



## Legislation Text

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**File #:** 14-0336, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**FROM:**

Mark Danaj, City Manager

**SUBJECT:**

Report on Emergency Coastal Development Permit Issued for the Temporary Ban on Fishing from the Manhattan Beach Pier; Declaring an Emergency and Nuisance (City Manager Danaj) (REVISED 7-1-14).

**RECEIVE REPORT AND DECLARE AN EMERGENCY AND NUISANCE**

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**RECOMMENDATION:**

Staff recommends that the City Council receive the report, declare an emergency and nuisance, and authorize the City Manager to reach-out to community stakeholders and public agencies to develop options regarding pier fishing for City Council consideration.

**FISCAL IMPLICATIONS:**

There are no fiscal implications associated with the recommended temporary measures.

**BACKGROUND:**

On July 5, 2014, a swimmer was bitten by a shark that had been caught by a fisherman standing on the pier. Over the past several months there have been reports of a number of sightings of great white and other juvenile sharks in the 7 to 10 foot range near the Pier, which has caused concern in the community. According to media reports, some pier fishers are using bait and equipment that may serve to attract and catch sharks. Through the years, the City has received complaints about surfers and swimmers being injured by fishing lines and hooks from fishers on the pier. Since the incident, swimmers and surfers have related other instances, prior to the incident, where they have been injured by hooks and entangled in fishing lines near the pier, thereby adversely affecting their ability to access and enjoy the ocean. In response to the incident, the City imposed an advisory warning to prohibit fishing from the pier until July 8, 2014. On July 7, 2014, the Acting Community Development Director granted an emergency coastal development permit (CDP) to temporarily prohibit fishing on the Manhattan Beach Pier based on public safety purposes. Upon consultation with the California Coastal Commission staff, the Director issued a revised CDP (Attachment 1) on July 8, 2014 that prohibits fishing from the pier for up to 60 days while the issue is studied. Public access on the pier is still permitted.

In the late evening on July 9, a Coastal staff member informed staff that she believes that the Coastal Commission has retained jurisdiction to grant the emergency permit. Thus, on July 10, City staff renewed the dialogue with Coastal staff. City staff sent an email on July 10 to explore: the jurisdictional issues raised by that staff person; and the steps necessary to obtain a waiver from the permit requirements based upon the emergency and nuisance created by the conflict between fishers

and the safety of swimmers and surfers.

Since the incident, staff has consulted with a variety of other governmental entities including: the State Department of Fish and Wildlife, which has enforcement authority over the pier; State Department of Parks and Recreation, who administers the City's lease of the pier with the State; Los Angeles County Lifeguards; the Los Angeles County District Attorney; and, as noted above, the Coastal Commission. The Coastal Commission is in session on July 9-11, 2014, and key members of the Coastal staff are on vacation. Nevertheless, City staff is still reaching out to the Coastal staff to obtain further input on the jurisdictional and the waiver issues.

The California Department of Fish and Wildlife (CDFW) has jurisdiction and authority over the investigation into this matter, and has gathered information about the incident. On the afternoon of July 10, CDFW issued the attached release. As stated in the release,

"The California Department of Fish and Wildlife (CDFW) today announced they found no evidence state fishing laws were violated by an angler who hooked a white shark from the Manhattan Beach Pier.

An investigation including evidence from videos, social media and personal interviews did not provide proof there was intent by the angler to target white sharks.

It is legal to fish for the many species of sharks, rays and other fish that frequent the waters surrounding the pier using the same techniques used that day. Facebook posts and interviews resulted in evidence that showed the angler was targeting bat rays, but admitted to catching sharks including white sharks.

This is a legal activity and consistent with numerous other fishing practices in waters where similar tackle is used to catch a variety of fish species. Incidentally caught species that are not legal to keep must immediately be released. In this case, the line was cut before the fish was landed.

Although this was a very unfortunate incident where a person was injured, criminal prosecution requires proof beyond a reasonable doubt that a crime was committed. Unless additional evidence is discovered, no charges will be pursued by CDFW in this case.

The department encourages a diverse range of ocean recreation and reminds all ocean users to be aware of their surroundings, including the activities of others, when recreating in or near the ocean.

CDFW looks forward to working closely with the city of Manhattan Beach to restore fishing access to the pier as soon as possible."

## **DISCUSSION:**

The Manhattan Beach Certified Local Coastal Program (LCP), which regulates development in the Coastal Zone, was approved by the City Council on February 1, 1994 by adoption of Resolution No. 5060, and certified by the Coastal Commission on May 24, 1994. There have been a number of amendments approved over the years. The LCP gives the City the ability to issue CDPs, including

emergency CDPs.

