



AGENDA REPORT

City of Poway

CITY COUNCIL

DATE: November 7, 2023
TO: Honorable Mayor and Members of the City Council
FROM: Alan Fenstermacher, City Attorney
CONTACT: Alan Fenstermacher, City Attorney
afenstermacher@poway.org
SUBJECT: Urgency Ordinance Banning Distribution of Hate Litter

Summary:

Based on past and recent events in the City of Poway and San Diego County, the Mayor and staff are recommending the City Council adopt an urgency ordinance (Attachment A) adding Chapter 8.22 to the Poway Municipal Code ("PMC"), making it unlawful and a public nuisance to distribute or dump pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public area, including outside a private residence, with the intent to willfully injure, intimidate, interfere with, oppress, harass, or threaten anyone based on a characteristic or perceived characteristic which is protected by state or federal law, including race, religion, color, sex, gender, gender identity, gender expression, marital status, medical condition, military or veteran status, national origin, ancestry, physical or mental disability, genetic information, sexual orientation, and age.

Recommended Action:

It is recommended the City Council adopt the recommended urgency Ordinance (Attachment A), which must be passed by a four-fifths (4/5) vote, to take effect immediately without the need for any further action by the City Council or 30-day waiting period.

Discussion:

Beginning in June 2023 and continuing to the present day, there has been a surge in the distribution of antisemitic and homophobic flyers in neighborhoods in San Diego County, causing severe distress to residents leaving and arriving back to their residences. On October 25, 2023, the Department of Homeland Security ("DHS") and Federal Bureau of Investigation ("FBI") issued a Public Service Announcement to highlight potential threats in the United States from a variety of actors in response to the Hamas attacks on Israel on October 7, 2023, and subsequent activities in that region. The Public Service Announcement stated: "the volume and frequency of threats to Americans, especially those in the Jewish, Arab American, and Muslim communities in the United States, have increased, raising our concern that violent extremists and lone offenders motivated by or reacting to ongoing events could target these communities. These threats have included hoax bomb threats targeting houses of worship and violent rhetoric online encouraging attacks against the Jewish, Arab American, and Muslim communities across the United States."

Further, on April 27, 2019, during Passover, an armed gunman fatally shot one woman and injured three other people inside the Chabad of Poway, located in the City of Poway. Shortly before committing this heinous crime, the shooter posted an antisemitic and racist open letter on the internet.

In order to protect all of its citizens from threats and other harassment based on race, ethnicity, religion, or any other protected characteristic, the Mayor and City staff recommend adopting the proposed urgency Ordinance (Attachment A) adding Chapter 8.22 to the PMC, making it unlawful and a public nuisance to distribute or dump pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public area, including outside a private residence, with the intent to willfully injure, intimidate, interfere with, oppress, harass, or threaten anyone based on a characteristic or perceived characteristic which is protected by state or federal law, including race, religion, color, sex, gender, gender identity, gender expression, marital status, medical condition, military or veteran status, national origin, ancestry, physical or mental disability, genetic information, sexual orientation, and age.

Rather than amending the PMC by a traditional ordinance that would require a second reading and take effect 30 days after its adoption following the second reading, the City Council has the power to enact an urgency ordinance, not in conflict with general laws, as necessary to protect public peace, health, and safety, via exercise of the powers provided to cities in Article XI, Section 7, of the California Constitution, and in compliance with Government Code section 36937, subdivision (b). The adoption of this urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety as those terms are used in Government Code Section 36937(b). Urgency ordinances must be approved by a four-fifths (4/5) vote of the City Council.

Environmental Review:

This item is not subject to CEQA review.

Fiscal Impact:

There is no fiscal impact with this action, other than undetermined enforcement costs, which would be included in the City's existing contract with the San Diego County Sheriff's Department.

Public Notification:

None.

Attachments:

A. Ordinance No. 863

Reviewed/Approved By:



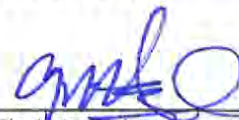
Wendy Kaserman
Assistant City Manager

Reviewed By:



Alan Fenstermacher
City Attorney

Approved By:



Chris Hazeltine
City Manager

ORDINANCE NO. 863

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POWAY, CALIFORNIA, ADDING CHAPTER 8.22 TO TITLE 8 (HEALTH AND SAFETY) OF THE POWAY MUNICIPAL CODE REGARDING HATE LITTER

WHEREAS, pursuant to Government Code sections 36934 and 36937, a city may adopt an urgency Ordinance for the immediate preservation of the public peace, health, or safety;

WHEREAS, as forth below in the declaration of the facts constituting the urgency, recent and unprecedented levels of hate-motivated activities pose numerous threats to the public peace, health, and/or safety;

WHEREAS, the City of Poway desires to keep members of the community safe from non-protected hate speech and hate-containing writings; and

WHEREAS, the City Council desires to adopt Chapter 8.22 of the Poway Municipal Code, establishing regulations for the distribution of written material containing specified hate speech including violations, penalties, and enforcement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF POWAY DOES ORDAIN AS FOLLOWS:

SECTION 1: The above recitations are true and correct.

SECTION 2: The City Council finds and determines that the adoption of this urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15060(c)(2), in that the adoption of this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and is further and independently exempt from the California Environmental Quality Act under State CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty there is no possibility the adoption of this Ordinance will have a significant effect on the environment.

SECTION 3: The City Council has the power to enact an urgency Ordinance, not in conflict with general laws, as necessary to protect public peace, health, and safety, via exercise of the powers provided to cities in Article XI, Section 7, of the California Constitution, and in compliance with Government Code section 36937, subdivision (b). The adoption of this urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety as those terms are used in Government Code Section 36937, subdivision (b) in at least the following respects:

- A. On April 27, 2019, during Passover, an armed gunman fatally shot one woman and injured three other people inside the Chabad of Poway, located in the City of Poway. Shortly before committing this crime, the shooter posted an antisemitic and racist open letter on the internet.
- B. Beginning in June 2023 and continuing to the present day, there is a local (San Diego County) surge in the distribution of antisemitic and homophobic flyers in neighborhoods, causing severe distress to residents leaving and arriving home.

- C. On October 7, 2023, armed HAMAS fighters breached border security fences and stormed beaches in Israel, leading to the death of over 1,400 in Israel, including at least 32 Americans. Since that time, at least 3,400 people have been killed in Gaza. Antisemitic and anti-Palestinian incidents have since spiked across the United States.
- D. On October 25, 2023, the Department of Homeland Security (“DHS”) and Federal Bureau of Investigation (“FBI”) issued a Public Service Announcement to highlight potential threats in the United States from a variety of actors in response to the HAMAS attacks on Israel on October 7, 2023, and subsequent activities in that region. The Public Service Announcement stated: “the volume and frequency of threats to Americans, especially those in the Jewish, Arab American, and Muslim communities in the United States, have increased, raising our concern that violent extremists and lone offenders motivated by or reacting to ongoing events could target these communities. These threats have included hoax bomb threats targeting houses of worship and violent rhetoric online encouraging attacks against the Jewish, Arab American, and Muslim communities across the United States.”
- E. Residents of the City of Poway have spoken to the City about the increase of and threat posed by distribution of hate litter to the members of the community.

The above-identified facts constitute a current and immediate threat to the public peace, health, and safety of the City, within the meaning of Government Code section 36937, subdivision (b). In light of these facts, the City Council finds that an urgency Ordinance is necessary and essential. The City Council declares that this urgency Ordinance is necessary for immediate preservation of the public peace, health, and safety of the community.

SECTION 4: The new Chapter 8.22 is hereby added to Title 8 of the Poway Municipal Code to read as set forth on Exhibit 1 hereto.

SECTION 5: If any provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6: This Ordinance shall be codified.

