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ORDINANCE NUMBER O- 20111 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 01 2011

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 63.0103 AND 63.0105, ALL RELATING TO PUBLIC PARKS, PLAYGROUNDS, BEACHES, TIDELANDS AND OTHER PROPERTY.

WHEREAS, the San Diego City Charter and the San Diego Municipal Code provide that the City Manager shall have control over the parks, plazas, and beaches of the City of San Diego (City); and

WHEREAS, the San Diego Municipal Code provides the City Manager with the authority to issue permits for the use of the City's parks, plazas, and beaches; and

WHEREAS, on June 25, 2010, the Coastal Environmental Rights Foundation filed a lawsuit against the City entitled *Coastal Environmental Rights Foundation v. City of San Diego*, Case No. 37-2010-00095062-CU-TT-CTL (the Lawsuit), alleging that the City's process for issuing park use permits under Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is discretionary and therefore subject to the California Environmental Quality Act; and

WHEREAS, based on the City's practice of treating the issuance of park use permits under Chapter 6, Article 3, Division 1 of the San Diego Municipal Code as a ministerial process based on whether space is available for the activity proposed in the permit application, the City amended Chapter 6, Article 3, Division 1 of the San Diego Municipal Code on May 24, 2011, pursuant to Ordinance Number O-20058 to conform the Municipal Code to the City's long-standing practice of how it issues park use permits ministerially; and

WHEREAS, on May 27, 2011, the San Diego Superior Court issued a ruling in the Lawsuit in which the Court found that Chapter 6, Article 3, Division 1 of the San Diego Municipal Code, as amended, gives the City discretion in the issuance of park use permits; and

WHEREAS, the City has appealed this ruling, and therefore the decision is not yet final; the City is nevertheless processing amendments to the permitting provisions of the San Diego Municipal Code for park use permits for the purpose of codifying the existing practice and ensuring the process is ministerial (with limited exception as set forth below); and

WHEREAS, the City hereby amends Chapter 6, Article 3, Division 1 of the San Diego Municipal Code to clarify that permits issued pursuant to section 63.0103 are, unless specified otherwise, issued based on the capacity of the park and provides that rules and regulations for the issuance of park use permits, including those determining park capacity, are to be based on objective standards; and

WHEREAS, the City desires to clarify and streamline the process for applicants for events at a park or beach that also require a Special Event Permit, in that these applicants would be able to apply for a Special Event Permit after receipt of a reservation of that space from the City Manager; applicants would then receive their park use permit concurrently with any Special Event Permit; and

WHEREAS, the City desires to codify the existing practice of a Summer Moratorium for Special Events in the City's Developed Regional Parks, specify those Special Events that are a long-standing exception to the Summer Moratorium, and create a process for the waiver of the Summer Moratorium; and

WHEREAS, the City desires to codify the existing practice of not issuing park use permits on City holidays, including the weekend after a Friday holiday and the weekend before a

Monday holiday for events in Balboa Park, Mission Bay Park, Presidio Park, or Shoreline Parks on Memorial Day, Fourth of July, and Labor Day, except for specific events at certain locations; and

WHEREAS, the City desires to have discretion over certain specified park activities; and

WHEREAS, by way of these amendments, the City intends to effect no actual change to the City's long-standing implementation of Chapter 6, Article 3, Division 1 of the San Diego Municipal Code as amended on May 24, 2011, and as existing before that amendment, or to the City's long-standing practice of issuing permits thereunder ministerially, except as to the above-referenced changes: codifying and creating a reservation system for Special Events at parks and beaches, creating a waiver process for the Summer Moratorium, and specifying those park activities that the City desires to have discretion to approve, as set forth in section 63.0103(d)(4); NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is amended by amending sections 63.0103 and 63.0105 to read as follows:

§63.0103 City Manager Permit Procedure

Whenever doing any of the acts specified in this Article is conditioned upon obtaining a permit, permission, or consent from the City Manager, the following procedure shall be followed:

(a) through (c) [No change in text.]

