



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 6/6/2023

Agenda Item: 10C

Department: City Manager
Prepared By Andy Hall, City Manager

Subject:

TEMPORARY MODIFICATION OF BEACH HOURS IN ACCORDANCE WITH SECTION 12.32.140 OF THE SAN CLEMENTE MUNICIPAL CODE AND CONSIDERATION OF URGENCY ORDINANCE RELATED TO SAME

Summary:

Section 12.32.140 of the San Clemente Municipal Code allows the City Manager to modify the beach closure hours when special circumstances warrant. There has been a measurable increase in municipal code violations in the beach areas and enforcement of the laws and ordinances of the City become challenging after 10:00 p.m. Although this is a temporary action, staff will be monitoring the beach environment to determine if the early closure improves public safety at the beach. If so, a permanent modification of the beach closure hours will be presented to the City Council for consideration.

Background:

In accordance with Section 12.32.140 of the San Clemente Municipal Code (SCMC) the use of the public beaches is not allowed between the hours of 12:00 a.m. (midnight) and 4:00 a.m. However, the SCMC indicates that in the event of special circumstances the City Manager is authorized and empowered to modify the hours by filing the modification and the specified period of the modification with the City Clerk.

It has been determined by the City Manager that current circumstances warrant a modification of the beach closure hours to extend the closure from 10:00 p.m. until 4:00 a.m. rather than midnight until 4:00 a.m. In recent months, reports of municipal code violations, including physical altercations have occurred or originated on the beach during the late evening.

It is important to note that the beaches immediately adjacent to the City beaches in San Clemente close at 10:00 p.m. as do most of the beaches in Orange County. Consistent closure times will reduce confusion by visitors that may be unaware of the delineations between the City and State beaches.

If the City Council chooses to pursue a permanent modification to the hours of closure, the SCMC will need to be amended by Ordinance. For that purpose, both an Urgency Ordinance and a regular Ordinance have been prepared and attached hereto for consideration by the City Council.

A permanent closure will involve coordination with the California Coastal Commission and compliance with the Coastal Act. Section 30001 (c) of the Coastal Act states, "(c) That to promote the

public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.” This statement is further supported by the Coastal Act in Section 30005 Local governmental powers; nuisances; attorney general’s powers which indicates that “No provision of this division is a limitation on any of the following: (a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone. (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.” The San Clemente City Code defines, in part, a nuisance as “Anything which is injurious to health or is indecent and offensive to the senses...” Clearly, many of the provision of the Coastal Act are consistent with the desire of the City Council to create a safe environment on the beach.

Finally, it should be noted that the hours of operation on the pier are not being changed at this time. The pier will remain open until midnight and reopen at 4:00 a.m.

Council Options:

1. Move to support the action of the City Manager to modify the hours of closure from 12:00 a.m. until 4:00 a.m. to 10:00 p.m. until 4:00 a.m. on City beaches; adopt Urgency Ordinance 1751 amending Section 12.32.140 of the San Clemente Municipal Code to modify the closure hours of the beaches in the City; introduce and conduct a first reading on Ordinance No. 1752 amending Section 12.32.140 of the San Clemente Municipal Code; and find the actions categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines.
2. Move to support a temporary modification in different closure hours of City beaches and/or the pier by the City Manager, and find the action exempt from CEQA.
3. Adopt Urgency Ordinance 1751 amending Section 12.32.140 of the San Clemente Municipal Code to modify the closure hours of the beaches in the City, and find the ordinance exempt from CEQA.
4. Modify and adopt Urgency Ordinance 1751 amending Section 12.32.140 of the San Clemente Municipal Code, and find the ordinance exempt from CEQA.
5. Introduce and conduct a first reading on Ordinance No. 1752 amending Section 12.32.140 of the San Clemente Municipal Code to modify the closure hours of the beaches in the City, and find the ordinance exempt from CEQA.
6. Modify, introduce and conduct a first reading on Ordinance No. 1752 amending Section 12.32.140 of the San Clemente Municipal Code, and find the ordinance exempt from CEQA.
7. Continue the item and request additional information from staff.
8. Provide direction to the City Manager to keep the current closure hours between 12:00 a.m. and

4:00 a.m.

Fiscal Impact:

None

Environmental Review/Analysis:

Staff recommends that the City Council determine the actions to be categorically exempt from CEQA under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA guidelines.

