

ORDINANCE NO. 2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 58, PUBLIC FACILITIES, PARKS AND RECREATION, OF THE SAN MARCOS CITY CODE TO ADD RESTRICTIONS ON CERTAIN BEVERAGE CONTAINERS AND COOLERS IN THE SAN MARCOS RIVER AND WITHIN DESIGNATED PARK AREAS ADJACENT TO THE RIVER; PROVIDING PENALTIES FOR VIOLATIONS OF SUCH RESTRICTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The San Marcos River and the City's adjacent parks are premier City resources enjoyed by residents and visitors alike.
2. The City's history, culture and sense of place are inextricably linked to the river and adjacent parks.
3. The river and adjacent parks provide inexpensive and safe outdoor and recreational opportunities for residents and visitors.
4. As coveted resources, the City seeks to maintain the natural beauty, safety and cleanliness of the river and adjacent parks.
5. However, due to the growing volume of visitors to the river and adjacent parks, litter, trash and debris left by visitors has increased greatly, creating health and safety concerns for people, animals and natural environment.
6. As a result, the City is spending more money and resources to maintain the river and adjacent in a clean and safe condition.
7. The City has identified certain beverage containers and types of coolers as major contributors to the total volume of litter, trash and debris and restricting such types of containers and coolers would reduce the volume of litter, trash and debris and the costs for the City to maintain the river and adjacent parks in a clean and safe condition.
8. For these reasons, adopting restrictions on such containers and coolers in the river and adjacent city parks is in the interest of the public health safety and welfare.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The city council finds the Recitals to be true and adopts them as the findings of the city council.

SECTION 2. Section 58.026 of the San Marcos City Code is hereby amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. Amendments to remaining sections of the City Code herein will be similarly indicated.

Sec. 58.026. Definitions.

In this article:

All-terrain vehicle means a motor vehicle that is equipped with a saddle for the use of the rider, designed to propel itself with three or four tires in contact with the ground, designed by the manufacturer for off-highway use by the operator only.

Artifacts mean objects used or modified by humans, including but not limited to arrowheads, dart points, stone, bone or shell implements, or any other object of historic or archeological significance.

Boat means a vessel not more than 30 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

Camp or *camping* means erecting a tent, arranging bedding, or both for the purpose of remaining overnight, or the use of a trailer, camper, or other vehicle for the purpose of sleeping during the night.

Children's Park means an area bounded on the north by the driveway leading from Cheatham Street to the Children's Park parking areas, on the east by the San Marcos River, on the south by the Union Pacific Railroad tracks, and on the west by Purgatory Creek.

City park means any area of real property owned, used, or maintained by the city as a public park, playground, or athletic facility.

Container means a bottle, can, or other receptacle.

Cooler means an insulated container for keeping food and drink cool.

Cultural features include but are not limited to city archeological landmarks, archeological sites, historic sites and structures, Indian rock art, or historic rock art.

Department means the parks and recreation department.

Director means the director of the parks and recreation department.

Endangered species means any plant, insect, animal, bird, amphibian, reptile, fish, shellfish, or other aquatic or terrestrial life listed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, or Texas Parks and Wildlife Department as endangered or threatened.

Harass means to disturb or irritate persistently. Implies systematic persecution by besetting with annoyances, threats, or demands.

Motor vehicle has the meaning given in the state Uniform Act Regulating Traffic on Highways, V.T.C.A. Transportation Code § 501.002.

Natural area means city-owned property in excess of one acre designated as a natural area by ordinance or signage at the main entrance or entrances.

Night means the period beginning one-half hour after sunset and ending one-half hour before sunrise.

Nude or state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, female breasts or a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals or areola of the female breast.

Open Container means a container that is open, that has been opened, that has a broken seal, or the contents of which are fully or partially removed.

Person means natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons.

Plant life means all plants including trees, dead or downed wood, shrubs, vines, wildflowers, grass, sedge, fern, moss, lichen, fungus, or any other member of the plant family.

Playscape area of Children's Park means an area in Children's Park bordered by timbers enclosing the community playscape.

Public Waterway means the portion of the San Marcos River within the corporate city limits of the City of San Marcos. This does not include being on a landing, dock, wharf, deck, or other structure that is attached to and is a part of private property that is adjacent to the San Marcos River.

Riverbank or banks of the river means the sloping ground that borders the watercourse and confines the water in the natural channel when the water level, or flow, is normal.

Receptacle means an object or space used to contain something.

Single-Use Beverage Container means any container used to hold beverages designed to be used once before being thrown away. They may include, but not limited to, containers made of metal or aluminum, cardboard, Styrofoam, plastic, or glass.

Styrofoam includes foam, polypropylene, expanded polypropylene, and polystyrene.

Temporary restriction means any restriction imposed by the mayor or city manager on the use of city park areas or facilities for a period less than 30 days.

Unattended pet means any domesticated animal that is unaccompanied or not under the immediate physical control of its owner or caretaker.

Weapon means any device from which a shot, projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device. Weapons include but are not limited to the following: rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

Wildlife means any non-domesticated animal, bird, amphibian, reptile, fish, shellfish, or other aquatic life or any portion thereof.

SECTION 3. Sections 58.033-58.056 of the San Marcos City Code are hereby amended as set forth below.

Sec. 58.033. Public display or consumption of alcoholic beverages in city parks.

(a) It is unlawful for any person to publicly consume or display alcoholic beverages within a city park.

