



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

TO: The Governing Board

FROM:  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Officer

DATE: January 25, 2012

SUBJECT: **Agenda Item IV: Consideration of adoption of ordinance regarding park rules and regulations, waiver of first reading, and introduction of "An ordinance of the Mountains Recreation and Conservation Authority establishing park rules and regulations, and prescribing the punishment for violations thereof."**

Staff Recommendation: That the Governing Board introduce, discuss, and waive the first reading of "An ordinance of the Mountains Recreation and Conservation Authority establishing park rules and regulations, and prescribing the punishment for violations thereof" ("Ordinance").

Legislative Authority:

Public Resources Code Section 5782.21 provides, in part, as follows:

Districts may adopt and enforce all rules, regulations, ordinances, and bylaws necessary for the administration of government, and protection of the property, improvements, and facilities under the management or belonging to the district.

Government Code Section 53069.4 provides, in part, as follows:

The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.

Public Resources Code Section 5786.17(c) provides, in part, as follows:

To protect property and to preserve the peace at recreational facilities and other property owned or managed by the district, the Board of Directors may confer on designated uniformed district employees the power to issue citations for misdemeanor and infraction violations of state law, city or county ordinances, or District rules, regulations, or ordinances...

Background: The Ordinance currently in effect on agency-owned and operated parklands has provided ranger and park staff with a valuable tool to provide for enhanced public safety while preserving both open space and recreational values thereupon. Evolution in statutory and case law, however, now requires that the Ordinance be updated accordingly. The most significant differences between the current Ordinance and the proposed Ordinance are summarized below.

An affirmative vote on this agenda item will acknowledge the reading of the title and introduction of the proposed Ordinance, waive the first reading, and set the public hearing, second reading, and possible adoption of the Ordinance at the subsequent regular meeting of the Board, pursuant to Government Code Section 25120, *et seq.*

The revised Ordinance represents the full and comprehensive Ordinance code for all property and parkland owned, operated, or managed by the Mountains Recreation and Conservation Authority. Adoption of this proposed Ordinance shall serve to amend the existing ordinance as indicated.

This item is the introduction and first reading of the proposed Ordinance. The second reading and possible final passage of the proposed Ordinance will be scheduled for the next regular meeting of the Board. The new provisions of the Ordinance shall go into effect 30 days from the date of final passage.

The revised Ordinance is intended to apply from the effective date forward. The Ordinance operative prior to the effective date, with all attendant procedures, is intended to remain in effect for and apply to all citations issued for violations which occurred prior to the effective date continuing until such time as each of those procedures and violations have been resolved.

Summary of relevant changes in proposed Ordinance:

Section 1.1(a)-(d), (f), (h), (i), (k), (p), (u)-(w). Definitions were added or amended to provide greater clarity to the meaning of Ordinance provisions.

Section 1.1(o) - Definition of “park” and “parklands”: The agency owns and operates many parklands held in fee title. The agency also operates other properties in which it holds easement rights and still others which it operates pursuant to agreements with the property owners. The amendment to the definition clarifies that the Ordinance is intended to apply to any park over which the agency exerts day-to-day managerial and/or operational authority.

Section 1.1(t) - Definition of “responsible person”: This is a new section which provides a definition of “responsible person” as it relates to an liability for violation of the Ordinance. This definition allows liability to flow to persons, as defined, who may be jointly and severally liable for the underlying violation.

Section 1.2 (a): This section has been amended to further define the jurisdictional authority to enforce the Ordinance on property managed by the MRCA.

Section 1.6 Service of citations, orders, and notices: This is a new notice provision intended to codify practice..

Chapter 2 amendments: Chapter 2 sections have been amended to provide additional notice of the penalty sections governing the violation.

Chapter 3 amendments:. Chapter 3 sections as applicable have been amended tp provide additional notice of the penalty sections governing the violation.

Section 3.0: This section has been amended to delete posting of the Ordinance at all parks, which requirement given the number of parks, acreage involved, numbers of access points does not provide consistent and effective notice.

