 19 speech on the Boardwalk after sunset. Rather, all of the “expressive activity” that
 20 Plaintiffs wish to engage in is permitted on the Boardwalk at any time. Because the
 21 fundamental premise of Plaintiffs’ Complaint is erroneous, dismissal is proper.

22 **B. LAMC §42.15 Does Not Prohibit The Solicitation Of Donations**
 23 **Anywhere On The Boardwalk At Any Time.**

24 Plaintiff is also incorrect that LAMC §42.15 “equate[s] ‘soliciting’ for political
 25 donations with ‘vending’.” (Complaint at ¶ 33, lines 4-6; “Prayer for Relief” at ¶ 3,
 26 lines 11-14.) The concepts are entirely distinct under the ordinance, and only “vending”
 27 is prohibited at certain times in certain places. The ordinance defines “vending” in
 28 relevant part as “requir[ing] someone to pay. . . a fee *before* providing . . . Merchandise

1 . . . even if characterized by the Vendor as a Donation.” (RJN, Ex. 1, LAMC §42.15
2 (A)(20) (emphasis added).) In contrast, the ordinance defines “Donation” as “[a] gift; a
3 voluntary act *which is not required and does not require anything in return.*” (*Id.*,
4 LAMC §42.15(A)(6) (emphasis added).) As the inclusion of the term “before” in the
5 definition of “vending” makes clear, “vending” applies to instances where a person
6 makes the distribution of merchandise conditional upon receipt of a fee or donation.
7 The solicitation of donations is not “vending” under the plain meaning of the ordinance.

8 Thus, although LAMC §42.15 does impose certain restrictions on vending, those
9 restrictions are not relevant here. Under the ordinance, Plaintiffs are free to distribute
10 their literature and solicit donations, so long as they do not make the former conditional
11 upon the latter. Further, based on the allegations in the Complaint, Plaintiffs have not
12 vended, and apparently do not wish to vend, anything. (*See* Complaint at ¶ 25, lines 3-5
13 (“[Plaintiffs] were not selling or vending anything”), ¶ 29, lines 2-7 (“[Plaintiffs] did
14 not provide any food, goods, merchandise, or services in exchange for any donations
15 [they] received”).⁷ Because the ordinance does not equate soliciting donations with
16 vending, Plaintiffs are not entitled to the relief they seek in their Complaint.

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21 ⁷ Even if the vending regulations were relevant, they are reasonable time place manner
22 restrictions. In *One See One World One Family Now v. City & County of Honolulu*, 76
23 F.3d 1009, 1015-16 (1996), the Ninth Circuit held that a complete ban on the sale of
24 merchandise in Honolulu, including merchandise that reflected philosophical ideas, was
25 constitutional because it was “content-neutral, narrowly tailored to serve substantial
26 interests throughout Waikiki, and leaves ample alternative channels of communication.”
27 *Id.* at 1016. Notably, the Ninth Circuit agreed that “[c]ities have a substantial interest in
28 protecting the aesthetic appearance of their communities by ‘avoiding visual clutter’”,
and “in assuring safe and convenient circulation on their streets.” *Id.* at 1013. If such
interests justify a total ban, then certainly placing a limited time restriction on certain
activities in certain portions of the Boardwalk is constitutional.

1 **II. As This Court Held in *Dowd v. City of Los Angeles*, The Sunset Provision in**
2 **LAMC §42.15 Is Constitutional.**

3 To the extent that Plaintiffs are alleging that LAMC §42.15 prohibits them from
4 “tabling” on the Boardwalk, they are again incorrect. As described in Section I.A.
5 above, Plaintiffs can set up tables on the Boardwalk—either in the Designated Spaces
6 from 9:00 a.m. until sunset, or in undesignated spaces of the Boardwalk at any time, so
7 long as they abide by the size, height, and ingress/egress restrictions. (RJN, Ex. 1,
8 LAMC §42.15(E)(9), (F)(1).)

9 In *Dowd*, this Court ruled that the Sunset Provision in the 2008 version of LAMC
10 §42.15, which prohibited all activity in designated spaces between Sunset and
11 9:00 a.m., was a reasonable time place manner restriction. (RJN, Ex. 2, *Dowd*, 2013
12 U.S. Dist. LEXIS at *39-40.) This Court further held that a provision in the 2008
13 version of LAMC §42.15 that placed limitations on the equipment that could be used on
14 the Boardwalk so that, for example, “performers accustomed to performing from
15 ladders are unable to do so,” was a valid time place manner restriction. (*Id.* at *36-38.)
16 These same conclusions should apply to the current version of the Sunset Provision,
17 which is identical in all respects except one—it is *less* restrictive than its predecessor.
18 Unlike the 2008 version, which prohibited *all* activity in designated spaces, the present
19 version of the Sunset Provision prohibits only (a) the setting up or taking down of items
20 (such as tables); (b) blocking of the designated spaces (for example, from pedestrian
21 traffic and the City’s emergency response teams); and (c) attempting to reserve the
22 space for use the following day. (*See* RJN, Ex. 1, LAMC §42.15(E)(9).)

