ORDINANCE PROHIBITING NIGHTTIME LOITERING IN CITY PARK CONSTITUTIONAL

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As illustrated by the *Trantham* opinion described herein, vagrancy statutes and similar laws are oftentimes unconstitutionally vague because they punish status, rather than conduct. Specifically, these laws lack sufficient standards to curb the unbridled discretion of police officers. As a result, such laws may subject individuals who present a less than desirable appearance to arrest when arbitrarily classified as "rogues or vagabonds" in the opinion of a law enforcement official.

NIGHT MOVES

In the case of *People v. Trantham*, 161 Cal.App.3d Supp. 1; 208 Cal.Rptr. 535 (1984), defendant Roger Trantham appealed his being found guilty of a misdemeanor for "entering, remaining, staying or loitering in a park between the hours of 10:30 p.m. and 5 a.m. of the following day" in violation of the Los Angeles Municipal Code section 63.44(B)(14). The facts of the case were as follows:

> On January 25, 1983, Los Angeles Police Officer Gary Brusatori went to North Hollywood Park to investigate complaints from residents concerning loitering at the park. Officer Brusatori and his partner arrived at the park at approximately 11 p.m. A short time later, Officer Brusatori saw defendant drive into the parking lot. There are signs posted on either side of the driveway used by defendant indicating that the park is closed between 10:30 p.m. and 5 a.m. Each sign is approximately 12 inches wide by 18 inches high and placed about six feet above the ground. A street light on the sidewalk illuminated both signs and, in addition, the headlights of defendant's vehicle further illuminated the signs as he entered the parking area.
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> Trantham left his vehicle and walked into a nearby public restroom. On the south side of this restroom is posted a third sign declaring that the park is closed between 10:30 p.m. and 5 a.m. This sign, which is the same size as the two signs posted at the park entrance, is illuminated by a light on the southeast corner of the restroom. After two or three minutes, defendant left the restroom, walked to a group of trees, and spent seven to eight minutes walking behind the trees.... Officer Brusatori placed Trantham under arrest at approximately 11:15 p.m.

On appeal, Trantham argued that the term "loitering" in the ordinance violated the federal and state constitutional guarantees of due process because it failed "to afford the requisite notice of the conduct proscribed and for the reason that it is void for vagueness and overbreadth." Specifically, Trantham asserted that "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." As characterized by the appeals court, Trantham maintained that "a statute that makes no distinction between harmful and innocent conduct is void for overbreadth."

> Trantham submits that "in order to be constitutional, the present ordinance would have to articulate some overt conduct which would be sufficient to provide law enforcement with probable cause to believe that defendants were lingering ("loitering") with the specific intent to commit a crime." He argues that the absence of such standard renders section 63.44(B)(14) impermissibly vague for the reason that this deficiency encourages arbitrary and discriminatory law enforcement. He further argues that "simply lingering "loitering", alone, is not and cannot be made a crime," and thus, section 63.44(B)(14) is overbroad to the extent it criminalizes such innocent conduct.

"In addition to the notice component of the void-for-vagueness doctrine," the appeals court acknowledged that "its more important element has been recognized as its requirement for minimal guidelines to govern law enforcement in order to discourage arbitrary and discriminatory enforcement of the law."

> Antiloitering statutes represent an arena for conflict between healthy antipathy to the "roust" or arrest on suspicion, on the one hand, and legitimate interests in crime prevention, on the other. Security against arbitrary police intrusion is basic to a free society. Thus, arrests on mere suspicion offend our constitutional notions. Frequently they amount to arrest for status or condition instead of unlawful conduct. Most of the provisions of the now repealed vagrancy statute (former Pen.Code, s 647) were concerned with status rather than conduct.
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> At the opposite side of the scale is the view that law enforcement officers need not wring their hands in constitutional frustration while nighttime prowlers and potential thieves and rapists skulk through our neighborhoods. The usual accommodation between these warring notions is the concept of "reasonable cause," that is, an officer may properly inquire, search and sometimes arrest if he has reasonable cause to believe that a crime has been committed.

According to the appeals court, "[t]he constitutional standard to be applied when an ordinance such as this is attacked as unduly restrictive of personal rights is one of 'reasonableness'."

> The rule is too well established to warrant citation of authority that a municipality, under its inherent police power, may enact legislation which may interfere with the personal liberties of its citizens and impose penalties for the violation thereof where the general welfare, public health and safety demand such enactment; but this rule is always subject to the rule of reasonableness in relation to the objects to be attained. The question then is whether the ordinance in question was reasonable, in view of the needs of the state, with reasonableness being roughly measured by the gravity of the evil to be corrected and the importance of the right invaded. Expressed another way, the measure so adopted must have some relation to the ends thus specified... [In determining this relationship, courts have applied] the following test: '(1) Is there an evil? (2) Do the means selected to curb the evil have a real and substantial relation to the result sought? (3) If the answer to the first two inquiries is yes, do the means availed of unduly infringe or oppress fundamental rights of those whose activities or

> conduct is curbed?

Applying this reasoning to the facts of the case, the appeals court found "[t]he basic fallacy of defendant's position is his myopic focus upon the word "loiter," which has led him to misconstrue the purpose and nature of section 63.44(B)(14)." In the opinion of the appeals court, the challenged ordinance was "simply a park closure law."

