

(O-2006-132)
(COR. COPY)

SO
7/11/06

ORDINANCE NUMBER O- 19508 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 18 2006

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 43.1001, 43.1002, AND 43.1003, AND BY AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1, SECTION 63.0102, ALL RELATING TO THE SMOKING AND DISPOSAL OF TOBACCO PRODUCTS AT PUBLIC PARKS AND BEACHES

WHEREAS, the City of San Diego is committed to keeping its public beaches and parks clean, safe, healthy, and pleasant for everyone, and

WHEREAS, the United States Environmental Protection Agency has classified secondhand smoke as a Class A carcinogen, the most dangerous classification of carcinogens.

WHEREAS, the California Environmental Protection Agency has designated secondhand smoke as a substance that causes cancer in humans; and

WHEREAS, the United States Centers for Disease Control and Prevention has established that about 3,000 adult non-smokers die each year from lung cancer caused by secondhand smoke; and

WHEREAS, the California Environmental Protection Agency has concluded that secondhand smoke has caused approximately 35,000 heart disease-related deaths in non-smokers; and

WHEREAS, reliable studies continue to show that breathing secondhand smoke is a significant health hazard especially for pregnant women and their unborn children, children,

elderly people, individuals with cardiovascular disease-impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

WHEREAS, nonsmoker and smokers who suffer allergies, respiratory diseases, and other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of such adverse reactions; and

WHEREAS, smoking at public parks and beaches endangers children and others by exposing them to carcinogenic secondhand smoke; and

WHEREAS, children seeing people smoking at public parks and beaches may model this dangerous behavior; and

WHEREAS, discarding tobacco and cigar and cigarette butts on the ground in the City of San Diego's public parks and beaches is unsightly, unclean, and particularly hazardous to small children, who might handle or ingest them; and

WHEREAS, the City Council for the City of San Diego has determined that, in light of these findings, banning smoking and improper disposal of tobacco products at parks or beaches owned or controlled by the City of San Diego is necessary to protect the health, safety, and welfare of San Diego residents, visitors and the environment, NOW, THEREFORE,

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

Section 1. That Chapter 4, Article 3, Division 10 of the San Diego Municipal Code is amended by amending sections 43.1001, 43.1002, and 43.1003 to read as follows:

§43.1001 Purpose and Intent

The smoking of tobacco, or any other weed or plant, is a positive danger to health and is a material annoyance, inconvenience, discomfort, and health hazard to those who are present in confined spaces, and to small children playing in the City's *park* and *beach* areas and Tot Lots. Therefore, in order to serve the public health, safety and welfare, the declared purpose of this Division is to prohibit the smoking of tobacco, or any weed or plant, in Public Places and Places of Employment except in designated smoking areas identified by signs as set forth in Section 43.1005 of this Division. A further purpose of this Division is to prohibit smoking in and around public parks, beaches, and Tot Lots.

§43.1002 Definitions

For purposes of this Division, the following definitions shall apply:

"*Bar*" means an establishment where the primary business is sale of alcoholic beverages for consumption on the premises and where all occupants are required to be twenty-one (21) years or older.

"*Place of Employment*" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. It includes work areas, private offices, employee lounges, conference rooms, and employee cafeterias. It does not include a private residence or a Public Place.

"*Public Beach*" means any *coastal beach*, as defined in Municipal Code section 113.0103, that is owned or controlled by the City of San Diego.

"*Public Park*" has the same meaning as in Municipal Code section 113.0103.

"Public Place" means any enclosed area where the public is routinely permitted without special invitation. It includes retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, and public transportation facilities. It does not include a private residence.

"Shared Work Area" means a room in a Place of Employment in which more than one person is assigned to perform work during the course of a work shift period.

"Smoke" or "smoking" includes the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind.

"Tot Lot" means a play area designed for use by children that is located in a Public Park. The boundary of a Tot Lot is typically defined with concrete or wood, but may be defined by other material.

§43.1003 Prohibitions

- (a) It is unlawful to Smoke in a Public Place or Place of Employment except in a designated smoking area lawfully established in accordance with this Division.
- (b) It is unlawful to Smoke in a Tot Lot or within fifty feet of a Tot Lot. This prohibition does not apply to private property.
- (c) It is unlawful for an owner, operator, or manager of any facility, business, or agency to designate or maintain a smoking area in a Public Place or

Place of Employment which does not comply with the requirements set forth in Sections 43.1004 and 43.1005 of this Division.

