

ORDINANCE NUMBER O- 21386 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 08 2021

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 3, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 83.0202 AND 83.0203; AND CHAPTER 8, ARTICLE 5, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTION 85.10, ALL RELATING TO TRAFFIC, VEHICLES, AND PEDESTRIANS.

WHEREAS, the City Attorney is bringing forward San Diego Municipal Code (Municipal Code) sections for repeal that are preempted by state law or are otherwise constitutionally problematic; and

WHEREAS, a municipal ordinance is invalid if it attempts to impose additional requirements in a field that has been preempted by general law; and

WHEREAS, Municipal Code section 83.0202, titled "Interfering with Traffic," makes it unlawful for any person to stand or sit in a roadway if they are interfering with traffic; and

WHEREAS, Municipal Code section 83.0202 was originally adopted in April 21, 1942 by San Diego Ordinance O-2423 N.S. and incorporated in the Municipal Code on January 22, 1952 by San Diego Ordinance O-5046 N.S. (originally numbered section 83.03 and renumbered to section 83.0202 on November 1, 1999 by San Diego Ordinance O-18701 N.S.) and has remained in effect without substantive change; and

WHEREAS, pedestrian activity on roadways is already closely regulated by the California Vehicle Code, and the California Supreme Court has struck down ordinances in other cities identical to section 83.0202 as preempted (*Pipoly v. Benson*, 20 Cal. 2d 366, 375 (1942); *People v. McNeil*, 96 Cal. App. 4th 1302, 1306-308 (2002)); and

WHEREAS, Municipal Code section 83.0203, titled "Pedestrians Standing on Sidewalks," makes it unlawful for any pedestrians in a business district to stand on the sidewalk, except as near as practicable to the building line or the curb line; and

WHEREAS, Municipal Code section 83.0203 was originally adopted on April 21, 1942 by San Diego Ordinance O-2423 N.S. and incorporated in the Municipal Code on January 22, 1952 by San Diego Ordinance O-5046 N.S. (originally numbered section 83.04 and renumbered to section 83.0203 on November 1, 1999 by San Diego Ordinance O-18701 N.S.) and has remained in effect without substantive change; and

WHEREAS, section 83.0203 was found unconstitutionally vague by a federal District Court because it does not provide adequate notice to the public as to what conduct is prohibited or guidance to police officers as how it should be applied (*Lee v. City of San Diego*, 492 F. Supp. 3d 1088, 1095 (S.D. Cal. 2020)); and

WHEREAS, Municipal Code section 85.10, titled "Intoxicated Person in Vehicles – Prohibited," prohibits persons under the influence of liquor or drugs to be in or about a motor vehicle when on a street or public place; and

WHEREAS, Municipal Code section 85.10 was originally adopted on February 4, 1958 by San Diego Ordinance O-7748 N.S. and has remained in effect without substantive change; and

WHEREAS, since its enactment, the California Supreme Court has held that local public intoxication ordinances are invalid because state law preempts local ordinances addressing criminal aspects of public intoxication (*In re Koehne*, 59 Cal. 2d 646 (1963); *In re Zorn*, 59 Cal. 2d 650 (1963); *People v. Lopez*, 59 Cal. 2d 653 (1963)); and

WHEREAS, the California Penal Code already regulates many aspects of public intoxication, for example, California Penal Code section 647(f), makes it illegal for any person to be intoxicated (either by alcohol or drugs) in a public place while either blocking a sidewalk or being unable to care for himself or others; California Vehicle Code section 23152 prohibits driving while under the influence of alcohol or drugs; and, California Health & Safety Code section 11550 makes it illegal to use or to be under the influence of certain controlled substances; and

WHEREAS, the City Attorney recommends that the Council of the City of San Diego repeal Municipal Code sections 83.0202, 83.0203, and 85.10 because it will prevent unnecessary constitutional challenges and potential unintended, arbitrary enforcement; NOW, THEREFORE,

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

Section 1. That Chapter 8, Article 3, Division 2 of the San Diego Municipal Code is hereby amended by repealing sections 83.0202 and 83.0203.

Section 2. That Chapter 8, Article 5, Division 00 of the San Diego Municipal Code is hereby amended by repealing section 85.10.

Section 3. 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 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Paige E. Folkman
Paige E. Folkman
Chief Deputy City Attorney

PEF:hm:cmd
September 14, 2021
Or.Dept: PSE
Doc. No.: 2738881_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 02 2021.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 11/8/21
(date)

[Signature]
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

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REPEALING SECTIONS 83.0202 AND 83.0203; AND
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MUNICIPAL CODE BY REPEALING SECTION 85.10, ALL
RELATING TO TRAFFIC, VEHICLES, AND PEDESTRIANS.

Chapter 8: Traffic and Vehicles

Article 3: Alternative Transportation

Division 2: Pedestrians and Bicycles

~~§83.0202~~ **Interfering with Traffic**

~~(a) It shall be unlawful for any person to stand in any roadway, other than in a safety zone or in a crosswalk, if such action interferes with the lawful movement of traffic.~~

~~(b) It shall be unlawful for any person to sit in any roadway or along a curb adjacent to a roadway, if such action interferes with the lawful movement of traffic.~~

~~§83.0203~~ **Pedestrians Standing on Sidewalks**

~~In the Central Traffic District or any business district it shall be unlawful for any pedestrians to stand on the sidewalk, except as near as practicable to the building line or the curb line.~~

Article 5: Special Regulations

Division 00:

~~§85.10~~ — ~~Intoxicated Person in Vehicles~~ — ~~Prohibited~~

~~No person who is under the influence of intoxicating liquor or narcotic drugs shall be in or about any motor vehicle, while such vehicle is in or upon any street or other public place.~~

PEF:hm:cm
September 14, 2021
Or.Dept:PSE
Doc. No.: 2738882_2

Passed by the Council of The City of San Diego on NOV 02 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 08 2021

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

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

By [Signature], 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 19 2021, and on NOV 08 2021.

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 [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21386</u>