

**CITY OF SAN DIEGO  
OFFICE OF THE CITY CLERK  
MEMORANDUM  
(619) 533-4000**

**DATE:** January 5, 2012  
**TO:** Lea Fields-Bernard, Rules Committee Consultant  
**FROM:** Elizabeth Maland, City Clerk  
**SUBJECT:** Ballot Proposal for Rules Committee Review

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Attached is a ballot proposal amending San Diego Municipal Code section 54.0110, filed with my office today for placement on an upcoming Rules Committee meeting agenda pursuant to Council Policy (CP) 000-21. The proponents is Martha Sullivan on behalf of Occupy San Diego.

Through CP 000-21, a proposal receives Rules Committee review and comment, and may be forwarded to the Council for consideration and possible placement on the ballot.

My office will keep a copy of the ballot proposal and re-submit it to you after the January 6, 2012, deadline for proposed ballot measures submitted under CP 000-21 for the June, 2012 primary election.

  
Elizabeth Maland  
City Clerk

Attachment

cc: Diana JuradoSainz, Legislative Coordinator

**Ballot Proposal to Amend the Encroachment Code**  
**January 5, 2012**

Occupy San Diego hereby submits a Ballot Proposal to revise San Diego Municipal Code (SDMC) 54.0110 for the June 2012 Ballot, consistent with San Diego City Council Policy OOO-21. It is a simple amendment to SDMC 54.0110 "Unauthorized Encroachment Prohibited":

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SAN DIEGO, CA

"It is unlawful for any person to erect, place, allow to remain, construct, establish, plan or maintain any vegetation or object on any public street, alley, sidewalk, highway, or other 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)

There is presently an exception to SDMC 52.80.01 that is also very apt for the Encroachment SDMC 54.0110, and would bring public property in line with the same requirement imposed on private business premises:

"Trespasses upon Privately Operated Business Premises", exceptions include (c) (2) "Peaceful picketing, lawful labor activities,... peaceful political activities."

*This Ballot Proposal copies SDMC 52.80.01(c) and Subsection (2) thereof and revises it as follows to INSERT into SDMC 54.0110:*

**(a) Exceptions.** *The provisions of this section shall not apply where their application would result in an interference with or inhibition of peaceful picketing [DELETE: directed toward the business establishment], lawful labor activities, or peaceful political activities, including but not limited to:*

**(i)** *Use and display of the Flag of the United States in compliance with 36 U.S.C. 173-178 .*

# **Ballot Proposal to Amend the Encroachment Code**

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- (ii) Voter registration stations, including tables, chairs, shade canopies, signs and any other necessary equipment and supplies to support this purpose.*
- (iii) Voter and resident information displays, including tables, chairs, shade canopies, signs and portable shelving and any other necessary equipment and supplies to support this purpose.*
- (iv) Peaceful assemblies of voters and residents for civic engagement, to develop consensus on matters of concern to them, and/or to prepare petitions for redress of grievances, including tables, chairs, shade canopies, signs and any other necessary equipment or supplies to support the event's purpose.*

In submitting this Ballot Proposal, we again note that this would bring PUBLIC premises under the same requirements as "privately operated business premises" in SDMC 52.80.01. And this will also reduce City costs to enforce SDMC 54.0110, since law enforcement resources will not be redirected to enforce its provisions for peaceful picketing, lawful labor activities, or peaceful political activities.

Submitted by Martha Sullivan on behalf of Occupy San Diego, January 5, 2012

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## 36 U.S.C. 173-178

### **§173. Display and use of flag by civilians; codification of rules and customs; definition**

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to sections 1 and 2 of title 4 and Executive Order 10834 issued pursuant thereto.

### **§174. Time and occasions for display**

- (a) Display on buildings and stationary flagstaffs in open; night display It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness.
- (b) Manner of hoisting The flag should be hoisted briskly and lowered ceremoniously.
- (c) Inclement weather The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.
- (d) Particular days of display The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Lincoln's Birthday, February 12; Washington's Birthday, third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, second Monday in October; Navy Day, October 27; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and such other days as may be proclaimed by the President of the United States; the birthdays of States (date of admission); and on State holidays.
- (e) Display on or near administration building of public institutions The flag should be displayed daily on or near the main administration building of every public institution.
- (f) Display in or near polling places The flag should be displayed in or near every polling place on election days.
- (g) Display in or near schoolhouses The flag should be displayed during school days in or near every schoolhouse.

### **§175. Position and manner of display**

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

- (a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.
- (b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

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- (c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.
- (d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.
- (e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.
- (f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.
- (g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.
- (h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.
- (i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.
- (j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.
- (k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.
- (l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

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- (m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff. The flag shall be flown at half-staff thirty days from the death of the President or a former President; ten days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. As used in this subsection -
  - (1) the term 'half-staff' means the position of the flag when it is one-half the distance between the top and bottom of the staff;
  - (2) the term 'executive or military department' means any agency listed under sections 101 and 102 of title 5; and
  - (3) the term 'Member of Congress' means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.
- (n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.
- (o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

### **§176. Respect for flag**

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

- (a) The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.
- (b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

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- (c) The flag should never be carried flat or horizontally, but always aloft and free.
- (d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of the platform, and for decoration in general.
- (e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.
- (f) The flag should never be used as a covering for a ceiling.
- (g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.
- (h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.
- (i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.
- (j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.
- (k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

### **§177. Conduct during hoisting, lowering or passing of flag**

During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present except those in uniform should face the flag and stand at attention with the right hand over the heart. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Aliens should stand at attention. The salute to the flag in a moving column should be rendered at the moment the flag passes.

### **§178. Modification of rules and customs by President**

Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

# OCCUPY SAN DIEGO

FOR IMMEDIATE RELEASE

Contact: Rachel Scoma, Attorney at Law  
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## Free Speech Ballot Measure Proposed By Occupy San Diego

### Recent Police Crackdowns Mirror Infamous San Diego 1912 Free Speech Fight

#### January 2012 named "Free-Speech Month"

January 3, 2011 (SAN DIEGO) -- 100 years after the San Diego City Council infamously suppressed free speech in downtown San Diego, Occupy San Diego will commemorate this historic event by naming January 2012 as "Free-Speech Month," and by proposing a ballot measure to amend the City's municipal code to improve the respect of free speech in San Diego. This amendment will create an explicit exception to the current encroachment law (SDMC 54.0110) to allow for "peaceful picketing, lawful labor activities and peaceful political activities."

"As San Diego gears up to commemorate the now infamous Free Speech Fights of 1912, Occupy San Diego will present the San Diego City Council with the choice to protect free speech or to repeat the mistakes of a hundred years ago and continue to allow the arrest and imprisonment of peaceful citizens exercising their First Amendment rights in San Diego," said Martha Sullivan, an active San Diego community volunteer and supporter of Occupy San Diego.

On January 5, 2012 at 2:00 p.m. Occupy San Diego will host a press conference on the steps of City Hall announcing its intent to file the ballot proposal, what changes it will make to the current municipal code, and how community members can get involved and help build local support for the initiative. "We are calling all free-speech advocates to attend the San Diego City Council Rules Committee meeting on January 11, 2012, to influence the Committee's decision and recommend putting this amendment on the June 2012 ballot," said Ray Lutz, a former Congressional Candidate who was recently arrested for registering voters at the San Diego Civic Center. "The actions of the city to squelch free speech in the central square of the city are astonishing, over-reaching, and unacceptable."

Activists will submit the ballot proposal immediately after the press conference to City Offices.

"Not only are we commemorating the 100 year anniversary of the San Diego prohibition on free speech on January 20th (see [http://www.aftguild.org/free\\_speech](http://www.aftguild.org/free_speech)), said Rachel Scoma, a free speech attorney affiliated with Occupy San Diego, "we will also mark the two year anniversary of Citizens United, the U.S. Supreme Court decision which now allows corporations to spend unlimited funds to influence political campaigns as a form of political speech. We will be working to educate the people about these important issues and put pressure on the City Council to respond differently than the San Diego City Council did a 100 years ago in the disaster of the Free-Speech Fights of 1912."

Ray Lutz: raylutz@citizenoversight.org (619) 820-5321

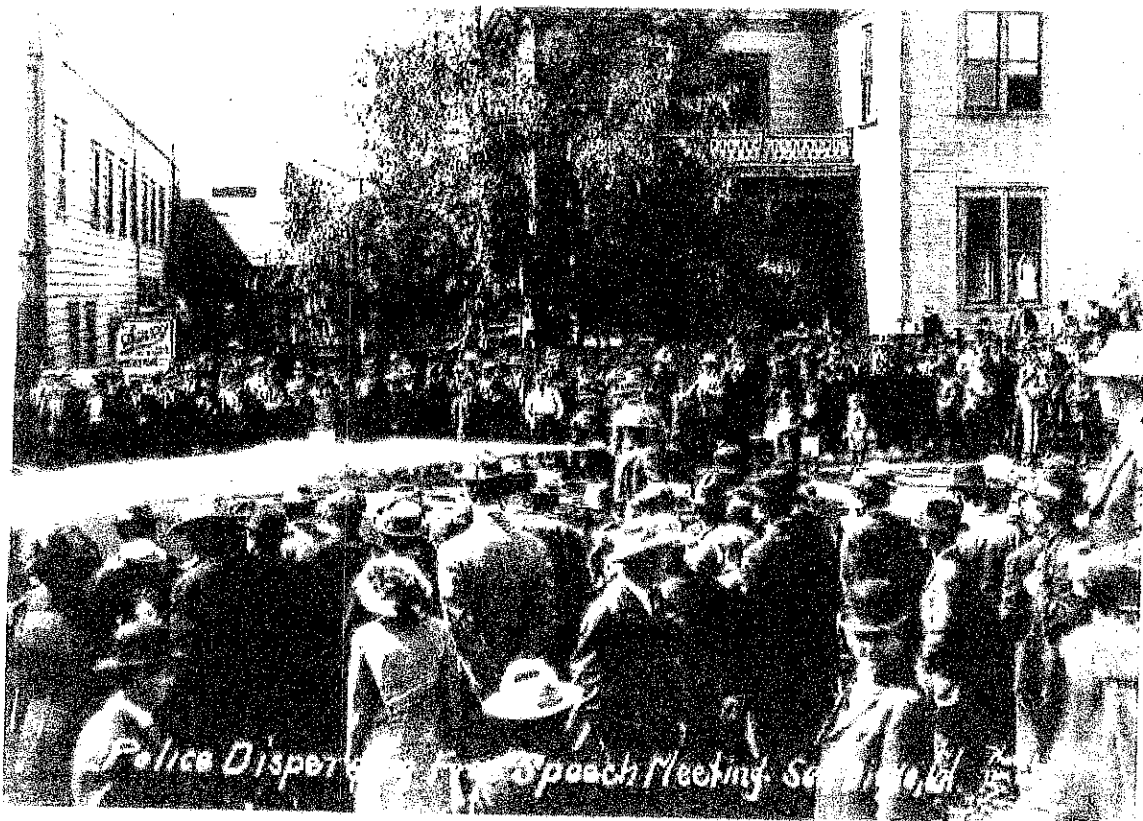
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Free-speech fight of 1912 website: [http://www.aftguild.org/free\\_speech](http://www.aftguild.org/free_speech)



Ordinance prohibiting public speaking #4026, dated January 6, 1912.  
[http://www.aftguild.org/free\\_speech/history/pdf/ordinance-4623rev.pdf](http://www.aftguild.org/free_speech/history/pdf/ordinance-4623rev.pdf)



**Police dispersing Free Speech Meeting, San Diego, California, March 10, 1912**  
[http://www.aftguild.org/free\\_speech/free-speech-gallery/gallery03.html](http://www.aftguild.org/free_speech/free-speech-gallery/gallery03.html)



**Police disperse Free Speech protestors in San Diego October 28, 2011 (David Hatfield)**  
<http://davidhatfieldphotography.com/>

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