23 Plaintiffs do not challenge the soundness of the Court’s conclusions in *Dowd*.
24 And for good reason—*Dowd* correctly held that the Sunset Provision is constitutional.
25 It is well-settled that in a public fora, the government may impose reasonable time place
26 manner restrictions on protected speech so long as those limits are content neutral,
27 “narrowly tailored to serve a significant governmental interest” and “leave open ample
28 alternative channels for communication of the information.” *Ward v. Rock Against*

1 *Racism*, 491 U.S. 781, 791 (1989) (internal quotation marks omitted). The Sunset
2 Provision in the 2014 ordinance, as in the 2008 ordinance, satisfies this test.

3 First, the Sunset Provision is content neutral because “[n]one of the
4 characteristics an officer must consider [in enforcing the provision] is based in the
5 subject matter of the message ... the message conveyed is immaterial.” (RJN, Ex. 2,
6 *Dowd*, 2013 U.S. Dist. LEXIS 111435 at *20-21.) This conclusion is consistent with
7 binding precedent. *See, e.g., Hill v. Colorado*, 530 U.S. 703, 719 (2000) (finding that a
8 Colorado statute making it unlawful to distribute leaflets within 100 feet of a health care
9 facility’s entrance was content neutral because “it was not a regulation of speech [but]
10 [r]ather a regulation of the places where some speech may occur” and “appl[ies] equally
11 to all demonstrators, regardless of viewpoint.”)

12 Second, the provision is narrowly tailored to serve significant government
13 interests. In *Dowd*, this Court concluded that the Sunset Provision satisfied this factor
14 because the provision served “to ensure the Boardwalk is clean and safe for the crowds
15 of people that will visit the following day.” (RJN, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS
16 at *40 (internal quotations omitted).) The health and safety issues articulated in the
17 2014 version of LAMC §42.15 likewise serve a significant government interest. As
18 explained in the Findings and Purposes, the Sunset Provision is necessary because
19 without a prohibition on continuous use of the Designated Spaces, “[n]umerous
20 altercations occurred, in completion for locations and amounts of space. . . Frequently
21 the altercations became violent requiring law enforcement response to preserve the
22 public peace.” (RJN, Ex. 1, LAMC §42.15(B)(4)(b).) As further explained:

23 Unregulated, the Boardwalk became a place where only the strongest
24 earliest arrivals could secure space to exercise their rights of free expression
25 without threat of intimidations. Regulation, is necessary, therefore, to
26 manage the use of the limited space on the boardwalk to prevent conflicting
27 claims for the space and to allocate the limited space available fairly to all
28 who desire to use it for lawful purposes.

(*Id.*)

1 Finally, just as the Court concluded in *Dowd*, there remain ample alternative
2 channels of communication available for Plaintiffs to conduct the activities they wish.
3 (RJN, Ex. 2, *Dowd*, 2013 U.S. Dist. LEXIS at *27-28.) For example, at any time, on
4 any part of the Boardwalk, Plaintiffs could walk around and communicate their
5 message, distribute their literature, and solicit donations. They could even set up a table
6 to perform these activities, at any time, in the undesignated spaces on the west side of
7 the Boardwalk, so long as the table was a “reasonable size and height” and did not
8 “materially impede or obstruct pedestrian or vehicular traffic or areas designed for
9 emergency ingress and egress.” (RJN, Ex. 1, LAMC §42.15(F)(1)(b).) And as
10 discussed, before sunset, Plaintiffs could perform all of these activities at a table in
11 Designated Spaces.

12 Because there are numerous alternative avenues available for Plaintiffs to
13 disseminate their message, the Sunset Provision is a reasonable time place manner
14 restriction. *See, e.g., Int’l Soc’y for Krishna Consciousness of California, Inc. v. City of*
15 *L.A.*, 764 F.3d 1044, 1053 (9th Cir. 2014) (finding the ordinance was a reasonable time
16 place manner restriction because it permitted “numerous other forms of
17 communication,” including solicitation of “future donations online or via preaddressed
18 envelopes” and spreading the word to passersby); *G.K. Ltd. Travel v. City of Lake*
19 *Oswego*, 436 F.3d 1064, 1074-75 (9th Cir. 2006) (holding a restriction on pole signs
20 was constitutional because it allowed ample alternatives for communication, including
21 through “handbills, radio, television, newspaper or telemarketing”, as well as through
22 “wall signs, monument signs, awning and canopy signs, blade signs and overhanging
23 signs”); *One World One Family Now*, 76 F.3d at 1014-15 (9th Cir. 1996) (concluding
24 Honolulu’s ordinance was constitutional because it allowed plaintiffs “to disseminate
25 and seek financial support for their views through ‘myriad and diverse’ alternative
26 channels, such as handing out literature, proselytizing or soliciting donations” and
27 “[n]othing prevent[ed] plaintiffs here from reaching their intended audience”).
28

