



CITY COUNCIL AGENDA REPORT

DATE: September 3, 2019

AGENDA OF: September 10, 2019

DEPARTMENT: Parks & Recreation

SUBJECT: Main Beach – Public Access Policy (PR)

RECOMMENDATION: Resolution directing staff to:

- 1) Implement a Main Beach Public Access Policy authorizing the public's use of the dry sand portion of the beach during the hours of one hour before sunrise to midnight with the provision that the dry sand portion of the beach may be used at all hours to access the wet sand portion of the beach and with the understanding that the wet sand portion of the beach will remain open to the public 24 hours a day in accordance with all currently applicable rules for beach use (e.g. no camping, no alcohol, no smoking etc.) and for all uses by members of the public for which the beach may currently be used (e.g. fishing, jogging, kayak, paddle board and surfboard launching and landing, walking, meditating, swimming, sightseeing, nature observation, special events etc.);
 - 2) Direct that the Main Beach Public Access Policy shall automatically sunset 6 months from the date of its implementation unless before its sunset date, and after a public hearing and a review of then-current circumstances as well as the efficacy of the policy during its implementation in counteracting the negative public health and safety problems the policy was intended to address, the City Council directs that the policy, or a similar modified policy, remain in effect for an additional specified, limited period of time not to exceed six months; and
 - 3) Declare that the documented conditions requiring implementation of the Main Beach Public Access Policy constitute a public nuisance.
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BACKGROUND: Santa Cruz Municipal Code Section 13.04.011 authorizes the Director of Parks & Recreation to establish hours during which any City park property, including City beaches, will be open to the public. Public access to California's beaches is guaranteed by the California Constitution at Article X, Section 4. In implementing that public access guarantee, the California Coastal Act, at Public Resources Code Section 30210, states:

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.

In addition, the Coastal Act, at Public Resources Code Section 30214 provides:

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case... .

In approving the City's 2014-2019 Beach Management Plan on November 13, 2014, the California Coastal Commission noted that the Plan was to be implemented in accordance with these policies and the Beach Management Plan itself, at Section 1, page 3, in articulating its purpose, states:

The purpose of the 2014 Beach Management Plan (BMP) is to guide the activities of public agencies and private property owners in use and operations associated with Main and Cowell Beach as a means to protect natural resources, provide for public safety, and to maximize the extent and quality of the recreational experience of the residents of and visitors to the City of Santa Cruz.

In summary, both the Coastal Act and the City's Beach Management Plan, approved by the Coastal Commission, acknowledge that in implementing the subject coastal access policy, the City not only should, but must, implement that policy in a manner which protects and enhances public safety.

In June 1999 the Coastal Commission issued a Public Access Action Plan. The purpose and function of the Plan is explained in its executive summary:

This Public Access Action Plan was prepared by the California Coastal Commission pursuant to direction and funding under former Governor Wilson's "Coastal Initiative" in 1998. A comprehensive evaluation of the coastal access situation in California, as well as the Commission's roles and responsibilities, this Plan identifies a number of key issues and makes recommendations for addressing problem areas.

Plan Recommendation 28 pertains to beach curfews:

RECOMMENDATION 28. The Commission should ensure that all LCPs address the need to balance public safety concerns with public rights to access to beaches and the ocean by incorporating the Commission adopted (7/12/94) Guidance on Beach Curfews.

The Plan then proceeds to explain how the Commission should go about implementing this recommendation:

In the last several years, more local governments have proposed curfews for both beach areas and nearby parking lots. These curfews are generally in response to citizen complaints regarding criminal activities. While the Commission is certainly concerned about personal safety, they also need to protect the citizens at large and their rights to access the beach.

Accordingly, in order to balance personal safety with Constitutional rights, the Commission adopted a Beach Curfew Guidance document in June 1994. This Guidance document details the steps that the local government must take in order to meet the Commission's standards. First, there must be an identified and documented public safety hazard. Then, all alternatives to deal with the hazard must be identified and analyzed. Examples include the use of additional police officers, increased lighting, etc., instead of closing the area off to the public. Once it has been determined that there are no alternatives to resolve the criminal problem, then the area to be closed must be as small as possible. The curfew must be limited in duration, for one summer or one year. This temporary curfew often alters pattern (sic) enough to disperse the criminal activity.

The June 1994 Beach Curfew Guidance Document, referred to in Recommendation 28 and authored by then Coastal Commission Executive Director Peter Douglas, in its introduction states how the Guidance Document is intended to be used by local governments:

The following is proposed guidance for review under the Coastal Act of governmental actions limiting public access to and use of beaches and State waters. The principal purpose of this guidance is to identify an approach that minimizes restrictions on the general public's constitutional and statutory rights of access to beaches and State waters while at the same time ensuring that public safety concerns are adequately addressed. Another purpose is to identify procedures for the review of these actions which are expeditious and which take into account fiscal constraints faced by all governmental agencies.

