

(O-99-32)
(Cor. Copy)

ORDINANCE NUMBER O-18604 (NEW SERIES)

ADOPTED ON NOVEMBER 24, 1998

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 2 OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
70, RELATING TO PUBLIC SAFETY IN THE BORDER ZONE

WHEREAS, the San Ysidro Port of Entry (the San Ysidro crossing), between the City of San Diego (City) and the City of Tijuana, Baja California, Mexico, is the busiest border crossing in the world; and

WHEREAS, thousands of persons each day use the San Ysidro crossing to visit both the United States and Mexico, for business and pleasure purposes; and

WHEREAS, the flow of vehicular and pedestrian traffic in the immediate area of the San Ysidro crossing is substantially impaired or impeded by unlawful business and soliciting practices; and

WHEREAS, residents of both the United States and Mexico who use the San Ysidro crossing are frequently harassed by unlicensed transportation and other solicitors; and

WHEREAS, Tijuana is a popular place for minors, college students and tourists to visit during the evening hours; and

WHEREAS, research has shown that it is common for both adults and persons under the age of 21 to cross the border and obtain alcohol inexpensively at the bars and restaurants in Tijuana and other nearby towns in Baja California, then return through the San Ysidro crossing to the United States intoxicated; and

WHEREAS, many of the intoxicated persons returning to the United States become hostile and violent, requiring several law enforcement officers to subdue them and maintain the peace; and

WHEREAS, the total number of persons using the San Ysidro crossing between the hours of 10 p.m. and 6 a.m. can exceed 10,000, requiring a large staff of Immigration and Naturalization Service and customs officers to handle the flow of traffic; and

WHEREAS, the San Diego Police Department is charged with law enforcement in the immediate area of the San Ysidro crossing, but has a limited number of officers available at any one time to serve in the area; and

WHEREAS, the continuous flow of vehicular and pedestrian traffic into and returning from Mexico, the volume of minors crossing into Mexico each night, the number of intoxicated persons returning to the United States each night, and the widespread unlawful soliciting practices in the area of the San Ysidro crossing make it extraordinarily difficult for the police officers assigned to the area to protect themselves and other individuals and to preserve the peace; and

WHEREAS, the City Council of the City (the Council) finds that the safety of its police officers, residents and tourists crossing the border in both directions is threatened by the solicitation and alcohol-related violations of law in the area of the San Ysidro crossing; and

WHEREAS, the Council further finds that these conditions, and the circumstances under which the police officers must perform their duties, warrant giving the police officers additional law enforcement tools to preserve the peace and protect the public health and safety, and the safety of the officers;

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

Section 1. That Chapter V, Article 2 of the Municipal Code is hereby amended by adding Division 70, to read as follows:

SEC. 52.7001. Title

This Division shall be known as the "Border Public Safety Zone" ordinance.

SEC. 52.7002. Purpose

The purpose of the Council in enacting this Division is to provide additional law enforcement and prosecution tools to enable the San Diego Police Department to effectively maintain the public peace and promote the safety of the public in the area immediately adjacent to the San Ysidro Port of Entry.

SEC. 52.7003. Definitions

As used in this Division:

- (a) the term "Border Public Safety Zone" (the Zone) includes that territory beginning at the point where the west line of the San Diego and Arizona Eastern Railway right-of-way crosses the International Border; proceeding westerly along the border to a point where a prolongation of Virginia Avenue intersects; thence northerly along the west line of Virginia Avenue to a point where the prolongation of the west line of Virginia Avenue intersects the San Diego and Arizona Eastern Railway right-of-way, southerly along the west line of the San Diego and Arizona Eastern Railway right-of-way to the point of beginning.
- (b) the term "sell" has the same meaning as in Section 33.1406 of this Code.

(c) the term "solicit" has the same meaning as in Section 33.1406 of this Code.

SEC. 52.7004. Soliciting Within the Zone

(a) Section 33.1406 of this Municipal Code makes it unlawful for any person, either as principal or agent, to solicit or sell services, or to distribute any coupon, certificate, ticket or card, redeemable for services, within the Zone.

(b) It is unlawful for any person or entity to retain, hire, employ, recruit or compensate, in any manner, another person to solicit or sell services, or to distribute any coupon, certificate, ticket or card, in violation of section 33.1406.

(c) A first violation of this section 52.7004(b) shall be punishable by a fine of not less than \$350, plus any additional sentence the court deems warranted under the circumstances. Subsequent violations shall be punishable by a fine of not less than \$500 per violation and three days community service in the San Ysidro Community Planning Area, plus any additional sentence the court deems warranted under the circumstances.

SEC. 52.7005. Interference with Peace Officer's Duties Under Welfare and Institutions Code Section 1500.