Recommended Actions:

Staff Recommendation

1. Support the action of the City Manager to modify the hours of closure from 12:00 a.m. until 4:00 a.m. to 10:00 p.m. until 4:00 a.m. on City Beaches.
2. Adopt Urgency Ordinance 1751 entitled "AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, DECLARING A PUBLIC NUISANCE; AMENDING SECTION 12.32.140 OF THE SAN CLEMENTE MUNICIPAL CODE TO CLOSE THE PUBLIC BEACHES AT 10:00 P.M. FOR PUBLIC HEALTH, SAFETY AND WELFARE; AND FINDING THE ORDINANCE TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES."
3. Introduce and conduct a first reading by title only of Ordinance No. 1752 entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, DECLARING A PUBLIC NUISANCE; AMENDING SECTION 12.32.140 OF THE SAN CLEMENTE MUNICIPAL CODE TO CLOSE THE PUBLIC BEACHES AT 10:00 P.M. FOR PUBLIC HEALTH, SAFETY AND WELFARE; AND FINDING THE ORDINANCE TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES."

Attachment:

1. Urgency Ordinance No. 1751
2. Ordinance No.1752

URGENCY ORDINANCE NO. 1751

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, DECLARING A PUBLIC NUISANCE; AMENDING SECTION 12.32.140 OF THE SAN CLEMENTE MUNICIPAL CODE TO CLOSE THE PUBLIC BEACHES AT 10:00 PM FOR PUBLIC HEALTH, SAFETY AND WELFARE; AND FINDING THE ORDINANCE TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES

WHEREAS, Section 12.32.140 of the San Clemente Municipal Code (“SCMC”) currently provides for public beaches and the pier in the City of San Clemente, California (“City”) to close at midnight; and

WHEREAS, the City has conducted a survey of beach hours in both Orange and San Diego Counties, revealing that a vast majority of the beaches close at 10:00 p.m.; and

WHEREAS, the State beaches on either side of the City beaches close at 10:00 p.m., creating a situation where bad actors could congregate on City beaches for an additional two hours; and

WHEREAS, there have been a growing number of public safety incidents in the City in the past few weeks, many of which occur late in the evening when there are no lifeguards on duty and fewer members of the public around to witness the crimes; and

WHEREAS, over Memorial Day weekend, two Marines were brutally attacked near the San Clemente public pier by a large gathering of youths and related crimes are quickly escalating in the City; and

WHEREAS, there is a need to take immediate action to reduce these crimes and protect public safety, health and welfare; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare caused by keeping the public beaches open between the hours of 10:00 p.m. and midnight; and

WHEREAS, one of the stated purposes of the California Coastal Act is “promote the public safety, health, and welfare” as stated in Public Resources Code section 30001(c); and

WHEREAS, pursuant to Public Resources Code section 30005(b), “[n]o provision of [the Coastal Act] is a limitation...[o]n the power of any city or county or city and county to declare, prohibit, and abate nuisances”; and

WHEREAS, SCMC section 8.52.010 defines a public nuisance as including “[a]nything which is injurious to health or is indecent and offensive to the senses...”; and

WHEREAS, keeping the public beaches open between the hours of 10:00 p.m. and midnight is injurious to public safety, health and welfare and constitutes a nuisance within the meaning of SCMC section 8.52.010; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937(b).

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines.

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. Here, the Ordinance involves maintaining an existing use with a reduction in hours of operation. Thus, the Ordinance qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemptions identified in State CEQA Guidelines section 15300.2 apply. The Ordinance will not impact an environmental resource of hazardous or critical concern. The Ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource. There is no possibility that the project will cause a direct or reasonably foreseeable indirect effect on

the environment. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Keeping the public beaches open between the hours of 10:00 p.m. and midnight is hereby declared to constitute a public nuisance. This Ordinance is necessary to abate a public nuisance.

Section 4. Section 12.32.140 of the San Clemente Municipal Code is hereby amended to read as follows (underline indicates additions and ~~strikethroughs~~ represent deletions):

12.32.140 - Use of municipal pier and public beaches.