The Guidance Document, at pages 10-11, delineates standards and criteria for the imposition of beach curfews by local governments which, if adhered to by the local government, authorize the local government to implement, without Coastal Act review, a limited beach curfew of the type here being proposed by the Police Department and the Parks & Recreation Department.

First of all, before adopting a curfew the City should make findings of fact sufficient to enable a reasonable person to conclude that a public safety problem in fact exists on the beach warranting imposition of a beach curfew. The findings should also include a discussion of what alternatives to the curfew were considered and why their implementation would not effectively address the public safety problem.

A coastal development permit for the beach curfew will not be required so long as the curfew is narrowly tailored in the following respects:

- The geographic area to which the curfew applies should be specifically identified and should be limited to those beach areas with respect to which the City has identified the public safety problem warranting the limited beach closure. The area should be readily identifiable by members of the public.

- The curfew should avoid the prohibition of all public uses of the beach during the curfew hours. To this end, the curfew should authorize, and make provision for, fishing by members of the public from the shoreline, and the use of the wet sand area of the beach for other purposes typically associated with beaches (e.g. walking, surfing, paddling, swimming, kayaking, sightseeing, nature observation). The “wet sand” portion of the beach is that portion of the beach that is wet as a result of the wash of waves or tidal action. The curfew should also allow for the possibility of permitted special events on the beach during curfew hours.
- The hours of dry sand beach closure should be minimized so as to assure that the beach is closed only during those hours when it is reasonable to conclude that the public safety problem that the curfew is intended to address is most acute. In this regard, the Commission, in the Guidance Document, has determined that Coastal Act review will not be required for curfews where the period of closure is limited to the hours of midnight to one hour before sunrise.
- The curfew should contain a sunset provision. In this regard, the Guidance Document states, “An action by a governing body to impose restrictions on the hours of public use of beaches and State waters should be limited in duration and should contain a specific sunset clause (i.e., 1, 2, or 3 years). This provision would require reenactment of a beach closure ordinance or other action on a regular basis thereby allowing public input and a reevaluation of current circumstances that may warrant a relaxation of the hours of closure.”

After delineating the foregoing elements of an acceptable beach curfew regulation, the Guidance Document states: “If the elements set forth above are included in an ordinance or other action by the responsible governing body that limits access to beaches and State waters...the action will not be deemed a “development” for purposes of Section 30106 of the Public Resources Code [Coastal Act] and no coastal permit will be required.” The Guidance Document in this regard is entirely consistent with, and serves to implement, Public Resources Code (Coastal Act) Section 30005 which provides, in pertinent part, that “No provision of this division [the Coastal Act] is a limitation on any of the following:...(6) on the power of any city...to declare, prohibit, and abate nuisances...”

DISCUSSION: As explained below, the proposed policy, in City staff’s opinion, complies with Coastal Commission guidelines and therefore is eligible for adoption by the City Council without the necessity of a corresponding coastal development permit.

1. Evidentiary record documenting the need for the proposed beach curfew.

In September of 2018, the 9th Circuit U.S. Court of Appeals issued its decision in the *Martin v. City of Boise*, case, holding that:

“[S]o long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters], the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public ... That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” (internal quotation marks omitted)

In light of the *Martin* decision, and in recognition of evolving attitudes about effective ways of addressing nuisance conditions associated with homelessness, the City suspended enforcement of the Camping Ordinance's¹ prohibition of camping on public property. In addition, enforcement of Section 13.04.011 (prohibiting entering or remaining in a City park after hours) has focused upon homeless encampments that create nuisance conditions (such as accumulation of garbage, stolen property, drug paraphernalia or human waste) or present specific safety threats (such as fire risk). On April 9, 2019 the City council adopted Resolution No. NS-29,506, establishing a Standard Operating Procedure for Removal of Homeless Encampments on City or Non-City Owned Public Property (the "SOP"). In early May, 2019, the City moved forward with the closure of the "Gateway Encampment," a large unauthorized homeless encampment bounded by the "Gateway Plaza" shopping center, River Street, Highway 1 and the San Lorenzo River levee and occupied by 100-150 homeless individuals.