(a) California Welfare and Institutions Code (WIC) section 1500 imposes an affirmative duty upon a peace officer to prevent a resident of California under the age of 18 years (a juvenile), who is unaccompanied by a parent or guardian or who does not have written authorization from a parent or guardian, from entering Mexico.

(b) It is unlawful for any person to interfere with, impair or impede a peace officer's performance of the duty mandated by WIC section 1500, by facilitating in any manner a juvenile's crossing the border into Mexico.

(c) A person is guilty of violating section 52.7005(b) if he or she knows or reasonably should know that the juvenile crossing the border into Mexico is under the age of 18 years, is not accompanied by a parent or guardian, and does not have written permission from a parent or guardian to enter Mexico.

(d) A first violation of section 52.7005(b) shall be punishable by a fine of not less than \$250, plus any additional sentence the court deems warranted under the circumstances. Subsequent violations shall be punishable by a fine of not less than \$500 per violation and three days community service in the San Ysidro Community Planning Area, plus any additional sentence the court deems warranted under the circumstances.

SEC. 52.7006. Minimum Penalties for Violations Occurring in the Zone

(a) Conviction of a violation of any of the laws listed in Section 52.7006 (a)(1) - (6), occurring within the Zone, shall be punished by a fine of not less than \$250 for a first offense, plus any additional sentence the court deems warranted; and for any subsequent offense, a fine of not less than \$400 per violation and three days community service in the San Ysidro Community Planning Area, plus any additional sentence the court deems warranted:

- (1) Soliciting in the Zone, in violation of Municipal Code section 33.1406;
- (2) Aggressive solicitation, in violation of Municipal Code section 52.4001;
- (3) Violating the curfew imposed by Municipal Code section 58.0102(a);

- (4) Consuming alcohol in a public place, in violation of Municipal Code section 56.54(b);
- (5) Engaging in disorderly or offensive conduct in a public place, in violation of Municipal Code section 56.27;
- (6) Violating any provision of the Metropolitan Transit Development Board's Paratransit Ordinance.

(b) Conviction of a violation of any of the laws listed in section 52.7006(b)(1) - (4), occurring within the Zone shall be punished by a fine of not less than \$300 for a first offense, plus any additional sentence the court deems warranted; and for any subsequent offense, a fine of not less than \$500 per violation and three days community service in the San Ysidro Community Planning Area, plus any additional sentence the court deems warranted:

- (1) Committing any crime involving "a pattern of criminal gang activity," as that term is defined in California Penal Code section 186.22;
- (2) Aiding and abetting the violation of curfew, in violation of Municipal Code section 58.0102(b);
- (3) Filing a false police report, including by use of the 9-1-1 emergency line, in violation of Municipal Code section 52.05;
- (4) Loitering for drug use, in violation of Municipal Code section 52.3001;

SEC. 52.7007. Geographical Probation for Juvenile Offenders

If, within a one-year period, a juvenile is found to have violated any law or laws, on two or more occasions within the Zone, it shall be a condition of probation, or otherwise a part of the sentence, that for a period of time not

exceeding one year, the juvenile not be permitted within the Zone unless accompanied by the juvenile's parent or guardian.

SEC. 52.7008. Geographical Probation for Gang Related Offenses

If a person is convicted of any offense committed within the Zone, involving "a pattern of criminal gang activity" as that term is defined in the California Penal Code section 186.22, it shall be a condition of probation, or otherwise a part of the sentence, that during any term of probation, or for a period not to exceed two years after release from imprisonment, the person not be permitted within the Zone unless the court finds that the person's family or lawful business activities require his or her presence in the Zone.

Section 2. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. The City Clerk shall cause notice of the first reading and introduction of this ordinance at a public hearing to be held on November 11, 1998, at 10:00 a.m. at the regular meeting place of the City Council. The notice shall be published, at least ten (10) days in advance of the public hearing, in the City's official newspaper, as required by Section 99 of the City Charter.

Section 4. The City Clerk is hereby directed to cause publication of notice of the adoption of this ordinance for five (5) consecutive days in the City's official newspaper, as required by California Government Code Section 6040.1, within fifteen (15) days from the passage of this ordinance pursuant to California Government Code Section 6547.2.

Section 5. This ordinance is subject to the provisions for referendum contained in Section 27.2601 *et seq.* of the San Diego Municipal Code. Subject to those provisions, this ordinance shall take effect and be in force thirty (30) days from the date of its adoption and, prior to the expiration of fifteen (15) days from the passage of this ordinance, the City Clerk shall cause this ordinance to be published at least once in the City's official newspaper.

APPROVED: CASEY GWINN, City Attorney

By Theresa C. McAteer
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Deputy City Attorney

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