- (d) It is unlawful for an owner, operator, or manager of any facility, business, or agency to knowingly permit ashtrays or other ash receptacles to be located in areas where smoking is prohibited by this Division.
- (e) It is unlawful to intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with the provisions of this Division.
- (f) It is unlawful to *Smoke in a Public Park or Public Beach*, except in a temporary or permanent area authorized by the City of San Diego that is clearly demarcated by signs in conformity with this Code.

Section 2. That Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 63.0102 to read as follows:

§63.0102 Use of Public Parks and Beaches Regulated

- (a) It is the purpose and intent in enacting this Division to regulate and prohibit certain activities in public parks and beaches within the City of San Diego in the interests of protecting the enjoyment and safety of the public in the use of the facilities.
- (b) It is unlawful for any person within any public park or plaza or public beach or beach areas within the City of San Diego to do any of the acts enumerated in Section 63.0102(b).
 - (1) Posting of Handbills. It is unlawful to litter, to throw, or deposit on the ground, to post or affix to any tree, fence, or structure situated

within or on any City-owned park or plaza any handbills, circulars, pamphlets, tracts, dodgers, papers, or advertisements.

(2) Loose Animals. It is unlawful to bring, leave, turn loose or allow to go free any animal, fowl, or bird of any kind in or upon any City-owned park or plaza; provided, however, that Section 63.0102(b)(2) does not apply to:

(A) Horses being led, ridden, or driven upon any roads or paths therein;

(B) Dogs when fastened to and led by a chain or line not more than eight (8) feet in length of suitable strength;

(C) Dogs which are in special areas of parks designated and posted by the Park and Recreation Director as dog exercise and training areas and so long as the regulations of the Park and Recreation Director with respect to the use of such areas are followed.

(i) Implied Consent. The presence of a dog in a designated dog exercise and training area shall constitute implied consent of the person either owning or controlling the dog to the regulations imposed by the Park and Recreation Director.

(ii) Liability and Indemnification. The presence of a dog in a designated dog exercise and training area shall constitute a waiver of liability, on behalf of the

person either owning or controlling the dog, to the City of San Diego, as well as an agreement and undertaking to protect, indemnify, defend, and hold harmless the City of San Diego for any injury or damage caused by the dog.

- (3) Fireworks. It is unlawful to discharge any firearm, firecracker, bomb, torpedo, rocket, or other fireworks without the written consent of the City Manager; provided, however, that as to the discharging of firearms Section 63.0102(b)(3) does not apply to any authorized peace officer or employee of the San Diego Zoo while in the performance of his or her duties.
- (4) Destruction of Plants. It is unlawful to injure, destroy, cut or remove any tree, shrub, plant, wood, turf, grass, soil, or rock in or growing in any City-owned park or plaza without the written permission of the City Manager.
- (5) Defacement of Property. It is unlawful to cut, break, deface, or injure any building, monument, rock, fountain, cage, pen, fence, bench, hydrant, swing, or other structure, apparatus or property, or dig caves or other depressions within the cliff areas adjacent to the ocean shoreline without the written permission of the City Manager.
- (6) Dumping. It is unlawful to deposit or dump any garbage, refuse, dirt, ashes, broken glass, crockery, bones, tin cans, or like substances, or any carcass of any animal or fowl.
- (7) Glass Containers. It is unlawful to have, possess, or use any cup, tumbler, jar, or container made of glass and used for carrying or containing any

liquid for drinking purposes, except in locations where such containers are permitted under the terms of a lease, operating agreement or permit.

- (8) Littering. It is unlawful to leave or scatter about any boxes, empty or otherwise, waste paper, remains of meals, newspaper, tobacco, remains of any material capable of being smoked, or rubbish of any kind, except that such material and matter may be deposited in receptacles provided for such purpose.
- (9) Park waters. It is unlawful to bathe in the waters of any lake, pond, pool, or at any hydrant; or throw into or deposit any dirt, filth or foreign matter in the waters of any lake, pond, pool, or in like manner pollute the same; provided, however, that nothing contained in Section 63.0102(b)(9) prohibits persons from swimming in any municipal pool in accordance with the rules and regulations provided therefor.
- (10) Mistreatment of Animals. It is unlawful to take, kill, wound, disturb, or maltreat any bird or animal, either wild or domesticated, unless the same shall have been declared noxious by the City Manager and a permit issued for the killing of such noxious animals; provided, however, that Section 63.0102(b)(10) does not apply to any exhibits in the San Diego Zoo of Balboa Park when done by any employee in the course of his or her duties.
- (11) Fires. It is unlawful to kindle or allow to be kindled any fire or bonfire, or throw upon the ground a lighted match, lighted cigar or cigarette, or anything that would be liable to set fire to any grass, tree, shrub, building, or other property; provided, however, that nothing in section

63.0102(b)(11) prohibits persons from kindling fires in stoves, ovens, or similar facilities provided by the Park and Recreation Department.