Emergency Coastal Development Permit: Pursuant to the Coastal Act and the LCP, the Community Director has the authority to issue emergency coastal development permits. Pursuant to LCP Section A.96.190 (Attachment 2), the Director may issue an emergency CDP to proceed with remedial measures for a period not to exceed 60 days. As shown in Attachment 2, Section A.96.190 sets forth the application requirements, the limitations on the ability to issue a permit (none applicable here), noticing requirements, required findings and conditions, and requires the Director to report, in writing and orally, the granting of the emergency permit, at the next scheduled City Council meeting. Copies of this report are available at the Council meeting and have been mailed to the Coastal Commission and all persons requesting notification of local coastal development decisions. The emergency CDP (Attachment 1) contains all the necessary findings, including the following:

1. *An emergency exists that requires action more quickly than permitted by the procedures for a Coastal Development Permit and the work can and will be completed with thirty (30) days unless otherwise specified by the terms of the permit.* Immediate action is required as a great white shark was caught by a fisherman off the pier on July 5th, and subsequently the shark attacked and injured a swimmer in the ocean. There is a public health and safety need for the temporary measures to protect the public. Initially the ocean and pier were temporarily closed, the ocean and pier were then reopened, however fishing on the pier will continue to be prohibited temporarily while the incident is being studied. The pier will remain open for public access and recreation, only fishing will be temporarily prohibited. Surf fishing will continue to be allowed consistent with the Municipal Code regulations.
2. *Public comment on the proposed emergency action has been reviewed, if time allows.* Public comment on the emergency action will be provided for at the July 15, 2014 City Council meeting. The California Coastal Commission, Los Angeles County Lifeguard, and the California Department of Fish and Wildlife have been, and will continue to be, consulted with to study the incident.
3. *The work proposed would be consistent with the requirements of the Certified Local Coastal Program.* The temporary fishing prohibition only requires temporary signs and enforcement, and public access to the pier will still be provided. All recreational users of the coastal area, swimmers, surfers, boaters, fishers, beachgoers and others, will be considered during the study of this incident.

The Coastal Commission retains jurisdiction with respect to certain emergency permits, while the City has jurisdiction over other emergency permits. The City issued the emergency permit in good faith reliance upon a reading of applicable regulations, the City's LCP and map, and discussions with Coastal staff after the incident. However, a Coastal staff member alerted the City late Wednesday evening that she believes the Coastal Commission has retained the jurisdiction for this emergency permit. Accordingly, we have revised the staff report to inform the Council and the public of developments occurring after the distribution of the initial staff report, and to include the following discussion.

Emergency Waiver Provision (Public Resources Code Section 30611)

California Public Resources Section 30611 of the California Coastal Act provides:

“When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).”

Upon learning late Wednesday evening that a Coastal staff member questioned the City’s jurisdiction to issue the emergency CDP, staff contacted the only available Coastal staff person early Thursday to discuss a waiver of the permit pursuant to Public Resources Section 30611. Clearly, immediate action was required to protect swimmers and surfers from life-threatening danger, and a waiver may be necessary to prevent future life-threatening incidents. As noted above, the Coastal Commission is in session Thursday and Friday. Staff will provide further updates as to this issue.

#### Declaration of Emergency and Nuisance

As quoted above, the California Coastal Act allows waivers of the requirements of obtaining a CDP when immediate action is required to protect life. Under the City’s police powers, state law and the Manhattan Beach Municipal Code, the City may take measures to protect the public health, safety and welfare, such as declaring an emergency or a nuisance. In light of the July 5<sup>th</sup> incident, a declaration of an emergency is an appropriate measure to prevent future life-threatening incidents. Typically, a nuisance is declared in connection with a dangerous and defective condition of property. In this case, declaring a nuisance for the purpose of imposing a temporary ban on fishing is necessary because such fishing poses an immediate public health risk and temporary measures are required to protect the public from imminent danger of injury to swimmers and surfers. In addition, such declarations provide ample support for the issuance of both the emergency permit and a waiver.

The City is taking a measured approach to this emergency condition and nuisance. An Emergency CDP or waiver provides for fishing on the pier to be prohibited temporarily while the issue is being studied. The pier has remained open for public access and recreation; only fishing from the pier will be temporarily prohibited. Surf fishing, which poses a much lesser threat than that posed by unregulated pier fishing in deeper water, will continue to be allowed consistent with Municipal Code regulations. The beaches will remain open to swimmers, surfers, fishers and other recreational users.

In declaring an emergency and nuisance, the City is not attempting to avoid the requirements of the City’s LCP or Coastal Act. The City remains committed to complying with the goals and objectives of the Coastal Act and the City’s LCP, especially as those goals and objectives relate to providing safe access to all users of the ocean: swimmers, surfers, and fishers. The City simply needs a short period of time to receive input from all stakeholders: the State Department of Fish and Wildlife, the Coastal Commission, the County of Los Angeles, fishers, surfers, swimmers, residents and visitors, as to whether reasonable regulations can prevent future incidents of dangerous shark attacks and swimmers and surfers being injured by, for instance, lead weights, and other fishing equipment.