1 Furthermore, Plaintiffs do not allege any facts that would make the Court's
2 conclusions in *Dowd* inapplicable to them. First, that Plaintiffs claim to be engaging in
3 "core political speech" does not affect the analysis. *See, e.g., Long Beach Area Peace*
4 *Network v. City of Long Beach*, 522 F.3d 1010, 1020-23 (9th Cir. 2008) (holding that
5 portions of an ordinance preventing protests were reasonable time place manner
6 restrictions, even when applied to political speech in a public forum). Indeed, the lead
7 plaintiff in *Dowd*, Matthew Dowd, likewise alleged that he was "a political activist and
8 often intertwines political messages with his music during a street performance." (RJN,
9 Ex. 4, Complaint filed in *Dowd v. City Los Angeles*, ¶ 7.)

10 Second, it is irrelevant, even if true as alleged, that the LAPD officers referenced
11 an incorrect provision of LAMC §42.15 (*i.e.*, the prohibition on vending), when
12 threatening to cite Plaintiffs for violating the ordinance. (*See* Complaint at ¶ 26
13 (alleging that the LAPD officers told Plaintiffs that they "were illegally 'vending after
14 sunset' in violation of LAMC").) Regardless of the specific statements they made to
15 Plaintiffs at the time, the officers were legally justified in threatening to cite the
16 Plaintiffs because, as expressly admitted in their Complaint, Plaintiffs violated the
17 Sunset Provision of LAMC §42.15 by setting up a table in a Designated Space after
18 sunset. (Complaint at ¶ 24, lines 22-24; ¶ 27, lines 18-20.) *See, e.g., Edgerly v. City &*
19 *County of San Francisco*, 599 F.3d 946, 954 (9th Cir. 2010) (holding that arrest was
20 justified even though police cited the wrong provision of the Penal Code because
21 "probable cause supports an arrest so long as the arresting officers had probable cause
22 to arrest the suspect for any criminal offense, regardless of their stated reason for the
23 arrest").

24 Because this Court correctly held in *Dowd* that the Sunset Provision in LAMC
25 §42.15 is constitutional, and because Plaintiffs have failed to allege any facts that would
26 make the holding in *Dowd* inapplicable here, the Complaint should be dismissed.
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1 **III. Plaintiffs Fail To State A Claim Under The Bane Act Because The LAPD**
2 **“Threats” Were No More Than Enforcement Of A Valid Ordinance.**

3 Plaintiffs’ claim under the Bane Act fails because the Complaint does not
4 establish either of the two required elements: (1) “intentional interference with a state or
5 federal constitutional or legal right” and (2) “the interference or attempted interference
6 was by threats, intimidation or coercion.” *Allen v. City of Sacramento*, 234 Cal.App.4th
7 41, 67 (2015), citing *Jones v. Kmart Corp.*, 17 Cal.4th 329, 334 (1998). The Bane Act
8 was “intended to address only egregious interference with constitutional rights [. . .]
9 [t]he act of interference [. . .] must be deliberate or spiteful.” *Shoyoye v. County of Los*
10 *Angeles*, 203 Cal.App.4th 947, 959 (2012). Here, Plaintiffs’ factual allegations fall far
11 short of the “egregious interference with constitutional rights” required under the Bane
12 Act.

13 The Complaint fails to satisfy the first element of the Bane Act test because, for
14 the reasons described above, Plaintiffs’ constitutional rights were not violated by the
15 LAPD’s actions to enforce LAMC §42.15’s Sunset Provision. Accordingly, Plaintiffs
16 cannot show that there was an “intentional interference with a state or federal
17 constitutional or legal right.” Cal. Civ. Code § 52.1(a).

