

ORDINANCE NO. 9925 (N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES, TITLE 1, DIVISION 2, CHAPTER 1, RELATING TO DEFINITIONS, TITLE 1, DIVISION 6, CHAPTER 1, RELATING TO APPELLATE HEARING OFFICERS, TITLE 1, DIVISION 8, CHAPTER 2, RELATING TO ADMINISTRATIVE CIVIL PENALTIES AND TITLE 4, DIVISION 1, CHAPTER 1, RELATING TO PARKS AND RECREATION

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. This ordinance revises definitions in Title 1, Division 2, Chapter 1 relating to recent changes to the County Building and Fire Codes and corrects typographical errors. The ordinance also modifies post hearing procedures for appeals of licensing decisions in Title 1, Division 6, Chapter 1 and revises hearing procedures and post hearing procedures for administrative civil penalties in Title 1, Division 8, Chapter 2. In Title 4, Division 1, Chapter 1, the ordinance adds a definition for designated sports facilities, adds regulations for designated sports facilities and adds a regulation prohibiting fires in County parks during red flag warning days.

Section 2. Amend Title 1, Division 2, Chapter 1, Section 12.101 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC. 12.101. OFFICERS, BOARDS, COMMISSIONS AND DEPARTMENTS.

Whenever this code refers to an officer, board, commission, institution, department, office or division, it shall mean an officer, board, commission, institution, department, office or division of the County of San Diego unless otherwise specified.

SEC. 12.102. TENSES.

The present tense includes the past and future tenses and the future tense includes the present tense.

SEC. 12.103. GENDER.

The masculine gender includes the feminine and neuter.

SEC. 12.104. NUMBER.

The singular number includes the plural and the plural the singular.

SEC. 12.105. "SHALL" and "MAY".

"Shall" is mandatory and "may" is permissive.

SEC. 12.106. DEFINITIONS.

The following definitions in sections 12.106.5 - 12.117 shall apply throughout this code unless another meaning is apparent in the context within which the term is used.

SEC. 12.106.5. BUILDING INSPECTOR.

The words "Building Inspector", "County Building Inspector", "Chief Building Inspector", "Building Official" or "Director of Building Inspection" shall mean the "Director of Planning and Land Use" and any other person appointed or hired by the Director to perform these functions.

SEC. 12.107. CHARTER.

The word "Charter" shall mean the Charter of the County of San Diego, State of California, as amended.

SEC. 12.108. CODE.

The words "this code" shall mean the entire San Diego County Code.

SEC. 12.109. COUNTY BUILDING CODE.

The words "County Building Code" shall mean Title 9, Division 1, Chapter 1 and Division 2, Chapter 1 of this code.

SEC. 12.110. COUNTY ELECTRICAL CODE.

The words "County Electrical Code" shall mean Title 9, Division 1, Chapter 1 and Division 3, Chapter 1 of this code.

SEC. 12.110.5. COUNTY FIRE CODE.

The words "County Fire Code" shall mean Title 9, Division 6, Chapter 1 of this code.

SEC. 12.111. COUNTY PLUMBING CODE.

The words "County Plumbing Code" shall mean Title 9, Division 1, Chapter 1 and Division 4, Chapter 1 of this code.

SEC. 12.111.5. COUNTY MECHANICAL CODE.

The words "County Mechanical Code" shall mean Title 9, Division 1, Chapter 1 and Division 5, Chapter 1 of this code.

SEC. 12.112. CODES -- STATE.

Reference to the "Agricultural Code", "Business and Professions Code", "Elections Code", "Government Code", "Health and Safety Code", "Penal Code", "Streets and Highways Code" and "Vehicle Code" refer to the respective codes of the State of California.

SEC. 12.113. COUNTY.

The word "County" shall mean the County of San Diego.

SEC. 12.113.5. COUNTY ENGINEER.

The words "Road Commissioner", "County Surveyor", "Surveyor", "County Surveyor and Road Commissioner", "County Engineer" and "County Engineer and Road Commissioner of the County of San Diego" shall mean "Director of Public Works of the County of San Diego"; the words "County Road Department", "Road Department", "County Surveyor and Road Department" or "Department of the County Engineer" shall mean "Department of Public Works".

SEC. 12.113.7. DIRECTOR OF PLANNING.

The words "Director of Planning" shall mean the "Director of Planning and Land Use."

SEC. 12.113.8. BUILDING INSPECTION.

The words "Building Inspection Department" or "Department of Building Inspection" shall mean "Department of Planning and Land Use."

