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ORDINANCE NUMBER O- 19620 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 21 2007

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 43.1001, 43.1002, 43.1003, 43.1004, 43.1005, 43.1006, 43.1007, 43.1008, 43.1009 AND 43.1010, AND BY AMENDING CHAPTER 6, ARTICLE 3, DIVISION 00, SECTION 63.20.16, ALL RELATING TO THE REGULATION OF SMOKING AND PROHIBITING THE USE OF TOBACCO PRODUCTS ON CITY-OWNED FISHING PIERS, ON BOARDWALKS, SEAWALLS AND THE CABRILLO BRIDGE IN BALBOA PARK

WHEREAS, the City of San Diego is committed to keeping its public beaches, parks and boardwalks 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; and

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

WHEREAS, reliable studies continue to show that breathing secondhand smoke is a significant health hazard especially for pregnant women, children, elderly people, and individuals with cardiovascular disease-impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, smoking in public parks, beaches, on public fishing piers, and on boardwalks endangers children and others by exposing them to carcinogenic secondhand smoke; and

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

WHEREAS, the City Council for the City of San Diego[Council] has determined that, in light of these findings, banning smoking and improper disposal of tobacco products in public parks, on public beaches, fishing piers, and boardwalks 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; and

WHEREAS, the Council on July 11, 2006, adopted, as Ordinance O-19508 (New Series), an Ordinance to Ban Smoking on San Diego's Parks and Beaches; and

WHEREAS, the Council has determined that there is a need to additionally ban smoking on the City's boardwalks, fishing piers, seawalls, and the Cabrillo Bridge in Balboa Park, and to remove sections of the San Diego Municipal Code that may be out-of-date or in conflict with the State of California's laws regarding the regulation of smoking, 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, 43.1003, 43.1004, 43.1005, 43.1006, 43.1007, 43.1008, 43.1009, and 43.1010 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 areas controlled by the City of San Diego and to both children and adults enjoying the City's *public parks* and *public beaches*, its *tot lots*, *City-owned fishing piers*, *boardwalks* and *seawalls*. 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 any enclosed *places of employment* except for those areas listed in California Labor Code section 6404.5(d). A further purpose of this Division is to prohibit *smoking* in and around *public parks*, *public beaches*, *City-owned fishing piers*, *boardwalks*, *seawalls* and *tot lots*.

§43.1002 Definitions

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

"*Boardwalk*" means the public walkway on Ocean Front Walk in Mission Beach, beginning at the South Mission Beach Jetty northward to the terminus of the public walkway at Ocean Boulevard and Law Street in Pacific Beach. Also, the public walkway at Ocean Beach Park and the public walkway (the La Vereda and Calle Opima rights-of-way) at Kellogg Park at La Jolla Shores Beach.

"*City-owned fishing pier*" includes, without limitation, the Ocean Beach Municipal Pier and the City-owned portions of Crystal Pier, including that area subject to leasehold.

"*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.

“*Public beach*” has the same meaning as *coastal beach*, as defined in San Diego Municipal Code [Code] section 113.0103, provided that the *coastal beach* is owned or controlled by the City of San Diego.

“*Public park*” has the same meaning as in 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.

“*Seawall*” has the same meaning as in Code section 56.54(a).

“*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 an enclosed *public place* or an enclosed *place of employment* except in a designated outdoor smoking area lawfully established in accordance with this Division or the law of the State of California.

- (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 San Diego Municipal Code [Code] sections 43.1004 and 43.1005.
- (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 tamper with, remove, deface, destroy or otherwise vandalize any sign designating the prohibition of *smoking* or a demarcated *smoking area* as described in Code section 43.1003(g) below.
- (g) It is unlawful to *smoke* in a *public park* or *public beach*, on a *boardwalk*, *seawall*, *City-owned fishing pier*, or on the Cabrillo Bridge in Balboa Park, except in a temporary or permanent area authorized by the City of San Diego that is clearly demarcated by signs in conformity with this Division.

§43.1004 Designation of Smoking Areas

- (a) Designated *smoking areas* may be established, in a temporary or permanent manner, by the City Manager, or the City Manager's designee, pursuant to the provisions of San Diego Municipal Code section 43.1007,

below, or by the owner or operator of a private facility pursuant to the provisions of this Division and the law of the State of California.

- (b) Any designated *smoking* area shall be clearly marked and shall conform with all provisions of this Division and with state law.
- (c) Notwithstanding any other provisions of this Division, any facility or area may be designated in its entirety as a no-*smoking* area by the owner or manager thereof.

§43.1005 Posting of Signs

- (a) The owner, operator or manager of any *public place* or *place of employment* shall ensure that signs are posted in accordance with this section to designate *smoking* and no-*smoking* areas.
- (b) Signs which designate *smoking* or no-*smoking* areas established by this Division shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered by this Division.
- (c) No-*smoking* signs shall be specifically placed in retail food production and marketing establishments, including but not limited to grocery stores and supermarkets open to the public, so that they are clearly visible to persons entering the establishment, and clearly visible to persons at meat and produce counters.
- (d) Signs shall be placed at all entrances to *public places* and *places of employment*, including restaurants, which read substantially as follows:

NO SMOKING EXCEPT IN DESIGNATED AREAS.

