

ORDINANCE NUMBER O- 18254 (NEW SERIES)

ADOPTED ON JAN 29 1996

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 4, DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING EXISTING SECTION 54.0501 AND ADDING NEW SECTION 54.0501; REPEALING EXISTING SECTION 54.0502 AND ADDING NEW SECTION 54.0502; REPEALING EXISTING SECTION 54.0503 AND ADDING NEW SECTION 54.0503; REPEALING EXISTING SECTION 54.0504 AND ADDING NEW SECTION 54.0504; REPEALING EXISTING SECTION 54.0505 AND ADDING NEW SECTION 54.0505; REPEALING EXISTING SECTION 54.0506 AND ADDING NEW SECTION 54.0506; REPEALING EXISTING SECTION 54.0507 AND ADDING NEW SECTION 54.0507 AND ADDING SECTIONS 55.0508 AND 55.0509, RELATING TO PUBLIC PAY TELEPHONE REGULATIONS, SANCTIONS FOR NON-COMPLIANCE AND ENFORCEMENT PROCEDURES.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0501 and adding new Section 54.0501, to read as follows:

**SEC. 54.0501 Declaration of Public Nuisance**

The Council of the City of San Diego finds and declares that:

(a) Any public pay telephone used as an instrumentality for, or contributing substantially by its

presence to, the selling or giving away of controlled substances, as defined in Division 10 of the California Health and Safety Code, is hereby declared to be a public nuisance.

(b) Any public pay telephone that by its presence contributes substantially to the consumption of alcoholic beverages outdoors on public or private property, except where outdoor consumption of alcoholic beverages is authorized or permitted, is hereby declared to be a public nuisance.

(c) Any public pay telephone used as an instrumentality for, or contributing substantially by its presence to, loitering for a criminal purpose on public or private property is hereby declared to be a public nuisance.

(d) Any public pay telephone used as an instrumentality for, or contributing substantially by its presence to, the making of excessive noise is hereby declared to be a public nuisance.

Section 2. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0502 and adding new Section 54.0502, to read as follows:

**SEC. 54.0502 Definitions**

For purposes of this Division:

"High Crime Area" means any area of the City of San Diego determined by the Chief of Police to have a crime rate

one and one-half (1-1/2) times the City-wide average using the narcotic and prostitution arrest rate per 1,000 population.

"Objectionable conditions that constitute a nuisance" means disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.

"Redevelopment Project Area" means any Redevelopment Project Area formally adopted by the City Council of San Diego pursuant to Community Redevelopment Law, California Health and Safety Code Sections 33000, et seq., maps of which are on file in the Office of the City Clerk.

"Redevelopment Study Area" or "Redevelopment Survey Area" means any area formally designated and adopted by the City Council of San Diego pursuant to Community Redevelopment Law, California Health and Safety Code section 33310, et. seq., maps of which are on file in the Office of the City Clerk.

"Unimproved Private or Public Property" means any real property upon which there are no legally authorized buildings, structures or other development such as pavement or landscaping which increases the value of the real property.

Section 3. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0503 and adding new Section

54.0503, to read as follows:

**SEC. 54.0503 Enforcement Remedies**

(a) Violations of this division may be prosecuted as misdemeanors subject to the penalties provided in Municipal Code section 12.0201. However, criminal charges cannot be filed until thirty (30) calendar days from the date the Chief of Police or designee sends a notice of violation requesting compliance. The Chief of Police may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue any administrative remedy provided in Chapter 1 of this Code.

(b) The Chief of Police may remove the handset from any public pay telephone installed or maintained in violation of subsection 54.0504 (a) or (b). However, the handset cannot be removed until thirty (30) calendar days from the date the Chief of Police or designee sends a notice of violation requesting compliance. The public pay telephone shall remain inoperable without its handset until the telephone owner obtains written authorization from the Chief of Police to replace the handset.

Section 4. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0504 and adding new Section 54.0504, to read as follows:

**SEC. 54.0504 Prohibited Locations of Public Pay Telephone**

(a) It is unlawful for any person to install, locate or maintain a public pay telephone on Unimproved Public or Private Property.

(b) It is unlawful for any person to install or maintain, or allow to be installed or maintained, a public pay telephone in a "High Crime Area" or a "Redevelopment Project Area" or "Redevelopment Study Area" without written authorization from the Chief of Police. This section does not apply to public pay telephones installed prior to February 2, 1994.

(c) Criminal charges may be filed for any violation of Subsection 54.0504(a) or (b) thirty (30) calendar days from the date the Chief of Police or designee sends a notice of violation requesting compliance with this section.

Section 5. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0505 and adding new Section 54.0505, to read as follows:

**SEC. 54.0505 Approval Process for Public Pay Telephone Installation**

(a) The owner of any public pay telephone located or maintained in violation of Section 54.0504(a), but installed under a written contract that was executed before February 2, 1994, shall remove the public pay telephone at the termination of the written contract.

(b) The owner of any public pay telephone shall give written notice to the San Diego Police Department and a City-recognized community planning group located within a "High Crime Area," "Redevelopment Project Area" or "Redevelopment Study Area" when a public pay telephone is proposed for installation. The community planning group has thirty (30) days to respond to the Chief of Police. At the end of the thirty (30) days noticing period to the community planning group, the Chief of Police has an additional five (5) days to notify the telephone owner of the Police Department's determination regarding installation of the pay telephone.