SEC. 12.114. HEALTH OFFICER AND DIRECTOR OF PUBLIC HEALTH.

The term "Health Officer" and the term "Director of Public Health" shall mean the Health Officer of the County of San Diego appointed pursuant to Section 101000 of the Health and Safety Code of the State of California.

SEC. 12.115. PERSON.

The word "person" shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, religious group, county (other than the County of San Diego) city and county, city, municipal corporation, district or other political subdivision, or any other group or combination acting as a unit.

SEC. 12.116. ZONING ORDINANCE.

The word "Zoning Ordinance" shall mean Ordinance No. 5281 (New Series) of the County of San Diego, as amended.

SEC. 12.117. MISCELLANEOUS DEFINITIONS.

Whenever in this code the name of a department, office, agency, or officer is mentioned and such department, office, agency or officer has been abolished, reorganized or reconstituted the department, office, agency, or officer shall mean the responsible department, office, agency or officer as provided in the San Diego County Code of Administrative Ordinances.

Section 3. Amend Title 1, Division 6, Chapter 1, Section 16.106 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC. 16.106. HEARING OFFICER'S DECISION.

(a) The hearing officer shall issue a written decision within five days after the hearing.

(b) The hearing officer may uphold, overturn or modify the decision appealed from.

(c) The decision shall specify the hearing officer's findings of facts and reasons for the decision.

(d) The hearing officer shall file the decision with the Clerk of the Board, who shall be responsible to provide it to the County department involved and serve it on the appellant pursuant to section 11.112.

(e) The hearing officer's decision shall be final 10 days after it is served on the appellant.

Section 4: Amend Title 1, Division 8, Chapter 2 of the San Diego County Code of Regulatory Ordinances to read as follows:

CHAPTER 2. ADMINISTRATIVE CIVIL PENALTIES

SEC. 18.201. AUTHORIZATION AND PURPOSE.

This chapter provides a procedure by which County enforcement officials may assess administrative civil penalties as an alternative enforcement method for any violation of this code, the San Diego County Zoning Ordinance, any other County ordinance and any State law that County officials enforce. The remedies in this chapter are in addition to all other remedies the County may pursue and only govern enforcement actions brought pursuant to this chapter. Nothing in this chapter limits the ability of any enforcement official to seek the maximum civil penalties allowed when following any other enforcement procedure or in any civil action.

SEC. 18.202. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Director" means the Director of any County department or a Director's designated representative, responsible to enforce County codes, County ordinances or State codes.

(b) "Enforcement official" means any County employee with enforcement authority for County codes, County ordinances or State codes.

(c) "Hearing officer" means a person who presides over an administrative civil penalties hearing.

(d) "Responsible person" means a "person," as defined in Section 12.115 of this code, responsible for a violation prosecuted under this chapter.

SEC. 18.203. CIVIL PENALTIES.

A Director may assess civil penalties against a responsible person pursuant to the administrative procedures in this chapter as follows:

(a) At a daily rate the Director determines pursuant to the criteria in Section 18.205.

(b) For County code or ordinance violations, up to \$1,000 per day per violation against each responsible person, but no more than \$50,000 in civil penalties for any one violation against a responsible person in any 12 month period.

(c) For State code violations, up to \$2,500 per day per violation against each responsible person, but no more than \$125,000 in civil penalties for any one violation against a responsible person in any 12 month period.

(d) When more than one person is responsible for a violation each responsible person may be separately assessed. A person may be found responsible for different violations, or repeat violations, which are subject to separate cumulative maximums.

SEC. 18.204. NOTICE AND ORDER PROCEDURES.

(a) Whenever a Director determines that a violation the Director has authority to enforce has occurred or is occurring the Director may assess civil penalties pursuant to a written Notice and Order to any responsible person. When violations involve more than one department a Director may delegate enforcement authority to another Director.

(b) The Notice and Order issued by a Director shall state:

- (1) The name of the person against whom the civil penalty is assessed;
- (2) A description of the violation and all sections of the code or ordinance violated that are being charged;
- (3) The date and location of each violation;
- (4) A daily civil penalty assessment and the factors in section 18.205 the Director considered in determining the amount;
- (5) The beginning and ending date for the civil penalty assessment, unless the violation is continuing as of the date of the Notice. In the case of a continuing violation the Director may assess penalties up to the day the Notice is issued and/or assess continuing penalties at the daily rate established in the Notice until the violation is corrected;
- (6) Where a Director determines any violation is continuing, the responsible person is ordered to immediately cease violating the applicable law and commence and complete all action necessary to correct any outstanding violation under the guidance of the enforcement department;
- (7) The process for payment of civil penalties is as provided in section 18.207;
- (8) The person charged has the right to request a hearing to contest the Notice and Order as provided in section 18.208;
- (9) If the person charged fails to request a hearing within 14 days of the date on the Notice and Order the person waives all administrative remedies and the person loses the right to contest (A) whether any violation occurred, (B) whether the person charged is responsible for any violation charged, (C) the dates of any violation, including whether any violation is continuing and (D) whether the amount assessed is reasonable.