> From our review of section 63.44, entitled "Regulations Affecting Park and Recreation Areas," we conclude that it is regulatory in nature, rather than criminal, and that the purpose of its numerous subdivisions and subsections is to restrict and regulate the use of public parks and recreational areas under its purview in order to confine such usage to activities compatible with the natural resources of such places, otherwise to conserve those places in their pristine state, and to promote public health, safety and welfare in the usage of those parks and recreational areas. We further conclude that section 63.44(B)(14), a park closure regulation, was enacted to further those legislative purposes...
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> Ordinarily, a park is a pleasure ground set apart for the recreation of the public, to promote its health and enjoyment. It is beyond dispute that a local entity has exclusive jurisdiction over the management and control of its parks and may enact and enforce such regulations and rules that are necessary or appropriate to promote park purposes and to ensure the public's health, safety and welfare in the usage of its parks...
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> All those who would resort to the parks must abide by otherwise valid rules for their use, just as they must obey traffic laws, sanitation regulations, and laws to preserve the public peace. This is no more than a reaffirmation that reasonable time, place, and manner restrictions are constitutionally acceptable... [T]here is a substantial government interest in conserving park property, an interest that is plainly served by, and requires for its implementation, measures... that are designed to limit the wear and tear on park properties.

Accordingly, under the circumstances of this case, the appeals court found that "the park closure regulation embodied in section 63.44(B)(14) is no more and no less than simply a time, place and manner restriction upon the usage of the public parks and recreation areas under its ambit." Further, the appeals court found that "the means used, i.e., to prohibit any person from entering, remaining, staying, or loitering in any park during the specified time frame, to implement the parks' closure has a 'real and substantial relation to the result sought'."

> The closure of the parks for the late night hours delineated in section 63.44(B)(14) serves a substantial and legitimate governmental interest in limiting wear and tear on park properties" in order to further the goal of conserving park property. More importantly, the intent and purpose of section 63.44(B)(14) is clearly to establish a reasonable closing time for public parks in the interest of public safety and welfare. We observe that the closure of public parks during the late night hours also serves incidentally to deter those who would cloak themselves in dark of night to vandalize the parks or commit other acts of malicious mischief.

The appeals court further rejected Trantham's contention that "the City of Los Angeles is depriving him of his right to liberty... [under the federal and state constitutions because] section 63.44(B)(14) is not defined with the requisite specificity to place a person on notice as to what conduct is prohibited and encourages arbitrary law enforcement.

> [T]he right of the city to exclude the public from designated areas at designated times cannot be seriously questioned so long as the restriction is as narrowly defined as it is in the ordinance in question... {viz.] its restrictions are sufficiently narrow so that under no reasonable construction or application should the ordinance itself be denominated unconstitutional. The ordinance carefully defines the area that is restricted and the hours of the curfew. It also provides for appropriate notice. It applies to all persons and cannot be condemned as selective or discriminatory. Unlike [an unconstitutionally overbroad ordinance] which broadly restricted the use of any street, alley, or public place, the ordinance in question carefully delimits the curfew to a small, localized area.
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> [T]he interests of safety and public welfare are sufficient objectives to warrant closing public parks during the... nighttime period. We believe that the deprivation of defendant's uncontrolled liberty, by limiting his absolute use of the park, is minimal compared to the desirable public safety and welfare objectives served by this ordinance... [G]enerally speaking, late night park closure regulations pass constitutional muster as valid exercises of municipal power to restrict the use of a municipality's public facilities regarding reasonable time, place, and manner limitations.

Further, the appeals court found that the challenged section's "proscription against anyone entering, remaining, staying, or loitering in any park during the late night hours in question is not void for vagueness or overbreadth."

> No overbreadth problem arises since the regulation does not possibly encompass innocent as well as criminal conduct inasmuch as its proscription against anyone going into or being in a park for any length of time during the specified time period applies across the board, which means that it is of no legal consequence if a person enters or is in the park for an innocent or criminal purpose. Moreover, no vagueness problem arises for the reasons that the regulation places a person on notice as to precisely what conduct is proscribed and the proscription itself leaves no room for the exercise of discretion by law enforcement officers as to the propriety of any particular person's presence in the park...
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> Closure of a park for a specified time period means that the public in general is barred from the use of the park for the duration of such closure. In effect, it is the same as limiting the public's right to use a library or other public facility to the hours the facility is open to the public. There is no rational reason for differentiating parks from other facilities in that regard, except that parks may be used overnight for camping, which includes sleeping. Nonetheless, no one can seriously assert that a municipality cannot enact a regulation closing down its parks during the late night hours to conserve wear and tear upon those parks or that overnight camping is a fundamental right.

The appeals court further rejected Trantham's contention that "in order for the park closure regulation at issue to be valid it must afford 'actual' notice, i.e., sufficiently illuminated signs announcing the park's closure for the specified late night hours at every entrance and path in the park."

> Trantham has confused the notice component of due process, a constitutional mandate, with the preferred practice of placing signs at strategic points to inform persons as to what is prohibited. The "actual" notice mandated by due process is that "a penal statute define with sufficient definiteness that ordinary people can understand what conduct is prohibited." From the maxim of jurisprudence that everyone is presumed to know the law arises the postulate that ignorance of the law is no defense to its violation. Accordingly, lack of actual knowledge of the provisions of section 63.44(B)(14) is of no legal significance, the pivotal inquiry being "whether the defendant was aware that he was engaging in the conduct proscribed by that section."

The appeals court, therefore, affirmed the judgment of the trial court against Trantham.