18 The Complaint likewise fails to satisfy the second element of the Bane Act test.
19 LAPD officers did not employ “threats, intimidation, or coercion,” as those terms are
20 used in the Bane Act, by warning Plaintiff that they would enforce a LAMC ordinance
21 and issue a citation. Whether the officers properly threatened to enforce the ordinance
22 is immaterial, because even a “wrongful arrest or detention, without more, does not
23 satisfy [the Bane Act].” *Allen*, 234 Cal.App.4th at 69. Here, a citation was not issued at
24 all. In *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1196 (9th Cir. 2015), the Ninth
25 Circuit adopted the state courts’ findings that the Bane Act requires a plaintiff to
26 establish threats, coercion, or intimidation “beyond the coercion inherent in a detention or
27 search.” *Id.* The operative test for determining whether the officers engaged in
28 “threatening or coercive conduct” is “whether a reasonable person, standing in the shoes

1 of the plaintiff, would have been intimidated by the actions of the defendants and have
2 perceived a threat of violence.” *Richardson v. City of Antioch*, 722 F. Supp. 2d 1133,
3 1147 (N.D. Cal. 2010) (citing *Winarto v. Toshiba America Electronics Components,*
4 *Inc.*, 274 F.3d 1276, 1289-90 (9th Cir. 2001) (officer’s act of kicking in a door, using a
5 taser and screaming at plaintiff was sufficiently coercive). A warning does not satisfy
6 the second prong of the Bane test. *See Allen*, 234 Cal. App. 4th at 66 (holding there
7 was no Bane Act violation where the complaint alleged only a threat of arrest and
8 confiscation of property by the police officer); *Gant v. City of L.A.*, 765 F. Supp. 2d
9 1238, 1253-54 (C.D. Cal. 2011) (finding that “a wrongful arrest and detention, without
10 more, cannot constitute ‘force, intimidation, or coercion’ for purposes of [the Bane
11 Act]” because Plaintiffs had failed to establish that police used force, intimidation, or
12 coercion in his wrongful arrest), *rev’d* in part on other grounds, 772 F.3d 608 (9th Cir.
13 2014).

14 Here, although Plaintiffs allege that the LAPD officers “used threats of citation or
15 arrest and intimidation to coerce Plaintiffs to forego [their] rights,” this bald legal
16 conclusion is not supported by the factual allegations. *See Telesaurus VPC, LLC v.*
17 *Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (stating that courts should “disregard
18 threadbare recitals of the elements of a cause of action, supported by mere conclusory
19 statements”). Factually, Plaintiffs allege only that the LAPD officers “informed
20 [Plaintiffs] that [they] could not ‘vend’ after sunset,” (Complaint at ¶ 25, lines 1-5),
21 “told [Plaintiffs] that [they] could only engage in expressive activity on the Boardwalk,
22 including collecting petition signatures and passing out flyers, if [they] kept moving,
23 walking up and down the middle of the Boardwalk,” (*Id.* at ¶ 30, lines 10-13), and
24 “threatened [Plaintiffs] with a citation unless she acquiesced” (*Id.*). None of these
25 allegations amount to “coercion or a threat of violence” under the Bane Act.
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1 **IV. Plaintiffs Are Not Entitled To The Equitable Remedies They Seek Because**
2 **Their Prayer For Relief Is Based On A Misinterpretation Of The Ordinance.**

3 As explained above, Plaintiffs misinterpret LAMC §42.15. This
4 misinterpretation is most clearly exemplified in Plaintiffs’ Prayer for Relief, in which
5 Plaintiffs request that the Court issue: (1) “an injunction enjoining the City of Los
6 Angeles from enforcing ‘sunset provisions’ in LAMC §42.15 prohibiting all core
7 political speech on the Boardwalk after sunset” (Complaint, “Prayer for Relief” at ¶ 3)
8 and (2) “a declaration that requesting donations to support core political activity does
9 not constitute as vending [under LAMC §42.15]” (*id.* at ¶ 2).⁸

10 Plaintiffs are not entitled to the relief they seek because, as explained above,
11 LAMC §42.15 does not prohibit “all core political speech” after sunset and does not
12 equate requesting donations with vending. “A federal court has no jurisdiction to hear a
13 case that cannot affect the litigants’ rights.” *Native Village of Noatak v. Blatchford*, 38
14 F.3d 1505, 1509 (9th Cir. 1994); *see also United States v. Washington*, 759 F.2d 1353,
15 1356-57 (9th Cir. 1985); 28 U.S.C. § 2201. Also, a court should deny declaratory relief
16 where it will “neither serve a useful purpose in clarifying and settling the legal relations
17 in issue nor terminate the proceedings and afford relief from the uncertainty and
18 controversy faced by the parties.” *Washington*, 759 F.2d at 1356-57. For these reasons
19 too, the Court should dismiss the Complaint.

20 **CONCLUSION**

21 For all of the above reasons, and for any reasons that may arise at a hearing on
22 this matter, the Complaint should be dismissed for failure to state a claim. Accordingly,
23 the City respectfully requests that the City’s Motion to Dismiss be granted.
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28 ⁸ Plaintiffs also request that the Court issue a declaration that their constitutional rights were violated. (Complaint, “Prayer for Relief” at ¶ 1.)

1 DATED: June 6, 2016

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