EFFECTIVE DATE: This Ordinance shall take effect and be in force immediately following its adoption by a 4/5 vote of the City Council.

CERTIFICATION/PUBLICATION: The City Clerk shall certify the adoption of this Ordinance and cause it, or a summary of it, to be published in the manner required by law.

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INTRODUCED, PASSED, AND ADOPTED at a Regular Meeting of the City Council of the City of Poway, California, held the 7th day of November, 2023, by the following vote, to wit:

AYES:

NOES:

ABSTAINED:

ABSENT:

DISQUALIFIED:

Steve Vaus, Mayor

ATTEST:

Carrie Gallagher, CMC, City Clerk

Exhibit 1

CHAPTER 8.22: HATE LITTER

- 8.26.010 Purpose and intent
- 8.26.020 Definitions
- 8.26.030 Unlawful hate littering
- 8.26.040 Public nuisance declared
- 8.26.050 City Manager administrative authority
- 8.26.060 Violations, penalties, and enforcement

§ 8.26.010 PURPOSE AND INTENT.

Hate speech and hate-containing writings against anyone based on a characteristic or perceived characteristic which is protected by state or federal law has no place in the City of Poway. Such hate speech and hate-containing writings prevent people from comfortably moving to and from their homes and throughout the City of Poway out of fear for violence. Such target activities are a threat to the health, safety, and welfare of the community. This chapter shall be interpreted in a manner that is consistent with applicable state and federal law.

§ 8.26.020 DEFINITIONS.

For purposes of this chapter, the words and phrases in this chapter shall have the following meanings, except where the context clearly indicates a different meaning.

DUMP. To dump, throw, discard, place, deposit, or dispose of.

HARASS. To engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

PUBLIC AREA. All property that is owned, managed or maintained by the city, and shall include, but not be limited to any public street, building, grounds, lot, parcel park, plaza or parking lot dedicated to the authorized use and enjoyment of the public, and any other public property owned, maintained or controlled by another government agency within the City where the City is authorized to enforce its police powers as described herein.

PUBLIC STREET. Includes but is not limited to any city right-of-way, street, road, highway, alley, sidewalk, parkway, bridge, culvert, drain, and all other facilities or areas necessary for the construction, improvement, and maintenance of streets and roads.

SIDEWALK. That portion of the public right-of-way provided for the primary use of pedestrians along or adjacent to a street.

§ 8.26.030 UNLAWFUL HATE LITTERING.

(A) Unlawful hate littering. It shall be unlawful and a public nuisance for any person to distribute or dump pamphlets, flyers, or other materials, whether for commercial or

noncommercial purposes, in a public area, including outside a private residence, with the intent to willfully injure, intimidate, interfere with, oppress, harass, or threaten anyone based on a characteristic or perceived characteristic which is protected by state or federal law, including race, religion, color, sex, gender, gender identity, gender expression, marital status, medical condition, military or veteran status, national origin, ancestry, physical or mental disability, genetic information, sexual orientation, and age. Such distribution or dumping shall be deemed "hate littering."

(B) Exception. This section shall not apply to any activity protected under the Constitution of the United States and the Constitution of the State of California.

§ 8.26.040 PUBLIC NUISANCE DECLARED.

Any hate littering established in violation of this chapter is declared to be a public nuisance, and the City is authorized to abate the nuisance and remove hate litter as authorized by law.

§ 8.26.050 CITY MANAGER ADMINISTRATIVE AUTHORITY.

The City Manager or his or her designee may develop and adopt administrative regulations that are consistent with the terms and prohibitions of this chapter. This shall include all policies and procedures for the abatement of hate litter, including the policies and procedures for ensuring safe and prompt removal of the nuisance.

§ 8.26.060 VIOLATIONS, PENALTIES, AND ENFORCEMENT.

Any person who violates this chapter is guilty of a misdemeanor and punishable by a fine of not more than \$1,000 and/or imprisonment not to exceed six months. This chapter may also be enforced via administrative or civil actions as authorized by the Municipal Code.