(c) More than one Notice and Order may be issued against the same responsible person if the notice encompasses different dates and/or different violations.

SEC. 18.205. DETERMINATION OF CIVIL PENALTIES.

(a) In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered a violation had occurred, as evidenced by any writing issued or sent to a responsible person.

(b) The assessment of civil penalties shall end when all action required by the Notice and Order has been completed to the satisfaction of a Director.

(c) In determining the amount of the daily rate at which a civil penalty is assessed a Director may consider some or all of the following factors:

- (1) The duration of the violation.
- (2) The frequency or recurrence of the violation.
- (3) The nature and seriousness of the violation.
- (4) The impact of the violation on environmentally sensitive land or habitat or historical resources.
- (5) The responsible person's conduct after being notified of the violation.
- (6) The good faith effort by the responsible person to comply.
- (7) The economic impact of the penalty on the responsible person.
- (8) Any financial gain incurred by the responsible person as a result of the violation.
- (9) The violation's impact on the community.
- (10) Any other factors that justice may require.

SEC. 18.206. METHODS OF SERVICE.

The Notice and Order shall be served on the responsible person as provided by section 11.112 of this code. If for any reason service cannot be completed as provided in section 11.112, service may be accomplished by posting a copy of the notice in a conspicuous place on or near the property on which the violation is located. At the discretion of the Director, the notice may be posted in addition to personal or mail service.

SEC. 18.207. PAYMENT OF CIVIL PENALTIES.

(a) Civil penalties assessed shall be paid in full within 45 days from the date the Notice and Order is served unless the person served with the Notice and Order files a timely request for a hearing under section 18.208.

(b) In the case of a continuing violation, the person charged shall pay any amount assessed in the Notice and Order within 45 days from the date the Notice and Order was served. If a Director assesses continuing penalties as provided in section 18.204(b)(5) the person charged with a continuing violation shall be responsible to pay accrued penalties within 45 days from the date of notice from a Director that payment of an additional amount is due.

(c) Civil penalties paid to the County before a hearing under section 18.208 shall be refunded in full or in part if a hearing officer determines:

- (1) A violation enforceable under this chapter did not occur or did not occur on some or all of dates charged, or
- (2) The person charged was not responsible for a violation, or
- (3) The amount of the civil penalties shall be reduced.

SEC. 18.208. HEARING TO CONTEST NOTICE AND ORDER AND WAIVER.

(a) A person may request a hearing to contest a Notice and Order by completing a Request for Hearing form within 14 days after the notice was served, either at the office of the department that issued the Notice or by returning a Request for Hearing form by mail. If a person requests a hearing by mail, the request must be postmarked within 14 days of the Notice. Failure to timely request a hearing constitutes a waiver of the right to contest the Notice and the issues in paragraph (b) below.

(b) If the person charged as a responsible person in the Notice requests a hearing the person may contest any or all of the following issues:

- (1) Whether a violation enforceable under this chapter occurred,
- (2) Whether the person charged is responsible for the violation,
- (3) The dates when the violation occurred, including whether the violation is continuing,
- (4) Whether the amount assessed for the violation is reasonable.

(c) Within seven days after a County Department receives a timely request for a hearing it shall ask the Clerk of the Board of Supervisors to schedule a hearing before a County hearing officer appointed pursuant to sections 650 et seq. of the County Administrative Code.

(d) The Clerk shall set a hearing date, assign the matter to a hearing officer by selecting a hearing officer on a rotating basis from the list of appointed hearing officers and advise the person requesting the hearing and the Director who issued the Notice of the date, time and location of the hearing at least 10 days before the hearing.

SEC. 18.209. HEARING PROCEDURES.

The following procedures shall apply to hearings conducted under this chapter:

- (a) Every witness shall take an oath or make an affirmation.
- (b) The County bears the burden of proof at all civil penalties hearings. The standard of proof at a hearing is the preponderance of the evidence.
- (c) The hearing officer may consolidate hearings involving the same responsible person and/or the same property.
- (d) The hearing officer may continue a hearing for good cause.
- (e) Each party shall have the right to: call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which party first called the witness to testify and rebut the evidence against the party. The County may call and examine the appellant or any agent of the appellant as a witness during the department's case in chief or during the department's rebuttal case. The hearing officer may examine the appellant or any of the appellant's employees or agents as if under cross-examination.
- (f) Strict rules of evidence shall not apply. Evidence that might otherwise be excluded under the Evidence Code may be admissible if the hearing officer determines that it is relevant and the kind that reasonably prudent persons rely on in making decisions. All rules of privilege recognized by the Evidence Code, however, shall apply to the hearing. The hearing officer shall also exclude irrelevant and cumulative evidence.
- (g) The hearing shall be conducted in English. If the appellant or any of appellant's witnesses require an interpreter the appellant is responsible to provide a State certified interpreter at appellant's expense.

SEC. 18.210. FAILURE TO APPEAL OR ATTEND CIVIL PENALTIES HEARING.

- (a) The failure of any responsible person, who has been served with a Notice and Order, to appeal the Notice and Order or attend a properly noticed civil penalties hearing shall constitute a waiver of the right to an administrative hearing, the right to contest the Notice and Order and the right to contest any issue that could have been considered or is considered by the hearing officer at the hearing. If a responsible person, who has been served with a notice of hearing fails to appear for a hearing, a Director may request the hearing be continued or may elect to go forward with the hearing without the responsible person.

(b) If a person served with a Notice and Order does not request a hearing to appeal the Notice and Order within the time required by section 18.208(a) the director may issue an Administrative Enforcement Order, without a hearing, for any violation that was the subject of the Notice and Order.

SEC. 18.211. DECISION AND ADMINISTRATIVE ENFORCEMENT ORDER.

(a) The hearing officer shall issue a written decision within five business days after all testimony and other evidence have been received and file the decision with the Clerk of the Board. If the hearing officer sustains the Director's Notice and Order in whole or in part, the hearing officer shall also issue an Administrative Enforcement Order (AEO). The Clerk of the Board shall serve the written decision and any AEO the hearing officer issues on the parties by mail.

(b) The hearing officer's decision shall address each issue in section 18.208(b). The hearing officer shall consider the factors in section 18.205(c) in determining whether the amount of civil penalties assessed is reasonable. A hearing officer may reduce the daily rate of civil penalties assessed by the Director's Notice and Order, but the hearing officer may not eliminate a daily civil penalty or award a nominal civil penalty against a responsible person on any day the hearing officer finds that the responsible person committed a violation.

(c) If the hearing officer is required to issue an AEO pursuant to this section the AEO shall order a responsible person to pay within 10 days of the order, the amount of civil penalties due as of the date of the hearing. If requested by a Director and warranted by the evidence an AEO may also establish a deadline by which a responsible person shall: (1) cease any violation subject to enforcement under this chapter and/or (2) take corrective action to prevent further violations.

(d) If the hearing officer determines the Director, who issued the Notice and Order, is the prevailing party, the AEO shall also assess the County's administrative costs of the hearing against the responsible person and shall add the costs to the amount of any civil penalty a responsible person is ordered to pay.

(e) A hearing officer may also schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the AEO.

(f) When a Director issues an AEO pursuant to section 18.210(b) the Director shall state in the AEO:

- (1) The Director has issued an AEO,
- (2) The responsible person is ordered to pay the amount of civil penalties assessed within 10 days of the date of the order,

(3) When applicable, the responsible person is ordered to cease any ongoing violation by the date provided in the order, and

(4) When applicable, the responsible person is ordered to take corrective action by the date provided in the order.

(g) An AEO shall be served upon a responsible person as provided in section 18.206.

SEC. 18.212. FAILURE TO COMPLY WITH AN ADMINISTRATIVE ENFORCEMENT ORDER.

(a) After the responsible person is served with an AEO, the Director shall monitor the violations and determine compliance.

(b) If a responsible person fails to comply with the terms and deadlines set forth in an AEO, the Director may use all available legal means to obtain compliance and to recover the civil penalties owed. These means include, but are not limited to, the following:

- (1) The County may refer the debt to the Auditor and Controller for collection;
- (2) The County may file a civil action and/or
- (3) The County may record an AEO as a lien against the real property on which the violation is located in accordance with the procedures found in Section 18.214.

(c) It shall be unlawful for a person who has been served with an AEO to fail to comply with the Order.

SEC. 18.213. RIGHT TO JUDICIAL REVIEW.