(b) It shall be unlawful for anyone to use, carry, possess, or dispose of an open alcoholic beverage container with a volume capacity of five fluid ounces or less in a city riverfront park or on or in the public waterway.

~~(bc)~~ It is a defense to prosecution that the alcohol was consumed or displayed within a special event contract designated area of a rented pavilion, park, facility, or picnic tables, and the person is a part of the group that rented the area.

~~(de)~~ It is a defense to prosecution that the alcohol was consumed or displayed while conducting water activities that include but not limited to tubes, canoes, kayaks, and within the river or waterway of city parks.

~~(ed)~~ It is not a defense to prosecution that the alcohol was consumed or displayed while standing, sitting, or walking along the water's edge.

(fe) The department may establish entry and exit points designated along the river where **the** display of alcohol may be permitted. Open containers or consumption of alcohol are not permitted in these areas.

(gf) A person convicted of a violation of littering beverage containers in the San Marcos River or convicted of littering any materials or objects in any city park is subject to being fined in an amount of not less than \$250.00 but not more than \$500.00.

Sec. 58.034. Glass **and Single-Use beverage containers prohibited.**

(a) It is unlawful for any person to possess any glass beverage container in any city park.

(b) It is unlawful for any person to possess any glass **or single-use** beverage container in or on the **public waterway or in any designated areas where signs prohibit them on city park property.**

(c) **Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not more than \$500.00.**

~~(1) It is an affirmative defense to prosecution if the individual was involved in the clean up or collection of trash and debris from the rivers. An individual possessing any glass or single-use beverage container as a result of being involved in the clean-up of or collection of trash and debris is exempt from the application of this section.~~

Sec. 58.036. Authority of park rangers.

Park rangers designated by the **director of the city parks and recreation department city manager or their designee** are authorized to issue municipal court citations to enforce this chapter, all City Code provisions and all class C misdemeanor offenses or other offenses punishable by fine only, as defined by state law, within city parks.

SECTION 4. Section 58.039 of the San Marcos City Code is hereby amended as set forth below.

Sec. 58.039. Miscellaneous rules.

(a) The mayor or city manager may, in order to protect the public's health, safety, or welfare, or preserve city park resources, impose temporary restrictions on the use of city parks and facilities by posting notice at the main entrance of the facility, park, trailhead or other conspicuous location.

- (b) It is unlawful for a person to:
- (1) Enter or remain in an area of a city park that has been posted by the department as closed.
 - (2) Violate any restrictions on the use of city park areas or facilities where the restrictions have been posted or the person has received notice of the restrictions.
 - (3) Solicit, sell or offer to sell any good, or merchandise of any kind in a city park except by authority of an approved concession contract or permit properly issued or approved by the director.
 - (4) To remove notices posted by the department or post notices not approved by the department.
 - (5) Fail to display or present permit upon request a permit issued by the department.
 - (6) Place any table, grill, tarp, tent, or shelter ~~between the closest trail, pathway, or sidewalk and in or on~~ the ~~banks of the~~ river or anywhere restricted by signs.

~~(7) Dispose of any container into the waters or banks of the river within a city park or in any area of a city park unless it is disposed into a properly authorized and placed trash receptacle.~~

(c) Employees of the department, peace officers, park rangers, and emergency personnel are exempt from these rules to the extent these rules conflict with the discharge of their official duties.

~~(d) Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not more than \$500.00.~~

SECTION 5. Section 58.073 of the San Marcos City Code is hereby amended as set forth below.

Sec. 58.073. Limitations on Coolers that are allowed on rivers. Securing lids and covers to containers

~~It is unlawful to fail to secure the lid by strap, lock or other device to any ice chest, cooler, or other container designed for use to contain food or drink products while in use in or upon the San Marcos River.~~

(a) It shall be unlawful for any one person ~~one~~ to use, carry, possess, or dispose of a cooler or other type of receptacle that has a capacity greater than 30 quarts on or in the portions of the public waterways ~~of the portions of the San Marcos River that lie within the city limits that abuts city park property~~. All coolers or receptacles used, carried, and possessed on the San Marcos River shall be secured by a zipper, Velcro snap, mechanical latch, or bungee cord to prevent the contents of the cooler or receptacle from falling out of the cooler or receptacle.

(b) It shall be unlawful for anyone to use, carry or possess beverages in a disposable container on or in the public waters of the San Marcos River and each person is limited to one cooler in accordance with subsection (a)(1).

(c) It shall be unlawful for anyone to dispose of any container into the waters or banks of the San Marcos River unless it is disposed into a properly authorized and placed trash receptacle;

(d) It shall be unlawful for anyone to use, carry, possess or dispose of an open container with a volume capacity of five fluid ounces or less on or in the public waters of the portions of the San Marcos River that lie within the city limits.

(1) Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not more than \$500.00.

(2) It is an affirmative defense to prosecution if the individual was involved in the clean up or collection of trash and debris from the rivers. An individual using, possessing, carrying, or disposing of any of the items described in this section as a result of being involved in the clean-up of or collection of trash and debris is exempt from the application of this section.

SECTION 6. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 7. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 8. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 9. This ordinance will take effect on May 1, 2024, after its passage, approval and adoption on second reading and publication of the caption in accordance with the City Charter.

PASSED AND APPROVED on first reading on February 6, 2024.

PASSED, APPROVED AND ADOPTED on second reading on February 20, 2024.

Jane Hughson
Mayor

Attest:

Approved:

Elizabeth Trevino
City Clerk

Samuel J. Aguirre
City Attorney