

January 3, 1990

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
CITYWIDE DRINKING BAN AT BEACHES AND PARKS

On December 13, 1989, the Public Facilities and Recreation Committee approved a proposal to enact a citywide ban on alcohol at beaches, parks and associated parking lots. This office was directed to prepare an ordinance for the City Council docket of January 9, 1990. The attached ordinance is provided in compliance with this direction.

Section 1 of the ordinance is broad enough to constitute a citywide ban on the use of alcoholic beverages at the City's beaches and parks, consistent with the approach taken by the Public Facilities and Recreation Committee. However, Section 1 includes an exception for use or possession that is made lawful by state law, since state law preempts the City's ability to regulate the consumption of alcoholic beverages on state-licensed ABC premises, or to prohibit the possession of closed alcoholic beverage containers.

The proposed ordinance recognizes that the possession of sealed alcoholic beverages is lawful, as is the consumption of alcoholic beverages on licensed premises within city parks and beaches, when authorized by state law pursuant to the Alcoholic Beverage Control Act (Business and Professions Code sections 23002 et seq.) The ordinance therefore seeks to prohibit the consumption of alcoholic beverages or the possession of an opened alcoholic beverage container in those areas where it is not otherwise lawful under state law.

State law defines an alcoholic beverage as being any type of alcohol, spirit, wine or beer which contains more than one-half of one percent (0.05%) of alcohol by volume. The ordinance adopts this definition for purposes of clarity.

There are a number of related issues identified in the City Manager's Report which this office is not prepared to address at this time without further direction from the City Council.

The City Attorney should return with a more comprehensive ordinance once further direction is provided. Section 2, in the meantime, seeks to conform any provision of the San Diego Municipal Code to the provisions of this ordinance and thus avoid ambiguity.

Respectfully submitted,

JOHN W. WITT
City Attorney

RH:mb:260(x043.1)

Attachment

RC-90-1