Since the closure, the Police Department and Parks & Recreation Department have observed a growing homeless encampment on Main Beach adjacent to the San Lorenzo River Lagoon, with a corresponding increase in nuisance-related activity during nighttime hours (primarily alcohol abuse, illicit narcotics activity, litter and human waste) and the public safety and health hazards that necessarily ensue from that activity, including litter and discarded syringes, human feces, glass and other debris deposited on the beach by those engaging in the subject nuisance conduct. Additional information supporting the declaration of a nuisance will be presented at the hearing.

Should the proposed beach curfew be implemented, presence upon the beach during curfew hours would in and of itself constitute an infraction thereby providing police officers with probable cause to contact and cite persons suspected of engaging in other nuisance-related criminal misconduct.

In addition to the Police Department's recommendation, the City Council itself and City staff have received numerous complaints from members of the public further evidencing the late night misconduct which takes place at Main Beach and the resulting public health and safety hazards. Finally the City Council, at the public testimony on this matter, is expected to receive oral testimony to this effect. City staff submits that all of this evidence amply demonstrates the need for the proposed curfew.

2. No adequate alternative.

Main Beach, for the most part, is not illuminated during the darkness hours following midnight. Accordingly, during nighttime hours, it is virtually impossible to observe persons, and the conduct they are engaging in, from the two primary public viewing vantage points with access to the beach, i.e. the Boardwalk and Cliff Drive Vista Point.

Typically, during the graveyard shift, the Police Department will have anywhere from between one and two officers on patrol in the beach area. These officers patrol on a solo basis and the beat for which they are responsible encompasses the triangular area bordered by Third Street, Beach Street and Pacific Avenue and also includes the Municipal Wharf, Cowell Beach, Main Beach and the Dream Inn. Given the size of Main Beach, and given the on-duty officers' other patrol duties and the fact that they need to be near their vehicles during the majority of their

¹ SCMC Chapter 6.36 – Camping.

shift to promptly respond to emergency calls for service, it is not practical to assign officers to conduct foot patrols of Main Beach on multiple occasions during a given graveyard shift.

Based upon the Police Department's experience, the Department would expect that a beach curfew, once enforced, while not completely eliminating nuisance conduct on Main Beach, should serve to deter the majority of the nuisance conditions currently being experienced.

3. Limited geographic area/specific identification.

It should be noted that only the dry sand portion of Main Beach would be subject to the proposed curfew; there is no proposal to close the wet sand portion of the beach which will remain open to the public on a twenty-four hour per day basis with the understanding that the dry sand beach can also be used twenty-four hours per day to access the wet sand portion of the beach.

4. Public uses during curfew hours.

The proposed policy would not prevent members of the public from using Main Beach for a variety of purposes to which members of the public currently use the beach. During the curfew hours, as explained above, the wet sand portion of the beach would remain open to the public twenty-four hours of the day and that portion of the beach can be used by the public for any purpose for which members of the public may now legally use the beach. Examples include fishing, walking, sightseeing, nature observation, meditating, swimming, wading, and launching or landing paddle boards, kayaks and surfboards.

5. Minimal curfew hours/Notice of Public Access Policy.

In accordance with California Coastal Commission Beach Curfew Guidelines, the proposed Policy would implement a curfew only between the hours of midnight and one hour before sunrise. Given the fact that the City has historically experienced the problems necessitating the curfew during all nighttime hours of darkness, the Police Department and Parks & Recreation Department submit that the proposed curfew, which can be expected to last between four to five hours per day depending upon the season, is indeed the minimal amount of closure time necessary to constructively address the nuisance related problems the beach curfew is expected to ameliorate.

Public notice of the Public Access Policy and its beach curfew would be prominently posted and would also notify members of the public that the wet sand portion of the beach is not subject to the curfew and remains accessible to members of the public at all hours for their full use.

6. Sunset provision.

Again in accordance with California Coastal Commission Beach Curfew Guidelines, the proposed public access policy contains a sunset provision which is within the range provided for in the Coastal Commission Guidelines. Furthermore, the policy stipulates, per the Guidelines, that the subject beach curfew will not be extended, or re-enacted in a modified form, absent a City Council review of pertinent circumstances as of the time of the sunset date and a public hearing pursuant to which the Council considers evidence and receives testimony concerning the efficacy of the policy in reducing criminal misconduct on the beach and the

need and advisability of extending the curfew for a limited period of time or of enacting a subsequent modified Public Access Policy of limited duration.

FISCAL IMPACT: None.

Submitted by:

Submitted by:

Approved by:

Tony Elliot
Director of Parks and Recreation

Andrew Mills
Chief of Police

Martín Bernal
City Manager

ATTACHMENTS:

Resolution, with Exhibit A: Main Beach Public Access Policy
1994 Beach Curfew Guidance Document