

CODE ENFORCEMENT VIOLATION COMPLAINT

Via: Email

DATE: June 27, 2022

FROM: Mission Beach Precise Planning Board
Mission Beach Town Council
San Diego, CA 92109

TO: California Coastal Commission
Marsha Venegas, Enforcement Officer
Andrew Willis, Southern CA Supervisor
7575 Metropolitan Dr. Suite 103
San Diego, CA 92108
619-767-2370

We believe the City of San Diego is and has been in violation of the *San Diego Local Coastal Program*, the *Mission Beach Precise Plan* and the *Coastal Act* by allowing both the public's visual and physical access to the coast to be impeded in Mission Beach Park ("Park") by allowing impermissible retail activity in the Park by so called "street vending."

This impermissible activity and blockage of the public's access began approximately two (2) years ago and has continued unabated. Our position is the state vending law Senate Bill 946 contains language which permits the City to enforce existing ordinances that exclude vending from specific areas in accordance with §51037 and §51038.

§51037(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

§51038

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

Section 30821 to the Coastal Act authorizes the Commission to impose administrative civil penalties for violations of the public access provisions of the California Coastal Act.

We believe the following Sections of the Coastal Act and the San Diego Local Coastal Program Access policies have been violated:

Section 30210 Access; recreational opportunities; posting. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30221 Oceanfront land; protection for recreational use and development. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30251 Scenic and visual qualities. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, we believe the City has ignored the Mission Beach Land Use Plan, known as The *Mission Beach Precise Plan*, which excludes retail and commercial uses from Mission Beach Park.

On November 3, 1987 Proposition G, a voter initiative passed 67% to 33% - it read:

CITY OF SAN DIEGO INITIATIVE MEASURE AMENDS THE SAN DIEGO MUNICIPAL CODE. Shall the Mission Beach Park property owned by The City of San Diego be restricted to the following uses: (a) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness and the like. (b) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building and Roller Coaster where economically feasible. (c) Incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature?

Upon passage of the Proposition G, the City added Municipal Code §63.50 into the City's Municipal Code, which states:

§63.50 Restricting The Use Of Mission Beach Park

(a) From and after the effective date of this measure, the Mission Beach Park property owned by the City of San Diego shall be restricted to the following uses:

(1) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.

On November 21, 1989, Proposition G was incorporated into the *Mission Beach Precise Plan* and the City of San Diego's *Local Coastal Plan* and certified by the Coastal Commission. The exact language certified by the Coastal Commission is on pages 47 and 48 of the *Mission Beach Precise Plan*. **The City of San Diego should have been enforcing the restrictions on retail activity for many years.**

On May 23, 2022, Municipal Code §63.50 was incorporated in the City of San Diego's new Sidewalk Vending Ordinance O21459. It reads as follows:

§36.0107 Vending in Public Parks, Plazas, and Beach Areas

(j) Vending is prohibited in the following locations: Sunset Cliffs Natural Park and Mission Beach Park as defined in section 63.50 of this Code.

The San Diego City Attorney, Mara Elliott, has refused to enforce the prohibition of vending in Mission Beach Park resulting in the continued blockage of the public's visual and physical access to the coast.

Please review the attached photos and videos documenting the recent activity.

We ask that the Coastal Commission, under the other authority given to it by the Sections below, issue an immediate cease and desist order to the City of San Diego and require it to enforce the local coastal plan which prohibits retail activity in Mission Beach Park. This will return the park to its designated use as a park.

Section 30003 Compliance by public agencies

All public agencies and all federal agencies, to the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of this division.

Section 30809 Ex parte cease & desist orders; notice; terms and conditions; time of effectiveness; duration

(a) If the executive director determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit or (2) may be inconsistent with any permit previously issued by the commission, the executive director may issue an order directing that person or governmental agency to cease and desist. The order may be also issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances: (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order. (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources. **(3) The local government or port governing body is a party to the violation.** (b) The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity.

To reiterate, we ask that the Coastal Commission issue an immediate cease and desist order to the City of San Diego and require it to enforce the local coastal plan which prohibits retail activity in Mission Beach Park. This will return the park to its designated use as a park. Since time is of the essence, we would appreciate hearing back on how you will proceed on our code enforcement complaint by Friday, July 1, 2022. Thank you.

/s/

Debbie Watkins, Chair
Mission Beach Precise Planning Board
(858) 344-1684

/s/

Larry Webb, President
Mission Beach Town Council
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