

Citizens' Oversight Projects (COPs)

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November 3, 2012



Richard Belesky
Park Ranger
Developed Regional Parks Division, Park and Recreation
2125 Park Boulevard, MS 30M
San Diego, CA 92101

858-581-9980
rbelesky@sandiego.gov

Dear Mr. Belesky:

Thank you for talking with me today and accepting my complaint about the activist signs, chair, and umbrella left on Children's/seal beach area. In talking to you, it is clear that the large "OPEN" sign is not a sign by the City of San Diego, but is of anti-seal activists who want to make sure people come down to the beach. In addition, as I was leaving, I noticed a three-way sign established on the sidewalk and locked to it with a bicycle lock. As it turns out, I happen to know of these particular laws and how they have been enforced with other points of view. I don't think it is fair to look the other way just because you may agree with the anti-seal activists.

The "encroachment law" in San Diego is SDMC 54.0110.
(See <http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art04Division01.pdf>)

§ 54.0110 Unauthorized Encroachments Prohibited

It is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

(Added 10-18-2007 by O-19670 N.S.; effective 11-17-2007)

This law has been extensively tested over the last year. In this case: <http://www.copswiki.org/Common/M1202> where people set a tomato plant down on a step and another case where a person was lying down on a tarp. The tarp was considered in violation because it was an object that was placed on city property.

People were arrested for placing signs down and being more than a few feet away. At children's/seal beach, the anti-seal activists have established signs on the beach and along the sidewalk. These appear to be the official statement by the City of San Diego, but they are not. They are personal political statements by a few activists who have set up a large table, request for money, flags, signs, big "open" banner about 25 feet high on the beach, and an unoccupied chair and umbrella on the beach. Many of these things appear to be official statements by the City of San Diego, but as you admitted, particularly with the OPEN

sign, it is a statement by a private party that has established it on city property, in violation of SDMC 54.0110.

In addition to 54.0110, these activists are in violation of the sign ordinance, SDMC 142.1206:

<http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division12.pdf>

§142.1206 Violations of Sign Regulations

(a) It is unlawful to do the following:

- (1) Place, post, paint or secure any *sign*, pennant, flag, banner, balloon, or similar attention-seeking device on public property or within the *public right-of-way* unless otherwise provided in the Municipal Code or specific state statute;
- (2) Place any lettering, card, poster, or notice of any kind on any curb, sidewalk, *street*, pole, post, utility box, hydrant, bridge, tree, building, or other surface that is located on public property or in the *public right-of-way* unless otherwise provided in the Municipal Code or specific state statute;
- (3) Display any *sign* without the required Sign Permit Sticker; or
- (4) Erect any *sign* on any *premises* contrary to the provisions of this division.

(b) Violations of any provisions of this division shall be subject to the enforcement provisions of Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

(Amended 6-12-2001 by O-18948 N.S.; effective 12-12-2001.)

And:

§142.1210 General Sign Regulations

b (5) Signs on Public Property and in *Public Rights-of-Way*

- (A) *Signs* are not permitted to be installed on public property or *public rights-of-way*, except for *signs* that are authorized by law, or as otherwise permitted in the Municipal Code.

Thus the "OPEN" sign is in direct violation of this provision and the encroachment law. Also many of the signs that are placed around the vicinity of the seal beach area are in violation of this provision. From my experience, unless you are personally holding a sign, you cannot just set it up. Freedom of speech must be allowed, but the reality is that in other situations, the enforcement of these regulations is far more rigorous.

The code on the use of public parks has similar provisions:

§63.0102 Use of Public Parks and Beaches Regulated

(a) Purpose and Intent - It is the purpose and intent in enacting this Division to regulate and prohibit certain activities in public parks and beaches within the City of San Diego in the interests of protecting the enjoyment and safety of the public in the use of these facilities, as well as the natural resources of the City of San Diego.

(b) It is unlawful for any person within any public park or plaza or public beach or beach areas within the City of San Diego to do any of the acts enumerated in Section 63.0102(b).

- (1) Posting of Handbills. It is unlawful to litter, to throw, or deposit on the ground, to post or affix to any tree, fence, or structure situated within or on any City-owned park or plaza any handbills, circulars, pamphlets, tracts, dodgers, papers, or advertisements.

Signs that express a point of view are expressly allowed, but these must be hand-carried, optionally outfitted with a handle for easy holding that must comply with the following:

§53.30 Dangerous Weapons Used During Picketing, Demonstrations And Strikes

No person shall carry or possess while participating in any demonstration, rally, picket line or public assembly any metal stake, club, or pipe, or any length of lumber, wood, or lath, unless that wooden object is 1/4" or less in thickness, and 2" or less in width. If not generally rectangular in shape, such wooden object shall not exceed 1/2" in its thickest dimension.

("Dangerous Weapons Used During Picketing, Demonstrations And Strikes" added 1-2-1979 by O-12537 N.S.)

Thus, even if the "OPEN" sign were being held by a person and not established in violation of the encroachment law, the pole is in violation of this provision. Unfortunately, this meant that even a flag pole is in violation, and indeed the City of San Diego has confiscated American flags which because the pole was bigger than 1/4 inch.

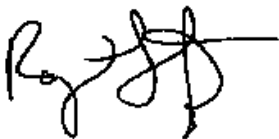
Therefore, with these laws clearly in mind, we at Citizens' Oversight request that the City of San Diego and the Park Rangers at the Seal Beach (Children's beach area) enforce these regulations without bias. In our opinion:

1. The "OPEN" banner is in full violation and must be removed.
2. An umbrella and lawn chair which is left on the beach without any person nearby (i.e. on the beach or in the water) must be considered "encroachment." It is a common practice by the anti-seal activists to establish the chair, umbrella, and "OPEN" sign, and then sit or stand at a table on the sidewalk. If these are to be established on the beach, then someone will have to be present either sitting in the chair or on the beach, for most of the time.
3. Signs set around the vicinity of the Children's beach area, such on the sidewalk, perhaps chained to a signpost or leaning on the wall, and with no individual within 5 feet (especially if they are left there all day long) are certainly in violation of the many provisions provided above and must be removed.
4. Attaching flags and signs to the fence is a violation of these rules of encroachment.
5. Citizens' Oversight supports the ability of the public to have signs expressing their point of view, but they must not be established along the stairs, on the landing, at the top, etc. with no one present, such that these signs appear to be official signs from the City of San Diego.
6. Furthermore, if someone is on the other side of the rope, as shown in one of the pictures I have attached, this must be grounds for arrest.

Citizens' Oversight also supports that political activist groups to have a table with their literature expressing their point of view, and establishing this on a temporary basis on the sidewalk so that pedestrian traffic is not impeded. We would also support the use of one or two signs behind the table to allow the activists to discuss their point of view with passersby. All other signs, on the sidewalk chained to poles, flags on the fence, signs on the landing, signs leaning on the seawall, etc. are in violation.

I would appreciate your confirmation that these laws will be enforced without bias, and if you refuse to do so, then please let me know so I can process this up the chain of command.

Sincerely,



Raymond Lutz
National Coordinator, Citizens' Oversight Projects



Illustration 1: large "open" banner with empty chair and umbrella



Illustration 2: Three-way signboard locked to a City sign



Illustration 3: Typical situation of beach-goers hassling the seals. The entire beach is available but they are almost touching the seals.



Illustration 4: Anti-seal activists encamped on the seal-side of the rope, with an umbrella that says "Beach Open"