

(3-2003)

- (e) The owner of every vessel having a permit to use a designated beaching area shall pay the City of San Diego an initial permit fee payable upon issuance, and a yearly fee thereafter, to be paid on the first business day of March each year. The fees specified herein shall be established by the City Manager upon the recommendation of the Director.

*(Amended 5-31-1994 by O-18073 N.S.)*

### **§63.30 Utilization of the Environmental Growth Fund**

Pursuant to the Environmental Growth Fund provision of the San Diego Charter section 103.1a, it is incumbent upon the City Council of the City of San Diego to use moneys derived from that fund exclusively for the purpose of preserving and enhancing the environment of the City of San Diego.

The City Council of the City of San Diego, in implementing said Charter provision, shall allocate all moneys within the fund not employed to pay the debt service on bonds, as set forth in San Diego Charter section 103.1a as follows:

- (a) The difference between two-thirds of the Environmental Growth Fund and the amount actually necessary to make principle and interest payments on outstanding open space bonds shall be accumulated and utilized solely for the purpose of providing funds for the acquisition of open space lands.
- (b) The remaining one-third of the Environmental Growth Fund shall be used for the purpose of preserving and enhancing the environment and shall be allocated to utilization each year, by the City Council, during the budget process, in accordance with the following priorities:
- (1) Open space maintenance, including litter removal and control;
  - (2) To provide matching funds for acquiring open space in cooperation with other private or governmental entities;
  - (3) Regional Park maintenance;
  - (4) Any other purposes consistent with the San Diego Charter section 103.1a.
- (c) The City Manager of the City of San Diego shall prepare, for approval by the City Council, regulations for the administration of the open space matching grant program.

(3-2003)

- (d) If the City Manager determines that anticipated revenues in any fiscal year will be insufficient to maintain existing City services necessary for preserving and enhancing the environment, the City Manager may ask the City Council to temporarily suspend compliance with this Section in order to allow Environmental Growth Funds to be allocated consistent with San Diego Charter section 103.1a. A majority vote of the City Council can temporarily suspend compliance with this Section for that fiscal year. Creating a mechanism for the suspension of this Section is necessary to prevent the abrogation of duties, obligations, and prerogatives of the City Council in the preparation and passage of the Annual Appropriation Ordinance pursuant to San Diego Charter section 71.

*(Amended 3-17-2003 by O-19159 N.S.)*

#### **§63.40 San Diego — La Jolla Underwater Park Ecological Reserve — Boating Regulations**

- (a) Definitions
- (1) As used herein, the San Diego — La Jolla Underwater Park Ecological Reserve is all that portion of District 19 consisting of the Pacific Ocean and tide and submerged lands lying within the boundaries of the City of San Diego, County of San Diego, State of California beginning at the most northerly point of Alligator Head Point as shown on La Jolla, Map 352 filed in the office of the County Recorder of said County; having a latitude of 32 degrees 51' 04", and a longitude of 117 degrees 16' 20", thence northeasterly to a point having a latitude of 32 degrees 51' 13" north and a longitude of 117 degrees 16' 10" west, thence northerly to a point being the intersection of longitude 117 degrees 16' 15" west with the westerly prolongation of the southerly line of Pueblo Lot 1298 as shown on the map of Pueblo Lands of San Diego made by James Pascoe, known as Miscellaneous Map No. 36 filed in the office of the County Recorder of said County; thence easterly along said prolongation of the southerly line of Pueblo Lot 1298 to the intersection with the Mean High Tide Line; thence in a generally southerly direction along said Mean High Tide Line to the point of beginning, as established by license agreement between The City of San Diego and the State of California pursuant to Council Resolution No. R-253779, adopted March 16, 1981.
- (2) As used herein, the terms "vessel" or "boat" are as defined in Harbors and Navigation Code section 651 and shall include motorized and non-motorized craft, including wind surfers, but shall exclude surf

(3-2003)

boards and paddle boards.

- (b) Except as provided herein, no person shall operate a vessel or boat at a speed in excess of 5 nautical miles per hour within any area marked by buoys or markers which are moored along the perimeter, or as close thereto as is practicable, or adjacent to that portion of the San Diego — La Jolla Park Ecological Reserve as shown on Document No. O-16857 on file in the office of the City Clerk, which is hereby designated a restricted area pursuant to Harbors and Navigation Code section 660 and described as follows:

Beginning at Point "97" on Alligator Head Point thence 1939.69 feet N 20 degrees 18' 47.0" E, more or less, to Point "42" (Lambert Coordinates: N 252,279.844, E 1,686,757.560; Geodetic Coordinates 32 degrees 51' 21.0" North Latitude, 117 degrees 16' 12.0" West Longitude), thence 2662.27 feet S 88 degrees 08' 12.2" E, more or less, to Point "43" (Lambert Coordinates N 252,193.281, E 1,689,418.425; Geodetic Coordinates 32 degrees 51' 20.4" North Latitude, 117 degrees 15' 40.8" West Longitude), thence 125 feet N 30 degrees 0' 00" E, more or less, to Point "44" (Lambert Coordinates N 252,301.534, E 1,689,480.925; Geodetic Coordinates 32 degrees 51' 21.47" North Latitude, 117 degrees 15' 40.08" West Longitude), thence 3028.48 feet N 10 degrees 24' 55.6" E, more or less, to Point "45" (Lambert Coordinates N 255,280.115 E 1,690,028.427; Geodetic Coordinates 32 degrees 51' 51.0" North Latitude, 117 degrees 15' 34.0" West Longitude), thence 1741.11 feet S 81 degrees 24' 29.1" E, more or less, to Point "82" (Lambert Coordinates N 255,020.000 E 1,691,750.000; Geodetic Coordinates 32 degrees 51' 48.59" North Latitude, 117 degrees 15' 13.78" West Longitude), thence generally southerly and westerly following the Mean High Tide Line to point of beginning.