(d) The City Manager shall issue the permit, permission, or consent if there is capacity for the proposed activity; except as set forth in (1) through (3) below:

- (1) An applicant for a Special Event, as defined in Chapter 2, Article 2, Division 40, to be held at a park or beach, shall apply for a reservation of space, which, if granted, is effective until the Special Event Permit is granted or denied. The City Manager shall consider all requests for reservations of space filed at least 120 days before the date of the proposed event; however, the City Manager may consider any permit which is filed less than 120 days before the proposed event. A reservation of space may be granted after consideration of factors such as previously scheduled events at and adjacent to the requested location, the park capacity, impacts to the park that may be caused by the event, any restrictions on Special Events such as the Summer Moratorium, and any recommendation from the appropriate park advisory body. A permit as required by Chapter 6, Article 3 shall be issued concurrently with the Special Event Permit.
 - (A) There will be no reservations granted for Special Events in Balboa Park, Mission Bay Park, Presidio Park, or the Shoreline Parks, which are those parks contiguous to the shoreline or beach in the communities of Ocean Beach, Mission Beach, Pacific Beach, and La Jolla, during the Summer Moratorium, which is from the Saturday prior to Memorial Day and the preceding Saturday and Sunday

through Labor Day, except for the following Special

Events:

- (i) Balboa Park: San Diego Pride Festival, AFC Half Marathon, Rock and Roll Marathon, Summer Concerts, Patrons of the Prado, Philippine Art Festival, Balboa Park 8 & 3 Mile Runs, 47th Balboa Park 4 Mile.
- (ii) Mission Bay Park: Over the Line, Rock and Roll Marathon, Kai Elua.
- (iii) Shoreline Parks: La Jolla Concert Series, Summer Fest, Taste at the Cove, Ocean Beach Street Fair and Chili Cook-off.
- (iv) Sports Leagues and Tournaments: Sports Leagues and tournaments may be permitted in athletic areas in Presidio Park, Robb Field, Santa Clara, Dusty Rhodes, Mission Bay Athletic Area (Bob McEvoy Fields), and Balboa Park.

- (B) An applicant who seeks a waiver from this provision shall make a written request to the City Manager not less than 120 days in advance of the event, describing the Special Event and explaining why the waiver should be granted. Within 10 business days of the request, the City Manager shall place the item on the next available agenda for the

appropriate park advisory committee. The City Manager shall issue a final decision within 10 business days after the vote by the park advisory committee.

- (2) No permit, permission, or consent will be issued under this section for events occurring in Balboa Park, Mission Bay Park, Presidio Park or Shoreline Parks on Memorial Day, Fourth of July, Labor Day, including the following Saturday or Sunday when the holiday falls on Friday, or the preceding Saturday or Sunday when the holiday falls on a Monday, except for permits for sports leagues and tournaments, and for fireworks at Ellen Scripps Browning Park, Mission Bay, and Ocean Beach for the Fourth of July.
- (3) Permits, permission, or consent required pursuant to the following sections shall be issued at the discretion of the City Manager: 63.08; 63.20.11; 63.20.16; 63.20.20; 63.25.11; 63.25.51; 63.25.52, 63.25.72; 63.0102(b)(4), (5), (7), (10), (12), (13), (14); and 63.0201. The City Manager shall consider applications for these activities filed 120 days in advance; however, the City Manager may consider any permit which is filed less than 120 days before the proposed activity. This section shall not apply to permits required pursuant to sections 63.08 and 63.0102(b)(3) for the discharge of fireworks, which shall be issued if there is park capacity for the event:

(e) through (g) [No change in text.]

- (h) The City Manager shall notify the applicant in person or by mail of his or her action granting or denying the application or alternative application. The City Manager, in denying an application, may authorize the gathering at such other date, time, or location as may be available, based on park capacity. If the applicant wishes to accept the proposed alternate date, time, or location, he or she shall, within two days of receiving the City Manager's notification, file a notice of acceptance with the City Manager. The City Manager shall thereupon issue a permit.
- (i) [No change in text.]
- (j) The City Manager may make such other rules and regulations as may be reasonably necessary for the implementation of Section 63.0103. These rules and regulations, including those determining park capacity, shall be based on objective standards, except for those approvals referenced in section 63.0103(d)(1)-(3). An application submitted under this Article is subject to the rules and regulations in place at the time the permit application is complete.

§63.0105 Exceptions to Application of Regulations

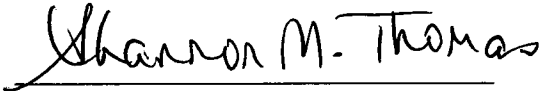
- (a) Nothing in this Division shall be construed to prevent any employee or agent of the City of San Diego from performing any duty that, in the opinion of the City Manager or his or her designee, may be thought necessary or proper for the maintenance, improvement, or betterment of any park, plaza or beach as may be in the best interests of the City of San Diego.

- (b) City sponsored events, which include those by City recognized Park and Recreation Department Advisory Committees, are exempt from the requirements set forth in section 63.0103.

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

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


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Shannon M. Thomas
Deputy City Attorney

SMT:als
9/21/2011
9/27/2011 Cor.Copy
10/12/2011 REV.
Or.Dept: City Atty.
Doc. No. 209836_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 14 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12-1-11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor