

ORDINANCE NO. 644

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, AMENDING CHAPTER 9.08 OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 10.68 OF TITLE 10 (VEHICLES AND TRAFFIC), AND CHAPTER 12.24 OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE CITY OF CARPINTERIA MUNICIPAL CODE

WHEREAS, Section 9.08.010, which prohibits consumption and possession of any open container of an alcoholic beverage in certain public places with certain exceptions, was adopted by the City Council in 1994;

WHEREAS, in enacting that ordinance, at a duly noticed public hearing, the City Council found that Section 9.08.010 is effective as a preventative regulatory mechanism to address the problems associated with the consumption of alcoholic beverages in public, including vandalism, violence, litter, trespassing, graffiti and drug activity;

WHEREAS, since 1994 California law has evolved such that the language of Section 9.08.010 requires updating to achieve consistency with state law;

WHEREAS, additional clarification as to the domain and intensity of its regulation of open containers of alcoholic beverages would better manage the public's expectations regarding their behavior in public;

WHEREAS, the City finds that continuing to regulate and prohibit the possession and consumption of open containers of alcoholic beverages in certain public places with certain exceptions is necessary to preserve the public's health, safety and welfare;

WHEREAS, proper regulation of open containers of alcoholic beverages requires amendment of Chapter 9.08 and corresponding amendment of Chapter 10.68 and Chapter 12.24; and

WHEREAS, at its duly noticed regular meetings of July 26 and August 9, 2010, the City Council considered the facts and analysis as presented in the staff reports and presentations prepared for this matter; and conducted a public hearing to obtain public testimony on the proposed ordinance.

NOW, THEREFORE, THE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS.

The above recitals are true and correct and incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. AMENDMENT OF CHAPTER 9.08 OF TITLE 9 (Public Peace, Morals and Welfare) OF THE CARPINTERIA MUNICIPAL CODE.

Chapter 9.08 (Open Containers) of the Carpinteria Municipal Code shall hereby be amended in its entirety by adding new Sections 9.08.010 to 9.08.060, which shall read as follows:

9.08 – OPEN CONTAINERS

9.08.010 – Declaration of Public Nuisance.

Public property and public places within the City exist for the use and enjoyment of the residents and the public at large. The consumption of alcoholic beverages in these areas tends to create a public health and safety hazard that adversely impacts neighborhoods, commercial areas and the general welfare of the City. It is the City's intent to minimize the nuisance of public intoxication while permitting, under appropriate conditions, the responsible enjoyment of alcoholic beverages in licensed places and during special events.

9.08.020 – Definitions.

The following definitions shall apply to this chapter:

- A. "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume, and that is fit for consumption either alone or when diluted, mixed or combined with other substances, as set forth in Business and Professions Code §23004, as may be hereafter amended;
- B. "Notice" means a sign stating that it is: "Unlawful to enter, be or remain on these premises, adjacent parking lot or adjacent public sidewalk with an open alcoholic beverage container. CPC 647e(a); CMC 9.08.030";
- C. "On-site alcohol sales" means the retail and consumption of alcoholic beverages within the specified premises of a licensee licensed by the Alcoholic Beverage Control Board of the State of California to sell alcohol for on-site consumption;
- D. "Off-sale alcoholic beverage licensee" means any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with §23000) of the state Business and Professions Code;
- E. "Open container" means any receptacle, including a bottle, can, jug or box, that contains an alcoholic beverage, and the seal of which has been broken, or the contents of which have been partially removed;
- F. "Public places" includes private property accessible to the public or commonly held open to public use;
- G. "Public property" means any property owned or controlled by the City of Carpinteria or other public agency, including but not limited to a street, sidewalk, bike path, alley, public restroom, parking lot, structure, building, recreational facility, vacant area, public beach or public park, or any vehicle or temporary shelter on any such property;

- H. "Special event" includes, but is not limited to, the following types of activities: a neighborhood block party, barbecue, picnic, fundraiser, parade, street fair, art and craft show, carnival, soap box derby, rally, community event or any other type of similar social event pursuant to CMC 10.68.

9.08.030 – Unlawful Acts: Public Consumption and Possession of an Open Container of Alcoholic Beverage Prohibited.

- A. Except as otherwise provided in CMC 9.08.040, it shall be unlawful to consume an alcoholic beverage: (1) on public property, (2) in public places or (3) on private property without the express consent of the owner of the private property.
- B. Except as otherwise provided in CMC 9.08.040, it shall be unlawful to possess an open container of an alcoholic beverage: (1) on public property, or (2) on the premises of, or parking lot abutting, any off-sale alcoholic beverage licensee, if the licensee's premises contain a clearly visible notice prohibiting such possession.

9.08.040 – Exceptions.

- A. Notwithstanding CMC 9.08.030(A) and (B), it shall not be unlawful to consume or possess open containers of alcoholic beverages under the following circumstances:
 - 1. Within the areas of public streets or sidewalks for which the City has granted an encroachment permit for a sidewalk cafe, beer garden or equivalent use that includes on-site alcohol sales;
 - 2. During and within special public park events if the City has, pursuant to CMC 12.24.022, granted a park use permit that, during the event, authorizes or permits persons attending the event to possess and consume open containers of alcoholic beverages in areas where such consumption and possession is otherwise prohibited by this chapter.
 - 3. During and within special events if the City has, pursuant to CMC 10.68, granted a street use or other permit that, during the event, authorizes or permits persons attending the event to possess and consume open containers of alcoholic beverages in areas where such consumption and possession is otherwise prohibited by this chapter.
- B. Notwithstanding CMC 9.08.030(A) and (B), it shall not be unlawful to possess empty alcoholic beverage containers for the purpose of recycling.

9.08.050 – Penalties and Enforcement.

- A. Unless another penalty is specified in state law, a violation of 9.08.030(A) constitutes a misdemeanor, except that any such violation may, in the discretion of the City Attorney, be charged and prosecuted as an infraction.
- B. Unless another penalty is specified in state law, a violation of 9.08.030(B) constitutes an infraction, punishable in accordance with the provisions of Chapter 1.08 of this code.

- C. In addition to criminal remedies, any violation of this Section shall constitute a public nuisance, and as such may be enforced by abatement and injunction, or by other civil action where appropriate.

9.08.060 – Construction to Avoid Preemption by State Law.

This chapter is enacted pursuant to §25620 of the California Business and Professions Code and §647(e) of the California Penal Code. This chapter shall not be construed or interpreted as applicable to any act or acts regulated by state law, but shall be limited to permitted subjects of local regulation not preempted by state law.

SECTION 3. AMENDMENT OF CHAPTER 12.24 OF TITLE 12 (Streets, Sidewalks and Public Places) OF THE CARPINTERIA MUNICIPAL CODE.

Section 12.24.021 (Public parks – Specifically prohibited acts) of Chapter 12.24 (Public Parks and Beaches) of the Carpinteria Municipal Code shall hereby be amended in its entirety, which shall read as follows:

12.24.021 - Public parks – Specifically prohibited acts.

- A. Within any public park in the city, it is unlawful for any person or persons to do any of the following acts:
1. To be in or upon any public park from one-half hour after sunset to one-half hour before sunrise; or to camp or lodge therein except in areas designated and posted as camping sites by the city manager, without first obtaining from the city manager a special public park use permit pursuant to Section 12.24.022 or a special event permit pursuant to Chapter 10.68;
 2. To drink or possess any alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume as set forth in Section 9.08.010, without first obtaining from the city manager a special public park use permit pursuant to Section 12.24.022 or a special event permit pursuant to Chapter 10.68.

Section 12.24.022 (Permits – Special public park use) of Chapter 12.24 (Public Parks and Beaches) of the Carpinteria Municipal Code shall hereby be amended in its entirety, which shall read as follows:

12.24.022 - Permits – Special public park use.

Any person or persons desiring to use a public park for a picnic, barbecue or other gathering at a time of the day, or day of the week, when such public park use is otherwise prohibited, and/or where consumption of any alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume will occur, may make prior written application to the city manager for a permit allowing such use. The city manager shall make application forms available and, upon reviewing each application, shall determine on a case-by-case basis whether the applicant shall be required to obtain a special public park use permit pursuant to this section or a special event permit pursuant to Chapter 10.68. Typically, for smaller events, including but not limited to

birthday parties and picnics, a special public park use permit shall be the appropriate permit. The city manager may condition the issuance of a special public park use permit upon the applicant's payment of a deposit sufficient to ensure cleanup and the applicant's agreement to hold the city harmless from the activities contemplated by the permit and to repair and replace any and all damage to city property which may occur during the special public park use. For larger events, the city manager may require a special event permit pursuant to Chapter 10.68.

Subdivision B of Section 12.24.050 (Public beaches specifically – Prohibited acts.) of Chapter 12.24 (Public Parks and Beaches) shall hereby be amended in part and shall read as follows:

12.24.050 Public beaches specifically--Prohibited acts.

B. Within the limits of any bathing beach in the city and within three hundred (300) feet seaward of the mean high tide line, it is unlawful for any person or persons to do any of the following acts:

1. To ride, float on, or otherwise use any surfboard, or to engage in the sport of surfing with a surfboard, or to ride with or on a surfboard, on ocean waves or swells or the surf;
2. To use or operate any motorized vessel;
3. To launch or land any motorized vessel;
4. To moor, store or otherwise maintain any raft, motorized vessel, boat or other privately owned equipment except as such may be specifically authorized by the city manager or his authorized representatives;
5. To consume an alcoholic beverage or possess an open container of any alcoholic beverage as set forth in Section 9.08.010.

SECTION 4. AMENDMENT OF CHAPTER 10.68 OF TITLE 10 (Vehicles and Traffic) OF THE CARPINTERIA MUNICIPAL CODE.

Subdivision M of Section 10.68.010 (Definitions) of Chapter 10.68 (Special Event Permits) of the Carpinteria Municipal Code shall hereby be amended in part, which shall read as follows:

10.68.010 – Definitions.

- M. "Special event" includes, but is not limited to, the following types of activities: a neighborhood block party, barbecue, picnic, fundraiser, parade, athletic event, street fair, art and craft show, carnival, soap box derby, rally, community event or any other type of similar social event which occur on a city street, sidewalk, alley or other street right-of-way, which obstructs, delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws and controls; or picnic, barbecue or other gathering in a public park at a time of the day, or a day of the week, when such public park use is otherwise prohibited, and/or where the consumption of or possession of an open container of any alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume will occur.

SECTION 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days following passage, this Ordinance shall be published once with the names of the members of the City Council voting for and against the same in The Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

SECTION 6: SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 7: CEQA EXEMPTION

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines §15060(c)(3) (this activity is not a "project" as defined in §15378).

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PASSED, APPROVED, AND ADOPTED this 9th day of August 2010, by the following called vote:

AYES: COUNCILMEMBERS: Armendariz, Clark, Stein, Reddington, Carty

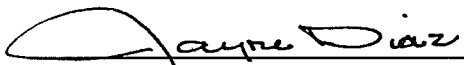
NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None



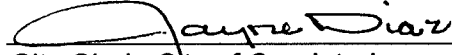
Mayor of the City of Carpinteria

ATTEST:



City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 9th of August 2010.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



Peter N. Brown, City Attorney