- (c) Except as provided herein, no person shall use or operate a vessel or boat within an area marked by buoys or markers which are moored within that portion of the San Diego — La Jolla Park Ecological Reserve, or as close thereto as is practicable, as shown on Document No. OO-16857 on file in the office of the City Clerk, which is hereby designated a special use area pursuant to Harbors and Navigation Code section 660 and described as follows:

Beginning at Point "97" on Alligator Head Point, thence 2771.67 feet N 59 degrees 29' 31.1" E, more or less, to Point "90" (Lambert Coordinates: N 251,867.843 E 1,688,472.153; Geodetic Coordinates: 32 degrees 51' 17.09" North Latitude, 117 degrees 15' 51.85" West Longitude), thence 400 feet S 30 degrees 30' 28.9" E, more or less, to Point "91" (Lambert Coordinates: N

(3-2003)

251,523.220 E 1,688,675.217; Geodetic Coordinates: 32 degrees 51' 13.70" North Latitude, 117 degrees 15' 49.43" West Longitude), thence 2450 feet S 59 degrees 29' 31.1" W, more or less, to Point "99" (Lambert Coordinates: N 250,279.455 E 1,686,564.399; Geodetic Coordinates: 32 degrees 51' 01.2" North Latitude, 117 degrees 16' 14.0" West Longitude), thence generally southerly and westerly following the Mean High Tide Line to point of beginning.

- (d) The provisions of subsections (b) or (c) shall not apply to any vessel or boat used or operated by or under the authority of any governmental agency nor during emergency use or operation affecting life or property.
- (e) The City Manager may promulgate any additional rules and regulations necessary and consistent with these provisions regulating or limiting the use of boats, vessels, surf boards or paddle boards within the San Diego — La Jolla Underwater Park Ecological Reserve designated herein.
- (f) The City Manager shall cause appropriate buoys or markers to be moored to mark the perimeters of the special use and restricted areas hereby designated, or as close thereto as shall be practicable. Between October 1st and April 30th of each year, the City Manager is further authorized to reduce the size of the boating prohibited zone established in subsection c by removing buoys or markers as may be appropriate to accommodate seasonal demands.

*(Amended 10-2-1989 by O-17350 N.S.)*

### **§63.50 Restricting The Use Of Mission Beach Park**

- (a) From and after the effective date of this measure, the Mission Beach Park property owned by the City of San Diego shall be restricted to the following uses:
  - (1) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.
  - (2) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building and Roller Coaster where economically feasible.
  - (3) Incidental and related uses to those uses authorized by (a) and (b)

(3-2003)

above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature.

- (b) Immediately following the effective date of this measure, the City Council shall initiate a program to carry out the provisions of this measure by amending the appropriate planning and zoning documents applicable to the Mission Beach Park property so that they are consistent with this measure. This program shall include, as necessary, amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, and all applicable City Zoning Ordinances.
- (c) Definitions. For purposes of this Initiative measure, the following words and phrases shall have the following meanings:
- (1) "Mission Beach Park" shall mean that real property together with fixtures and appurtenances owned by the City of San Diego and generally described as follows:
- Pueblo lands — Portion of lot 1803 West of Mission Boulevard, South of Ventura Place, North of San Fernando Place and East of Ocean Front Walk.
- (2) "Effective date" means the date upon which this measure is enacted by the City Council, or the date upon which it is approved by the voters, whichever occurs first.
- (d) Implementation. The City Council, City Planning Commission, and City staff are hereby directed to take any and all actions necessary under this Initiative measure, including but not limited to adoption and implementation of any amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, all applicable City Zoning Ordinances, or City Code, reasonably necessary to carry out the intent and purpose of this Initiative measure. Said actions shall be carried out forthwith.
- (e) Guidelines. The City Council may adopt reasonable guidelines to implement this Initiative measure following notice and public hearing, provided that any such guidelines shall be consistent with the intent and purpose of this measure.
- (f) Exemptions for Certain Projects. This measure shall apply to all proposed

(3-2003)

development or redevelopment of Mission Beach Park except a development or redevelopment proposal which has obtained a "vested right" as of the effective date of this measure. For purposes of this measure, a "vested right" shall have been obtained only if each of the following criteria is met:

- (1) The project has received its final discretionary approval; and
- (2) Substantial expenditures have been incurred in good faith reliance on the final discretionary approval; and
- (3) Substantial construction has been performed on the property in good faith reliance on the final discretionary approval.

The "substantiality" of the expenditures incurred and of construction performed and the question of whether or not such expenditures and construction were in "good faith" are questions of fact to be determined on a case by case basis by the City Council following application by the landowner or developer and upon notice to the interested public, and following public hearing.

- (g) Amendment or Repeal. This measure may be amended or repealed only by a majority of the voters voting at an election thereon.
- (h) Severability. If a section, subsection, sentence, phrase, clause, or portion of this Initiative is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. It is hereby declared that this Initiative and each section, subsection, sentence, clause, phrase, part, or portion thereof would have been adopted or passed irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portion be declared invalid or unconstitutional.

*(Addition of Sec. 63.50 approved on 7-28-1987 by O-16914 N.S. and voter approved 11-3-1987.)*