Section 3.2: This section has been amended to establish a violation with enhanced penalties for smoking, lighting or maintaining a fire on red flag or high fire risk days.

Section 3.9: This section has been amended to establish a violation with enhanced penalties for persons who bring aggressive dogs to parks or for dogs that injure or damage other persons or animals.

Section 3.10: This section has been amended to establish a specific violation for operating authorized vehicles on parkland in reckless or hazardous manner.

Section 3.13(b): This is a new section to establish specific authority to cite for non-permitted commercial uses.

Section 3.16(b): This is a new section to establish a violation for reckless operation of any model aircraft.

Section 3.18: This is a new section making trespass a violation.

Section 3.19: The Ordinance as amended herein establishes the power to subpoena witnesses and documents. This section establishes a violation for failure to comply with a subpoena.

Section 3.22: This is a new section that establishes a permit requirement and violation for group events.

Section 4.1: This section has been amended to provide additional notice on types of parking violations.

Section 4.2 - Liability for violations of vehicle use provisions: Section 4.2 clarifies the issue of liability for violations of traffic control and parking control provisions of the Ordinance. This section was modeled after Vehicle Code Section 40200(b), relating to parking violations where the both registered owner and the driver, rentee, or lessee of a vehicle cited for a violation may be held jointly liable for any resulting penalty. Similar to Section 40200(b), the proposed Ordinance allows for the registered owner to avoid liability if he or she is able to show that the vehicle was used by another person without said owner's express or implied consent, in which case the driver, rentee, or lessee shall remain liable. Likewise, any registered owner who pays any administrative fees for violations of the Ordinance may recover said fees from the driver, rentee, or lessee.

Section 4.3.1: This section has been amended to codify practice.

Section 4.3.2 - Administrative appeal of automated motor vehicle citation: The amendments to this section revise the provisions regarding the scope of administrative hearings of citations issued pursuant to the automated motor vehicle program to provide contestants with a fair and comprehensive opportunity to present both factual and legal arguments, including the ability to challenge the Ordinance itself.

Section 4.4: This is a new section added to codify existing practice.

Section 5.0 - Violations: The amendments to this section specify that certain

violations where indicated are infractions punishable by a specified fine schedule. All other violations of the Ordinance, with the exception of parking violations, are misdemeanors, pursuant to Public Resources Code Section 5786.17. Penalties for said violations are as set forth.

Section 5.1: This is a new section which supplants section 5.4 in part and carves out and addresses traffic control violations to enhance notice and establish that such violations are infractions subject to fine pursuant to Section 5.0(b). It also establishes a penalty not to exceed one hundred dollars.

Section 5.2: This section has been amended to establish a fine for parking violations.

Section 5.5: This section has been amended to state the current law that applies to enforcement of violations through administrative remedies.

Section 5.6 - Remedies for injury to parkland: This is a new section that requires that the remedy for any violation of the Ordinance that results in an injury to agency parkland shall be the complete restoration of the property to its condition immediately prior to the injury or the payment of restitution in an amount equal to the actual cost of said restoration, including administrative costs incurred by the agency.

Chapter 6 - Administrative remedies: Under the current Ordinance, the agency is authorized to utilize administrative remedies to enforce the provisions of thereof, pursuant to Government Code Section 53069.4. The proposed Ordinance revisions describe in more detail the administrative remedies available and clarifies the administrative process. A key distinction is made between administrative citations, issued or isolated violations of the Ordinance that do not require corrective action and administrative compliance orders, which are utilized when violations of the ordinance require specific actions by the responsible person in order to come into compliance with the ordinance. Compliance may include, but are not limited to, correcting the violation, payment of administrative penalties, and payment of administrative costs. Chapter 6 has also been reorganized to set forth distinct sections applicable to: 1) parking citations; 2) other administrative citations; and, 3) administrative compliance orders.

A full and complete copy of the proposed Ordinance is attached hereto.