

000191 REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 54
10/9

TO: CITY ATTORNEY
2. FROM (ORIGINATING DEPARTMENT): Environmental Services Department
3. DATE: 7/3/2007

4. SUBJECT: Amend San Diego Municipal Code by adding section 54.0110 "Unauthorized Encroachments Prohibited"

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Nancy Lovell 573-1206 MS 1103-B
6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): Phil Balmanno 573-1260 MS 1103-B
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST: No Fiscal Impact
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Chr An</i>	7/27/07	8	DEPUTY CHIEF	<i>J. Haas</i>	8-14-07
2	DEVELOPMENT SERVICES DEPT, EAS	<i>Mark Mc</i>	7/31/07	9	COO	- Not required -	
3	EOC	EXEMPT		10	CITY ATTORNEY	<i>Paul C. Brownberg</i>	8-27-07
4	LIAISON OFFICE	<i>CS</i>	8/1/07	11	ORIGINATING DEPARTMENT	<i>Chr An</i>	8-29-07
5	FINANCIAL MANAGEMENT	<i>Angela White</i>	8/9/07		DOCKET COORD:	9/13 <i>CS</i>	COUNCIL LIAISON: <i>CS</i>
6	AUDITOR	<i>Josua Allison</i>	8/14/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7					<input type="checkbox"/> REFER TO:	COUNCIL DATE: 9/25/07	

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

Amending the San Diego Municipal Code by adding section 54.0110 "Unauthorized Encroachments Prohibited" to replace the repealed Municipal Code 62.0306 "Unauthorized Encroachments Prohibited" which was inadvertently deleted by revisions to the Land Development Code in November 2005.

11A. STAFF RECOMMENDATIONS:
Adopt the ordinance.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA guidelines section 15060(c)(3).

HOUSING IMPACT: N/A

OTHER ISSUES: None

CITY CLERK INSTRUCTIONS: Please send a copy of the completed resolution to Stephen Grealy, MS 1103-B

000193

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 3, 1997 REPORT NO:
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Environmental Services Department
SUBJECT: Amend San Diego Municipal Code by adding section
54.0110 "Unauthorized Encroachments Prohibited"
COUNCIL DISTRICT(S): Citywide
CONTACT/PHONE NUMBER: Nancy Lovell (858)573-1206/ Phil Balmanno (858)573-1260

REQUESTED ACTION:

Amend San Diego Municipal Code by adding Section 54.0110 "Unauthorized Encroachments Prohibited".

STAFF RECOMMENDATION:

Adopt the ordinance.

EXECUTIVE SUMMARY:

One of the functions of the Environmental Services Department's (ESD) Code Enforcement Section is to enforce encroachments of refuse and recycling dumpsters or bins in public rights-of-ways. Due to the revisions to in the Land Development Code, Municipal Code Section 62.0306 "Unauthorized Encroachments Prohibited" was repealed on November 28, 2005 by O-19446 n.s.; effective February 9, 2006. This section was the principal encroachment enforcement code section for ESD. There is currently no enforcement code section which states that it is unlawful for persons to place dumpsters in the public rights-of-way without an encroachment permit.

In order to eliminate potential safety hazards and liability associated with these types of encroachments, ESD recommends that a new code section (SDMC 54.0110) be added to Chapter 5 (Public Safety, Morals & Welfare), Article 4 (Public Hazards and Public Nuisances), Division 1 (General Provisions). As with the inadvertently deleted code section, the new code section also addresses any other unauthorized object on public property or in the public right-of-way which is not a facility or structure as those terms are used in the Land Development Code. These objects would include, but not be limited to, such items as skate board ramps and basketball apparatus, which are the responsibility of other City Departments.

FISCAL CONSIDERATIONS:

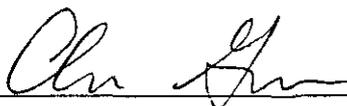
No Fiscal Impact.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Municipal Code Section 62.0306 "Unauthorized Encroachments Prohibited" was repealed on November 28, 2005 by O-19446 n.s.; effective February 9, 2006.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A



for Elmer L. Heap Jr., Director



R. Haas, Deputy Chief Operating Officer

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 54.0110 ENTITLED "UNAUTHORIZED ENCROACHMENTS PROHIBITED" AND RELATING TO PROHIBITING UNAUTHORIZED ENCROACHMENTS ON PUBLIC PROPERTY OR IN THE PUBLIC RIGHT-OF-WAY.

WHEREAS, former San Diego Municipal Code section 62.0306, which prohibited unauthorized encroachments on public property or in the public right-of-way, was repealed in 2006 as a result of revisions to the Land Development Code; and

WHEREAS, the Solid Waste Code Enforcement Unit of the Environmental Services Department had utilized former section 62.0306 as an enforcement tool with respect to unauthorized solid waste or recycling dumpsters and bins discovered in the public right-of-way or on public property; and

WHEREAS, the Environmental Services Department believes that adding section 54.0110 to the San Diego Municipal Code is necessary in order to eliminate potential safety hazards and liability associated with these types of unauthorized encroachments; NOW THEREFORE,

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

Section 1. That Chapter 5, Article 4, Division 1 of the San Diego Municipal Code is hereby amended by adding section 54.0110 to read as follows:

§ 54.0110 Unauthorized Encroachments Prohibited

It is unlawful for any *person* to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

Section 2. That the above activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(3).

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 Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
07/13/07
Or.Dept:ESD
O-2008-3

I hereby certify that the foregoing ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

NEW LANGUAGE – Underlined

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 54.0110 ENTITLED “UNAUTHORIZED ENCROACHMENTS PROHIBITED” AND RELATING TO PROHIBITING UNAUTHORIZED ENCROACHMENTS ON PUBLIC PROPERTY OR IN THE PUBLIC RIGHT-OF-WAY.

§ 54.0110 **Unauthorized Encroachments Prohibited**

It is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

GCL:mb
07/13/07
Or.Dept:ESD
O-2008-3