- (12) Overnight Camping. It is unlawful to camp, lodge, sleep, or tarry overnight; provided, however, that nothing in Section 63.0102(b)(12) prohibits any person from being or remaining in any park while in attendance at any function for which the City Manager has previously granted permission.
- (13) Sale of Merchandise. It is unlawful to sell or offer for sale any goods, wares, merchandise, article, or thing whatsoever without the written consent of the City Manager; however, sales of articles by nonprofit organizations that are allowed by law and conform to the City Manager's regulations are not prohibited by Section 63.0102(b)(13).
- (14) Solicitation. It is unlawful to practice, carry on, conduct, or solicit for any trade, occupation, business or profession without the written consent of the City Manager.
- (15) Shows. It is unlawful to set up, maintain, or give any exhibition, show, performance, lecture, concert, place of amusement, or concert hall without the written consent of the City Manager.
- (16) Conduct. It is unlawful to engage in any indecent conduct or indulge in any riotous, boisterous, or threatening behavior.
- (17) Sports. It is unlawful to play any game of ball or engage in any sport except at such places and at such times as shall be designated for such purpose by the Park and Recreation Department.

- (18) Use of Restrooms. It is unlawful for any person to resort to any toilet or restroom set apart for members of the opposite sex, provided that Section 63.0102(b)(18) does not apply to children under ten (10) years of age accompanied by their parent or guardian.
- (19) Bicycles. It is unlawful to ride a bicycle except: (1) where posted to authorize bicycle riding; or (2) on any designated bikeway; or (3) on any road designated and established for automotive traffic; or (4) on paved and unpaved park roads used as fire or service roads by authorized motor vehicles unless otherwise posted. Motorcycles or any other motorized vehicles are prohibited except on roads designated and established for automotive traffic.
- (20) Automobile Speed. It is unlawful to drive an automobile, motorcycle, or other self-driven vehicle upon any park or plaza property at any speed in excess of the limitations established by ordinances of The City of San Diego.
- (21) Horses and Vehicles. It is unlawful to leave or hitch any horse, or leave or park any automobile, motorcycle, or other self-driven vehicle on any park or plaza property, except at such places as are provided and designated for those purposes.
- (22) Car Washing. It is unlawful to clean, wash, polish, or to make other than emergency repairs upon any automobile, motorcycle, or other self-driven vehicle.

- (23) Vehicular Traffic. Unless making deliveries or loading onto park or plaza property, it is unlawful to drive or place any dray, truck, wagon, cart, or other traffic vehicle with a manufacturer's rate of capacity of more than one ton, carrying or regularly used or employed in carrying goods, merchandise, lumber, machinery, oil, manure, dirt, sand, soil, or any article of trade or commerce or any offensive article or material whatsoever upon any road or drive in any park or plaza, except such road or drive as may be provided or designated for such use.
- (24) Large Groups. Except as otherwise required or permitted by Chapter 2, Article 2, Division 40 of this Code, it is unlawful for any group of persons consisting of seventy-five or more persons to hold, conduct or participate in any celebration, parade, service, picnic, exercise, or other special event in any park, plaza, or beach without having first obtained a permit from the City Manager.
- (25) Obstructing Traffic. It is unlawful to obstruct the free travel of any vehicle or pedestrian over any of the walks, roads, or avenues of any park or plaza property.
- (26) Park Department Tools. It is unlawful for any person other than a Park and Recreation Department employee while in the performance of his or her duties, to move or remove from one location to another or destroy any equipment, tools, implements, or materials used by the Park and Recreation Department.

- (27) Bridle Trails. It is unlawful to enter upon or use any bridle trail except for the purpose of horseback riding.
- (28) Valves. It is unlawful to open or close any valves or switches pertaining to the water or electric services in any park, plaza or beach.

Section 3. That 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 4. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By MS
 David M. Stotland
 Deputy City Attorney

DS:lb
 06/07/06
 06/21/06 **COR. COPY**
 Dept: Police
 O-2006-132

I hereby certify that the following Ordinance was passed by the Council of the City of San Diego, at its meeting of JUL 11 2006.

ELIZABETH S. MALAND
 City Clerk

By [Signature]
 Deputy City Clerk

Approved: 7-18-06
 (date)

[Signature]
 JERRY SANDERS, Mayor

Vetoed: _____
 (date)

 JERRY SANDERS, Mayor