

MEMORANDUM OF LAW

DATE: March 18, 1988

TO: Councilmember Bob Filner

FROM: City Attorney

SUBJECT: Alcohol Ban in Public Parks in San Ysidro

Reference is made to your memorandum of February 16, 1988 asking for comments on the legality of banning the consumption of alcoholic beverages in public parks in San Ysidro. Your memorandum also expressed interest in any information regarding a proposal of this type and whether it has surfaced in any other community in the past.

"A charter city has inherent authority to control, govern and supervise its own parks." *Simons v. City of Los Angeles*, 63 Cal.App.3d 455, 468 (1976). The San Diego City Charter recognizes that authority by providing that ". . . The City Council shall by ordinance adopt regulations for the proper use and protection of said park property. . . ." San Diego City Charter, art. V, . 55. The authority of a municipality to regulate conduct in its public parks is generally recognized. A municipal park is a pleasure ground set apart for the recreation of the public through promotion of its health, welfare and enjoyment. To secure these beneficial objectives, bodies and officials entrusted with the management and control of parks have broad powers to affect rules and regulations. *People v. Nahman*, 2918 N.Y. 95, 81 N.E. (2d) 36 (1948).

The San Diego City Council has the legislative power to ban the consumption of alcoholic beverages in the public parks of San Ysidro. As a chartered city, The City of San Diego is empowered to "make and enforce within its limits all such local, police and sanitary and other regulations as are not in conflict with general laws." Cal. Const., art. XI, . 7. The City is required to show that any ordinance regulating conduct in the public parks is reasonably related to promoting the public health, safety, comfort and welfare and that the means to accomplish that promotion are reasonably related to that purpose. *Higgins v. City of Santa Monica*, 62 Cal.2d 24, 30 (1964).

The legal standard can be met by showing a factual basis for public health, safety and welfare problems attributed to alcohol consumption in the public parks of San Ysidro. A staff study of alcohol-related contacts encountered by the San Diego Police Department's Southern Division would be one means to determine whether there is a need for the proposed regulation. Surveys of

community groups is another source for acquiring factual data and have been used in the past to obtain meaningful input for proposals to ban alcohol consumption (see Attachment 1 showing responses to a recent survey of drinking on public beaches).

The issue of alcohol consumption in public parks has surfaced in other municipalities. A model ordinance regulating conduct in public parks and published by the National Institute of Municipal Law officers contains a provision banning alcohol consumption in public parks. NIMLO Model Ordinance Service, section 10-407, Charles S. Rhyne, (1981).

A City of Santa Cruz ordinance regulating the consumption of alcoholic beverages in state parks was held not to be in conflict with state law and enforceable by city law enforcement officers upon state park property located within the territorial limits of the City of Santa Cruz. 40 Ops.Cal.Atty.Gen. 10 (1962).

A City of Fresno ordinance banning alcohol consumption on city streets, alleys, sidewalks or playgrounds survived a court challenge. In upholding the ordinance, the court stated:

No clairvoyance is required to visualize that the consumption of alcoholic beverages on public streets, etc., could well constitute a social evil and police problem, particularly when we consider such a public gathering place as a mall where large numbers of the people congregate into the evening.

People v. Butler, 252 Cal.App.2d Supp. 1053, 1055 (1967).

In summary, The City of San Diego can ban the consumption of alcoholic beverages in public parks of San Ysidro if such action is a reasonable means to address a social evil and police problems in those areas.

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By

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Attachment

ML-88-30