(c) If the San Diego Police Department opposes the pay telephone installation, the Chief of Police shall notify the public pay telephone owner. The Chief of Police, in cooperation with the public pay telephone owner, shall determine whether voluntary measures restricting installation as outlined in Section 54.0506(b)(1) through Section 54.0506(b)(8) are appropriate. The Chief of Police, in cooperation with public pay telephone owners, shall develop implementing guidelines for voluntary measures restricting installation.

(d) The Chief of Police shall notify the public pay telephone owner in writing of the decision to either approve, conditionally approve with restrictions or deny the application for the installation of public pay telephone.

The Chief of Police may conditionally approve or deny the application by finding that the proposed installation:

(1) is located in a "high crime," "Redevelopment

Project Area," or "Redevelopment Study Area," and

(2) has the potential to create "objectionable conditions that constitute a nuisance" as defined in Section 54.0502.

(e) If the Chief of Police conditionally approves with restrictions or denies a pay telephone owner's request for pay telephone installation, then the pay telephone owner has ten (10) calendar days from the date of service of the order to appeal utilizing the procedures provided in subsections 12.0501(c) and (d) (Administrative Appeal Procedures) and Section 12.0502 (appeal hearing) of this Code.

(f) The Chief of Police shall report annually to the Public Safety and Neighborhood Services Committee, or any successor committee, on the effectiveness of monitoring the "High Crime Areas," and "Redevelopment Project Areas" and "Redevelopment Study Areas" and recommend any needed geographic changes.

(g) The Chief of Police shall adopt procedures implementing this Division. The Chief of Police shall mail to public pay telephone owners in January of each year a map of impacted areas, a copy of the regulations, and a list of community planning groups and their addresses.

(h) The San Diego Police Department, Crime Analysis Unit will maintain a file and make available a map reflecting the location of "High Crime Areas" within the meaning of this Section 54.0502.

Section 6. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0506 and adding new Section 54.0506, to read as follows:

**SEC. 54.0506 Abatement Procedures**

(a) The City shall not commence any proceedings to abate a public pay telephone constituting a public nuisance unless the Chief of Police:

(1) has notified the pay phone owner and the local public pay phone trade associations, such as the San Diego Payphone Owners Association; and

(2) has made a reasonable effort to work with the property owner upon whose property the public pay telephone is located or the public pay telephone owner, or both.

(b) The City shall work with the property owner or public pay telephone owner to eliminate the activities constituting a public nuisance by utilization of the appropriate voluntary measures from the following list:

- (1) blocking incoming calls;
- (2) removing the ringer on the phone;
- (3) shutting off the key pad after the initial number is dialed to eliminate "beeper" use;
- (4) making the telephone inoperative for designated time periods;
- (5) removing hand sets;
- (6) adding lighting;



(7) changing the type of enclosure of the telephone; or

(8) removing any or all of the telephones.

(c) Whenever the Chief of Police determines that any public pay telephone constitutes a public nuisance within the meaning of Section 54.0501 and further determines that the procedures in subdivision (a) and (b) of this section are not effective, an Abatement Notice and Order may be sent to the pay telephone owner directing abatement as outlined in the notice.

(d) The Chief of Police shall follow the Administrative Abatement procedures for time frame I as provided in Municipal Code Section 12.0603.

(e) If the responsible person does not comply with the Abatement Notice, the Chief of Police may proceed to abate the subject public pay telephone and recover all costs pursuant to the procedures found in Division 6, Article 2 and Division 3, Article 3 of Chapter I of this Code.

(f) The Abatement Notice issued under Section 12.0603 shall specify that abatement will require removal of the public pay telephone, and will prohibit its replacement on the same parcel or any contiguous parcel owned by the same property owner for a period of up to one year from the date of removal.

(g) Any decision of a hearing officer ordering abatement shall specify that it is unlawful for any public pay telephone owner to install a replacement public pay telephone on the same parcel or on any contiguous parcel

owned by the same property owner for a period of up to one year from the date of removal.

Section 7. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by repealing existing Section 54.0507 and adding new Section 54.0507, to read as follows:

**SEC. 54.0507 Exemptions**

(a) Public pay telephones located inside any building open to the public are exempt from the regulations of this Division.

(b) Public pay telephones installed to replace existing public pay telephones are exempt from the noticing requirements of Section 54.0505(b). They are subject to the remaining regulations of this Division.

Section 8. That Chapter V, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by adding Sections 54.0508 and 54.0509, to read as follows:

**SEC. 54.0508 List of Prohibited Locations**

The Chief of Police shall maintain, and make available upon request, a list of locations where installation of pay telephones is prohibited.

**SEC. 54.0509 Business Tax**

Each public pay telephone owner doing business in the City of San Diego is required to pay a business tax and obtain a certificate of payment of the business tax pursuant

to Chapter III, Article 1, Division 1, of the San Diego  
Municipal Code.

Section 2. This ordinance shall take effect and be in force  
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Joseph M. Battaglino  
Joseph M. Battaglino  
Deputy City Attorney

JMB:smf:jp  
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