- (e) *Smoking* shall be permitted in *public places* and *places of employment* only in areas containing a sign that reads substantially as follows:

DESIGNATED SMOKING AREA.

§43.1006 [Repealed]

§43.1007 Exemptions

- (a) Prohibitions on smoking in *places of employment* shall not apply to areas deemed exempt under California Labor Code section 6404.5 (d).
- (b) Nothing in this Division shall be construed to prohibit smoking by any theatrical or musical artist while such artist is performing on stage, provided that smoking is a bona fide part of the act and that no other laws, ordinances, or regulations are violated thereby.
- (c) Except as provided in San Diego Municipal Code [Code] section 43.1007(a) above, any owner or manager of a business or other establishment subject to this Division may apply to the City Manager for an exemption or modification of the provisions of this Division due to unique or unusual circumstances or conditions, provided such request may be granted by the City Manager under state law.
- (d) The City Manager, or a designee of the City Manager, shall have the sole authority and discretion to grant or deny requests for exemptions submitted under Code section 43.1007. In passing decision on such applications, the City Manager, or designee, shall take due account of the following considerations, as they reasonably apply to each application:

- (1) Whether the applicant has demonstrated an adequate understanding of the requirements of this Division, such that it is clear that the application is not based on a misunderstanding of the minimum requirements of compliance with this Division.
- (2) The efforts the business has made to comply with the requirements of this Division.
- (3) The physical structure of the area for which the exemption is sought.
- (4) The number of employees in or near the area for which the exemption is sought.
- (5) The nature and frequency of contact that the applicant's business has with the public.
- (6) Whether physical disabilities of employees would render compliance with the requirements of this Division unreasonably difficult.

The burden of proof shall be upon the applicant to show by substantial evidence that such unique or unusual circumstances exist, that there is a necessary and compelling reason to grant an exemption.

§43.1008 Duty to Enforce

- (a) The City Manager shall be responsible for assuring compliance with this Division when facilities which are owned, operated or leased by the City of San Diego are involved.

- (b) The owner, operator or manager of any facility, business or agency shall post or cause to be posted all signs required by Code section 43.1005. Owners, operators, managers or employees of same shall be required to orally inform persons violating this Division of the provisions hereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation.
- (c) Employers shall disseminate information concerning the provisions of this Division to their employees.
- (d) Any owner, operator, manager, or employee of any facility, business, or agency who, after having informed a violator of this Division of the provisions herein, continues to witness said violation, shall have the express right to refuse business or service to that violator.

§43.1009 Violations and Penalties

- (a) Any person who violates any provision of this Division by *smoking* in a posted "No *Smoking*" area is guilty of an infraction and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (b) An owner, operator or manager of any facility, business or agency who knowingly permits patrons to violate San Diego Municipal Code section 43.1003, or who knowingly fails to discharge any duty arising from the provisions of this Division, is guilty of a misdemeanor and subject to any enforcement option or penalty provision set forth in Chapter One of this Code to address violations of law.

§43.1010 Education for No-Smoking Program

The City Manager, or the City Manager's designee, shall engage in a continuing program to inform City employees, citizens, visitors, business owners and operators of their responsibility to comply with the *smoking* prohibitions as enumerated within this Division.

Section 2. That Chapter 6, Article 3, Division 00 of the San Diego Municipal Code is amended by amending sections 63.20.16 to read as follows:

§63.20.16 Fishing Piers Owned or Operated by the City of San Diego – Regulations

- (a) [No Change]
- (b) It shall be unlawful for any person to perform any of the following acts on any fishing pier owned or operated by The City of San Diego:
 - (1) Operate a vehicle thereon without written permission from the Recreation Director, and in no event, at a speed in excess of five miles per hour.
 - (2) Use roller skates, or skate boards or ride a bicycle thereon.
 - (3) Dive or jump or cause another person to fall, dive or jump from the pier into the ocean.
 - (4) Swim, wade, surf, or skin dive within seventy-five feet (75') of the pier.
 - (5) Climb on or across the pier railing.
 - (6) Cast any fishing line or pole overhead or allow any lure or hook to pass inboard of the pier railing while casting.
 - (7) Clean any fish except at locations provided for that purpose.


- (8) Deposit trash, refuse or debris, including tobacco, cigarette butts, or remains of any material capable of being *smoked*, unless in a receptacle provided for such purpose.
- (9) Use more than one pole or drop line at the same time.
- (10) Permit any animal on the pier except a seeing-eye dog when accompanying a blind person.
- (11) Surf cast from the beach or water within two hundred feet (200') of the pier.
- (12) Fish or trap sea life for commercial purposes.
- (13) Bring onto or have in his possession on the pier any fishing spear or fishing spear gun.
- (14) Permit any vessel to approach within one hundred feet (100') of the pier without written permission of the Recreation Director.
- (15) Kindle or maintain thereon any fire or bonfire for any purpose whatsoever, whether in an open brazier, hibachi pot, or otherwise, or use any heating, cooking or lighting device other than those employing electrical energy.
- (16) *Smoke* as defined in San Diego Municipal Code section 43.1002.

(c) [No Change]

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. That 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 
Alex W. Sachs
Deputy City Attorney

AWS:mm
02/14/07
03/28/07 Cor. Copy
04/05/07 Cor. Copy 2
Or.Dept:Council President Peters.
O-2007-88
MMS#4243

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 15 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5-21-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor