

[Draft order V1 03/02/2021]

ORDER

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

SECTION 59

PUBLIC SPACES PROTECTION ORDER

This order is made by Southend-on-Sea Borough Council (the "Council") and shall be known as the Southend-on-Sea Borough Council (Dog Control) Public Spaces Protection Order 2021 ("the Order").

PRELIMINARY

- 1 The Council, in making the Order is satisfied on reasonable grounds that it is likely that the activities identified below will be carried out in public places within the Council's area and that they will have a detrimental effect on the quality of life of those in the locality,

And that:

The likely effect of the activities
Is likely to be of a persistent or continuing nature,
Is likely to be such as to make the activities unreasonable, and
Justifies the restrictions imposed by the notice.

- 2 The Council is satisfied that the prohibitions imposed by this order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 3 The Council has had regard to the rights and freedoms set out in the European Convention on Human Rights, The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights and has concluded that the restrictions on such rights and freedoms imposed by this order are lawful, necessary and proportionate.

BY THIS ORDER

- 4 The effect of the Order is to impose the following prohibitions and/or requirements in the restricted areas at all times save where specified exemptions apply or where the express permission of the Council, or if the land is not in the ownership of the Council permission from the other relevant landowner has been given on the use of the Restricted Areas.
- 5 The prohibitions and/ or requirements are:
 - a. If a dog defecates at any time within the Restricted Area described in Schedule 1 and a Person in charge of the dog at that time fails to remove the faeces from the land

forthwith or dispose of the faeces from the Restricted Area forthwith, that person shall be guilty of an offence.

- i. For the purposes of paragraph 5(a) placing the faeces in a receptacle in the Restricted Area which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - ii. being unaware of the defecation whether by reason of not being in the vicinity or otherwise, or not having a device for or other suitable means of removing the faeces shall not be an excuse for failing to remove the faeces.
- b. A Person in charge of a dog shall be guilty of an offence if at any time within the Restricted Area described in Schedule 1 they are in charge of more than the four dogs.
- c. A Person in charge of a dog shall be guilty of an offence if at any time within the Restricted Area described in Schedule 2 they do not keep the dog on a lead.
- d. A Person in charge of a dog shall be guilty of an offence, if at any time, in the Restricted Area described in Schedule 1, they do not comply with a direction given by an Authorised Officer to put and keep the dog on a lead.
 - i. An Authorised Officer may only give a direction under this paragraph 5(d) to put and keep a dog on the lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.
- e. A Person in charge of a dog shall be guilty of an offence, if, at any time they take a dog onto, or permit a dog to enter or remain on, the Restricted Area as defined in Schedule 3.

EXEMPTIONS

- 6 Nothing in paragraph 5 of this Order applies to:
 - i. A disabled person (within the meaning of the Equality Act 2010) whose disability restricts his/her ability to comply with the requirements or prohibitions set out in paragraph 5 and where the dog is their guide dog or assistance dog; or
 - ii. A person who is training an assistance dog in an official capacity
 - iii. A dog used by the police or other agencies permitted by the Council for official purposes.

FURTHER REQUIREMENTS

- 7 A person who is believed to have engaged in a breach of this order or anti-social behaviour within the Restricted Areas, is required to give their name and address to an Authorised

Officer

- 8 A person who is believed to have engaged in a breach of this order within the Restricted Area is required to leave the area if asked to do so by a police officer, police community support officer or other person designated by the Council and not to return for a specified period not exceeding 48 hours.

OTHER

- 9 This order applies to a public place within Southend-on-Sea, defined in Schedules 1, 2 & 3 of this order and the accompanying plans and identified as the Restricted Area. **[To revisit and update once plans are finalised]**
- 10 The effect of the Order is to impose the prohibitions and requirements detailed herein, at all times, save where specified exemptions apply or where the express permission of the Council, or if the land is not in the ownership or control of the Council the other relevant landowner, has been given on the use of the Restricted Areas.

DEFINITIONS

- 11 For the purpose of this Order the following definitions will apply:

'Assistance dog' means a dog that is trained to aid or assist a disabled person.

'Authorised Officer' means a constable, a police community support officer or a person authorised in writing by Southend-on-Sea Borough Council.

'Person in charge' means a person who habitually has the dog in their possession, care or company at the time the offence is committed, or if none, the owner or person who habitually has the dog in his possession.