Any person against whom an AEO has been entered may obtain review of the order by filing a petition for writ of mandate with the San Diego County Superior Court in accordance with the timelines and procedures set forth in California Code of Civil Procedure Section 1094.5.

SEC. 18.214. PROCEDURES TO RECORD ORDERS AS LIENS.

If the responsible person fails to pay civil penalties in an AEO the County may record the order as a lien against the real property upon which a violation is located in accordance with the following procedures:

(a) Before recording, the Director shall serve the responsible person with a Notice of Intent to Record an AEO which informs the responsible person that recording the order will result in lien against real property unless the responsible person pays the amount due within 45 days from the date of the notice. The Director shall serve the Notice of Intent to Record an AEO as provided by Section 18.206.

(b) If the responsible person fails to pay the amount due in full by the due date the County may record the AEO as a lien. The lien shall attach upon recording the order in the Office of the County Recorder. The lien shall continue until the amount of the lien is paid in full.

(c) Notice of recording the AEO as a lien may be provided to the responsible person as provided by Government Code section 27297.5.

Section 5. Amend Title 4, Division 1, Chapter 1, Section 41.102 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC.41.102. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Animal" means any living thing that is a member of the animal kingdom, other than a human being.

(b) "County park" means any park, community center, recreation facility, sports complex, open space preserve, ecological reserve, landmark site or monument site owned, leased or managed by the County.

(c) "Designated sports facility" means a baseball field, soccer field, basketball court, tennis court, hockey rink, volleyball court, bocce ball court or other park sports facility that the Parks Department has posted as requiring a reservation when used by certain groups.

(d) "Director" means the Director of Parks and Recreation or the Director's designee.

(e) "Ecological reserve" means land or water areas the State establishes and the County manages, that are to be preserved in a natural condition for the benefit of the public to observe native flora and fauna and for scientific study or research.

(f) "Game of chance" means a game whose outcome is determined by use of a device such as dice, cards or some other random selector.

(g) "Historical site" means an object, building or structure that has historical or cultural significance.

(h) "Landmark site" means a place that has historical or cultural significance.

(i) "Minor" means a person under the age of 18 years.

(j) "Monument site" means a place where something has been erected in memory of a person or event.

(k) "Open space preserve" means land that contains sensitive natural biological and cultural resources and may allow limited passive recreational activities depending on the sensitivity of the resources involved.

(l) "Park ranger" means a person employed or appointed by the County to manage County parks and to enforce park rules and regulations.

(m) "Pet" means a dog, cat, bird, domesticated pygmy goat or pot-bellied pig owned by a park visitor.

(n) "Service animal" means a "guide dog," "signal dog" or "service dog," as those terms are defined in Penal Code section 365.5. A "service animal" also includes a "guide dog," "signal dog" or "service dog" in training accompanied by a trainer or an individual with a disability, who is training the dog.

(o) "Vehicle" has the same meaning as the term "vehicle" in California Vehicle Code section 670.

(p) "Water body" means any lake, river, stream, creek, pond, pool or reservoir located in a County park.

(q) "Youth group" means an organization that serves youth 18 years of age or younger, including but not limited to, the Boy Scouts, the Girls Scouts, YMCA, YWCA, Boys' and Girls' Clubs or any other similar organization.

Section 6. Amend Title 4, Division 1, Chapter 1, Section 41.118 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC. 41.118. FIRE HAZARDS AND SMOKING.

It shall be unlawful for any person in a County park to:

(a) Ignite a fire, except in a designated campfire ring or barbecue provided by the County when campfires or cooking are allowed by park rules or as specifically authorized by a park ranger.

(b) Ignite a fire when the County has given the person notice that the geographic area in which a park is located is subject to a red flag warning issued by the National Weather Service.

(c) Discard any lighted tobacco product or any burning or combustible material or other thing that could set fire to grass, shrubs, buildings or any other combustible substance.

(d) Smoke, as that term is defined in section 32.802(a) of this code.

Section 7. Amend Title 4, Division 1, Chapter 1, Section 41.124 of the San Diego County Code of Regulatory Ordinances to read as follows:

SEC. 41.124. USE OF DESIGNATED SPORTS FACILITIES BY CERTAIN GROUPS.

In order to provide a shared use of some highly desirable park sports facilities, between members of the community and groups that need a regulation field for league play or other organized sports activity, no person, as a member of a club, association, organization, company, league or organized team, shall use a designated sports facility in a County park for practice or games without written authorization from the Parks Department.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 12th day of March, 2008.