## Next Steps

Public comment on the emergency action will be provided for at the July 15, 2014 City Council meeting. The California Department of Fish and Wildlife, California Department of Parks and Recreation, and the Los Angeles County Lifeguard have been contacted and indicated that they support the temporary ban while pier fishing is being studied. The City will continue to consult with them and other experts as well as the general public.

During the interim period, the City Manager will reach out to community stakeholders and local agencies in order to fully explore all perspectives on the issue (similar to the approach utilized for the Six Man volleyball tournament to identify improvements a few years ago). This will include fishers, surfers, swimmers, other recreational users and members of the community. Further on-line civic engagement will be solicited through the MB Forum ("SpeakUpManhattanBeach") or on-line survey instruments.

Further, existing provisions in the Municipal Code will be reviewed to determine whether amendments are necessary. For example, MBMC Section 5.16.010 E provides:

"It shall be unlawful for any person to molest, hunt, disturb, injure, shoot at, take, net, poison, wound, harm, kill or remove from any park, beach or riding and hiking trail any kind of animal, waterfowl, bird, fish, nest or eggs except:

....

E. When fishing from the City pier or surf, using generally accepted fishing tackle or equipment."

Stakeholders need to explore whether the phrase, "using generally accepted fishing tackle or equipment" needs to be better defined so as to prevent shark attacks in the future.

MBMC Section 12.08.100 provides: "No person shall:

- A. Cast, extend, set, use or draw, or assist in casting, extending, setting, using or drawing any seine or net of any kind for the purpose of catching fish within a distance of one (1) mile from the mean high tide line of the City.
- B. Fish with more than one (1) fishing line or cast out more than one (1) fishing line at the same time on or from any part of the public pier which extends westerly into the Pacific Ocean at the foot of Manhattan Beach Boulevard, whether such line is attached to a fishing rod or not.
- C. Cast a line with any lead weight or metal substance, other than a hook attached thereto, by swinging said line with said weight above the iron railing on the public pier in the City or by swinging or casting said line overhead from a pole or from the hand. Casting must be from below the level of the railing of the pier."

Stakeholders need to examine whether such regulations are adequate, and whether additional regulations are necessary, to prevent future incidents.

Dialog will also continue with the aforementioned partner agencies: State Department of Fish and Wildlife, State Department of Parks and Recreation, Los Angeles County Lifeguards, and the California Coastal Commission. Finally, with multiple agencies' involvement with the issue, during the interim period the City will clarify jurisdiction and authority to modify regulations over fishing activities

on the pier.

Once all input is received and issues identified, the City Manager will return to the City Council with options and recommendations for City Council consideration. The temporary pier fishing ban expires on September 5, 2014. However, the City will make every effort to restore fishing access to the pier as soon as possible, and will promptly consider reasonable regulations, acceptable to the California Coastal Commission, Los Angeles County, and the California Department of Fish and Wildlife, designed to prevent future incidents.

The Roundhouse Aquarium is sponsoring a free public lecture entitled "Sharing the Waves with Sharks of the South Bay" at 7:30 PM at the Joslyn Center on July 15<sup>th</sup> (during the City Council meeting). The City requested that the Roundhouse repeat the lecture given recent events. The date and time are being determined at the time of agenda publication. The City will make every effort to live stream the repeat event and make the video available for replay.

In sum, the City understands and recognizes there is a delicate balance; protecting rights of all recreational users of the coastal area, swimmers, surfers, boaters, fishers, beachgoers and others. All of these users and public comments will be considered during the study. The California Constitution provides that the people shall have the right to fish upon and from the public lands of the State and in the ocean, and this temporary measure has no impact upon fishing from the beach. However, the seminal provision of the California Coastal Act is that all persons are entitled to access the ocean. We strongly feel that as a public agency the City's key responsibility to the public is to protect public safety while still allowing a balance with recreational use of the ocean, beach and pier. We are confident that, after a reasonable period of study, we can accomplish the proper balance so that all users of the oceans, including swimmers, surfers, fishers, and other recreational users, can have access to the ocean without being exposed to future life-threatening and dangerous incidents as documented in this report.

## **CONCLUSION:**

Staff recommends that the City Council receive the report, declare an emergency and nuisance, and authorize the City Manager to reach-out to community stakeholders and public agencies to develop options regarding pier fishing for City Council consideration.

### **Attachments:**

1. Revised Emergency Coastal Development Permit (July 8, 2014)
2. Manhattan Beach Local Coastal Program Section A.96.190 (Emergency Coastal Development Permit Procedure)
3. "Sharing the Waves with Sharks of the South Bay" Flyer
4. California Department of Fish and Wildlife July 10, 2014, Release.