'Restricted Area' has the meaning given by section 59(4) of the Anti-Social Behaviour Crime and Policing Act 2014 and for the purpose of this order as described in Schedules 1, 2 and 3 of this order and the accompanying plans. **[need to revisit and update once plans are prepared]**

PERIOD FOR WHICH THIS ORDER HAS EFFECT

- 12 This Order came into force at midnight on **[Day/Month]** 2021 and will expire at midnight on **[Day/Month]** 2024

WHAT HAPPENS IF YOU FAIL TO COMPLY WITH THIS ORDER?

- 13 Section 67 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse:
- a. To do anything that the person is prohibited from doing by a public spaces protection order; or
 - b. To fail to comply with a requirement to which the person is subject under a public spaces protection order.

14 A person guilty of an offence under section 67 is liable on conviction in a Magistrates Court to a fine not exceeding level 3 on the standard scale.

FIXED PENALTY

15 An Authorised Officer may issue a fixed penalty notice (“FPN”) to anyone they believe has committed an offence under section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014. The offender will have 14 days to pay the fixed penalty of £100. If the fixed penalty is paid within 14 days the offender will not be prosecuted. A FPN may be appealed to the Council through the internal appeals processed described on the issued notice.

APPEALS

16 Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the Restricted Area. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an Order is varied by the Council.

17 Interested persons can challenge the validity of this Order on two grounds:

- a. The Council did not have power to make the order, or to include particular prohibitions or requirements; or
- b. That one of the requirements of the legislation has not been complied with.

18 When an application is made the High Court can decide to suspend the operation of the order pending the Court’s decision, in part or in totality. The High Court has the ability to uphold the Order, quash it or vary it.

Dated.....

THE COMMON SEAL of SOUTHEND ON SEA)
BOROUGH COUNCIL was pursuant to a resolution)
of the Council hereunto affixed to this Deed in the)
presence of:-)

Proper Officer of the Council

SCHEDULE 1 - Restricted Area 1

1. Any land in the administrative area of Southend-on-Sea Borough Council open to the air and to which the public are entitled to have access (with or without payment).

DRAFT

SCHEDULE 2 - Restricted Area 2

1. Every length of road including adjacent pavements and verges within the administrative area of Southend-on-Sea Borough Council.
2. All allotments.
3. All promenades.
4. The following formal gardens:
 - Chalkwell Park Formal Gardens
 - Southchurch Park Formal Gardens
 - Churchill Gardens
 - Leigh Library Gardens
 - Prittlewell Square
 - Southchurch Hall Gardens
 - The Shrubbery
 - Priory Park Foundation area walled garden and Centenary garden
5. The following bowling greens:
 - Belfairs Park Bowling Greens
 - Chalkwell Esplanade Bowling Greens
 - Cavendish Bowling Green
 - Eastwood Park Bowling Green
 - Priory Bowling greens
 - Southchurch Park Bowling Green
 - Shoebury Park Bowling Green
 - Green areas along the beaches (during 1st May to 30 September only)
6. The following cemeteries:
 - Sutton Road Cemetery
 - North Road Burial Ground
 - Leigh Cemetery, London Road
 - Crematorium and memorial grounds
7. The following church yards:
 - St. Mary's Church
 - Holy Trinity Church
 - St. Clements Churchyard
 - St. John's Churchyard
8. All public Car Parks, excluding those within public parks

SCHEDULE 3 - Restricted Area 3

Exclusion Zones – All Year

1. **Children’s Play Areas** – All separate children’s play areas within public parks in the Borough of Southend-on-Sea and designated as such at any time during the period of this order, including beach play areas.

2. **Sports Areas**

Belfairs Park Tennis Courts
Bonchurch Park Tennis Courts
Chalkwell Park Tennis courts
Cavendish Park Tennis and Basketball Courts
Priory Park Tennis Courts
Southchurch Park Tennis Courts
Shoebury Park Tennis Courts
Warner’s Park – All-weather Pitch
Milton Road Gardens Tennis Courts
Cluny Square – 5 a side pitch

3. **Exclusion Zones – Part Year (1st May to 30th September)**

All beaches in the Borough of Southend-on-Sea extending out to the mean low water mark.

SCHEDULE 4 - LEGISLATION

Anti-Social Behaviour Crime and Policing Act 2014

Section 67

Offence of failing to comply with order

- (1) It is an offence for a person without reasonable excuse—
 - (a) to do anything that the person is prohibited from doing by a public spaces protection order, or
 - (b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.