

ORDINANCE NUMBER O- 20576 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 24 2015

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 2, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 52.80.01 RELATING TO TRESPASS AND EXCEPTIONS THERETO.

WHEREAS, the City of San Diego's trespass ordinance currently prohibits trespassing on privately operated business premises which are open to the public by individuals using the premises for a purpose contrary to the business functions or services, and who refuse to leave, or who return to the premises within forty-eight hours after being asked to leave; and

WHEREAS, San Diego's trespass ordinance is codified in section 52.80.01 of the San Diego Municipal Code (Municipal Code); and

WHEREAS, there is no identical trespass statute in state law; and

WHEREAS, San Diego's trespass ordinance offers additional protections beyond those offered by state law for business owners and operators; and

WHEREAS, San Diego's trespass ordinance is a valuable enforcement tool for the San Diego Police Department; and

WHEREAS, the exceptions contained within the trespass ordinance require updating in order to clarify that they are consistent with state and federal law; and

WHEREAS, the amendment to Municipal Code section 52.80.01(c)(1) allows for application of the current scope of protection offered by the Unruh Civil Rights Act; and

WHEREAS, the amendment to Municipal Code section 52.80.01(c)(2) ensures content neutrality and broadens the exceptions to include all activity protected by the state and federal constitutions; and

WHEREAS, the San Diego City Council (City Council) finds that the City has a substantial interest in promoting public safety, and protecting the rights of business owners and operators against unlawful trespassers; and

WHEREAS, the City Council finds it necessary to amend the trespass ordinance to clarify and be consistent with state and federal law; NOW, THEREFORE,

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

Section 1. That Chapter 5, Article 2, Division 00 of the San Diego Municipal Code is amended by amending section 52.80.01, to read as follows:

§52.80.01 Trespasses upon Privately Operated Business Premises Prohibited

- (a) No person shall have the right to use privately operated business premises which are open to the general public for any purpose which is contrary to the functions or services provided thereon without the consent of the owner, operator, or agent thereof. It shall be unlawful for any person so using such property to refuse or fail to leave such property upon being requested to leave by the owner, operator, or agent thereof.
- (b) It shall be unlawful for any person without the permission of the owner, operator, or agent of privately operated business premises which are open to the general public to enter upon such premises within forty-eight (48) hours after having been requested by the owner, operator, or agent thereof to leave pursuant to the provisions of subdivision (a).
- (c) Exceptions. The provisions of this section shall not apply in any of the following instances:

- (1) where their application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provisions of law relating to prohibited discrimination against any person;
- (2) where their application would result in an interference with or inhibition of lawful labor union activities that are permitted to be carried out on the property by state or federal law, or activities protected by the California Constitution or the United States Constitution;
- (3) where their application results in or is coupled with an act prohibited by section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers; or
- (4) where the person who is upon the privately operated business premises which are open to the general public is present under claim or color of legal right. This exception is applicable to situations wherein public officials are present in the course of their official duties and to situations involving disputes wherein the participants have available to them practical and effective civil remedies such as: marital and post-marital disputes; child custody or visitation disputes; disputes regarding title to or rights in legal property; landlord-tenant disputes; disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute; business-type disputes

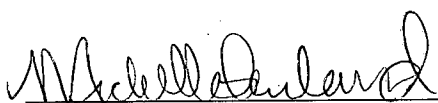
such as those between partners; debtor-creditor disputes; and instances wherein the person claims a right to be present pursuant to order, decree, or process of a court.

- (d) The purpose of this section is to protect the property rights of private business operators who open business premises to the public for specific business functions or services, while also recognizing and protecting the rights conferred by state and federal law. Nothing in this section should be construed to limit any right conferred by statutory or constitutional state or federal law.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the 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 
Michelle A. Garland
Deputy City Attorney

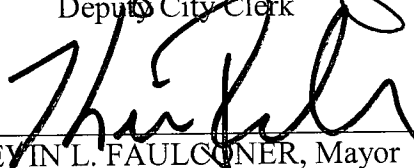
MAG:amt
September 11, 2015
Or.Dept:Police
Doc. No.: 1005988_5

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 10 2015.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11/19/15
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 10 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 24 2015

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Aty Brady, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 27 2015, and on NOV 24 2015

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Aty Brady, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20576

STRIKEOUT ORDINANCE

OLD LANGUAGE: Struck-Out

NEW LANGUAGE: Double Underline

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- (b) It shall be unlawful for any person without the permission of the owner, operator, or agent of privately operated business premises which are open to the general public to enter upon such premises within forty-eight (48) hours after having been requested by the owner, operator, or agent thereof to leave therefrom pursuant to the provisions of subdivision (a).
- (c) Exceptions. The provisions of this section shall not apply in any of the following instances:

- (1) ~~W~~here their application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provisions of law relating to prohibited discrimination against any person on account of color, race, religion, sex, creed, ancestry or national origin;
- (2) ~~W~~here their application would result in an interference with or inhibition of peaceful picketing directed toward the business establishment, lawful labor union activities that are permitted to be carried out on the property by state or federal law, or activities protected by the California Constitution or the United States Constitution peaceful political activities;
- (3) ~~W~~here their application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers; or
- (4) ~~W~~here the person who is upon the privately operated business premises which are open to the general public is present under claim or color of legal right. This exception is applicable to situations wherein public officials are present in the course of their official duties and to situations involving disputes wherein the participants have available to them practical and effective civil remedies such as: marital and post-marital disputes; child custody or visitations disputes; disputes regarding title to or rights in legal

property; landlord—tenant disputes; disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute; business—type disputes such as those between partners; debtor—creditor disputes; and instances wherein the person claims a right to be present pursuant to order, decree, or process of a court.

- (d) The purpose of this section is to protect the property rights of private business operators who open business premises to the public for specific business functions or services, while also recognizing and protecting the rights conferred by state and federal law. Nothing in this section should be construed to limit any right conferred by statutory or constitutional state or federal law.

MAG:amt
September 11, 2015
Or.Dept:Police
Doc. No.: 1018589_5