

ORDINANCE NUMBER O- 18296 (NEW SERIES)

ADOPTED ON MAY 06 1996

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 8,
OF THE SAN DIEGO MUNICIPAL CODE BY ADDING
SECTION 58.05 ENTITLED "DAYTIME LOITERING OF
JUVENILES IN ANY PUBLIC PLACE ON SCHOOL
DAYS."

WHEREAS, the Council of The City of San Diego is concerned with the level of juvenile violence, juvenile gang activity, and juvenile crime in The City of San Diego; and

WHEREAS, the crimes being committed by juveniles include serious offenses such as murders, drive-by shootings, drug-related crimes and other gang-related activities; and

WHEREAS, juveniles are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang related activities and to be victims of older perpetrators of crime; and

WHEREAS, The City of San Diego has an obligation to provide for the protection of juveniles from each other and from other persons, for the enforcement of parental control of and responsibility for their children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, juveniles are subject to compulsory education or a compulsory alternative education program; and

WHEREAS, it is believed that a daytime loitering ordinance imposed upon those persons of compulsory school age will encourage school attendance and will be in the interest of public health, safety, and general welfare to prevent juveniles from loitering or wandering in the City during school hours; NOW THEREFORE,

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

Section 1. That Chapter V, Article 8, of the San Diego Municipal Code be and the same is hereby amended by adding Section 58.05, to read as follow

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SEC. 58.05 DAYTIME LOITERING OF JUVENILES IN ANY PUBLIC PLACE ON SCHOOL DAYS.

(a) Definitions. For purposes of Section 58.05:

"Adult" means any person twenty-one (21) years of age and older.

"Emergency" includes but is not be limited to fire, natural disaster, automobile accident, or requirement for immediate medical care for another person.

"Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

"Juvenile" means any person under eighteen (18) years of age.

"Parent" means a person who is the natural or adoptive parent of a person.

"Parent" includes a court-appointed guardian or other person eighteen (18) years of age or older authorized by the parent, by a court order, or by a court-appointed guardian to have the care and custody of the person.

"Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, office buildings, transport facilities, shopping centers, and malls.

(b) Offenses.

(1) It is unlawful for any juvenile who is subject to compulsory education to loiter, idle, wander, or be in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, or the premises of any establishment, vacant lots or any unsupervised place between the hours of 8:30 a.m. and 1:30 p.m. on any day when school is in session for that juvenile.

(2) It is unlawful for any juvenile who is subject to a compulsory alternative education program to loiter, idle, wander, or be in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, or the premises of any establishment, vacant lots or any unsupervised place between the hours of 8:30 a.m. and 1:30 p.m. on any day when that juvenile would otherwise be required to attend a regular compulsory education school.

(3) It is unlawful for the parent of any juvenile to knowingly permit or by insufficient control allow the juvenile to be in violation of Section 58.05(b)(1) or (2):

(c) Defenses. It is a defense to prosecution under Section 58.05:

(1) When the juvenile is accompanied by his or her parent or other adult having the care or custody of the juvenile;

(2) When the juvenile is on an emergency errand directed by his or her parent;

(3) When the juvenile is going to, or coming directly from, their place of school-approved employment;

(4) When the juvenile is going to, or

coming directly from, a medical appointment;

(5) When the juvenile has permission to leave the school campus for lunch or a school-sponsored activity or has in his or her possession a valid, school-issued, off-campus permit;

(6) When the juvenile is going to, or coming from, a compulsory alternative education program activity;

(7) When the juvenile is attending or, without any detour or stop, going to or returning from, an official school, religious, government-sponsored, or other recreational activity supervised by adults and sponsored by The City of San Diego or a civic organization.

(d) Enforcement Procedure.

(1) Upon any violation of Section 58.05(b)(1) or (b)(2), a peace officer may issue a citation to the juvenile and may transport the juvenile home or to the school from which the juvenile is absent. If cited, the juvenile and a parent shall appear in court as directed in the citation. The parent shall be advised of the fact that the juvenile was cited for a violation of San Diego Municipal Code section 58.05. The parents shall be warned of their responsibility and liability as the juvenile's parents.

(2) If a parent has been previously warned as set forth in San Diego Municipal Code section 58.05(d)(1), upon a parent's first violation of San Diego Municipal Code section 58.05(b)(3), a peace officer may issue a citation for an infraction to the parent to appear in court.

(3) When a parent has previously been issued a citation for an infraction as set forth in San Diego Municipal Code section 58.05(d)(3), upon any subsequent violation by a parent of Section 58.05(b)(3), a peace officer may issue a citation for a misdemeanor to the parent of the juvenile to appear in court.

(e) Penalties.

(1) Any person convicted of an infraction for violation of San Diego Municipal Code section 58.05(b)(1), (2), or (3) may be punished by a fine not exceeding two hundred fifty dollars (\$250.00) or by a requirement to perform city, county or school-approved projects or community service, or both. If required to perform a project, the total time for performance shall not exceed twenty (20) hours over a period not to exceed sixty (60) days, during times other than a juvenile's hours of school attendance or a

juvenile or parent's hours of employment.

(2) Any parent convicted of a misdemeanor violation of Section 58.05(b)(3) may be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid, preempted or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of The City of San Diego hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid, preempted or unconstitutional.

Section 3. 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 Stuart H. Swett
Stuart H. Swett
Senior Chief Deputy

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