It shall be unlawful for any person to be upon or use the public pier between twelve (12:00) midnight and four (4:00) a.m. and any public beach of the City between the hours of ten (10:00) p.m. ~~twelve (12:00) midnight~~ and four (4:00) a.m. of the following day. In the event of special circumstances so warranting, the City Manager, in his or her judgment, is authorized and empowered to modify the hours established herein by first filing each such modification and the specified period thereof with the City Clerk. In addition, the City Council may by resolution modify the hours established herein for any business establishment which operates on the public pier or public beach if the Council determines in its sole discretion that such modification will not be contrary to the public health, safety or welfare.

Section 5. This ordinance takes effect immediately upon its adoption.

Section 6. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

Section 7. The City Council hereby enacts this urgency ordinance under California Government Code section 36937(b), which allows the City to adopt an urgency ordinance by not less than four-fifths vote for the immediate preservation of public peace, health or safety, subject to the findings herein. Upon adoption of this urgency ordinance, City Council directs staff to prepare, execute, and file with the Orange County Clerk a notice of exemption within five working days of the adoption of this Ordinance.

Section 8. The custodian of records for this ordinance is the San Clemente City Clerk, and the records compromising the administrative record for this Ordinance are located at 910 Calle Negocio, San Clemente, CA 92673.

APPROVED AND ADOPTED this ____ day of June, 2023.

ATTEST:

Laura Campagnolo, City Clerk

Chris Duncan, Mayor

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, hereby certify that Urgency Ordinance No. 1751, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the ____ day of June, 2023, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, 2023.

Laura Campagnolo, City Clerk

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

ORDINANCE NO. 1752

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, DECLARING A PUBLIC NUISANCE; AMENDING SECTION 12.32.140 OF THE SAN CLEMENTE MUNICIPAL CODE TO CLOSE THE PUBLIC BEACHES AT 10:00 PM FOR PUBLIC HEALTH, SAFETY AND WELFARE; AND FINDING THE ORDINANCE TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES

WHEREAS, Section 12.32.140 of the San Clemente Municipal Code (“SCMC”) currently provides for public beaches and the pier in the City of San Clemente, California (“City”) to close at midnight; and

WHEREAS, the City has conducted a survey of beach hours in both Orange and San Diego Counties, revealing that a vast majority of the beaches close at 10:00 p.m.; and

WHEREAS, the State beaches on either side of the City beaches close at 10:00 p.m., creating a situation where bad actors could congregate on City beaches for an additional two hours; and

WHEREAS, there have been a growing number of public safety incidents in the City in the past few weeks, many of which occur late in the evening when there are no lifeguards on duty and fewer members of the public around to witness the crimes; and

WHEREAS, over Memorial Day weekend, two Marines were brutally attacked near the San Clemente public pier by a large gathering of youths and related crimes are quickly escalating in the City; and

WHEREAS, there is a need to take immediate action to reduce these crimes and protect public safety, health and welfare; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare caused by keeping the public beaches open between the hours of 10:00 p.m. and midnight; and

WHEREAS, one of the stated purposes of the California Coastal Act is “promote the public safety, health, and welfare” as stated in Public Resources Code section 30001(c); and

WHEREAS, pursuant to Public Resources Code section 30005(b), “[n]o provision of [the Coastal Act] is a limitation...[o]n the power of any city or county or city and county to declare, prohibit, and abate nuisances”; and

WHEREAS, SCMC section 8.52.010 defines a public nuisance as including “[a]nything which is injurious to health or is indecent and offensive to the senses...”; and

WHEREAS, keeping the public beaches open between the hours of 10:00 p.m. and midnight is injurious to public safety, health and welfare and constitutes a nuisance within the meaning of SCMC section 8.52.010; and

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines.

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. Here, the Ordinance involves maintaining an existing use with a reduction in hours of operation. Thus, the Ordinance qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemptions identified in State CEQA Guidelines section 15300.2 apply. The Ordinance will not impact an environmental resource of hazardous or critical concern. The Ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource. There is no possibility that the project will cause a direct or reasonably foreseeable indirect effect on the environment. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Keeping the public beaches open between the hours of 10:00 p.m. and midnight is hereby declared to constitute a public nuisance. This Ordinance is necessary to abate a public nuisance.

Section 4. Section 12.32.140 of the San Clemente Municipal Code is hereby amended to read as follows (underline indicates additions and ~~strikethroughs~~ represent deletions):

12.32.140 - Use of municipal pier and public beaches.

It shall be unlawful for any person to be upon or use the public pier between twelve (12:00) midnight and four (4:00) a.m. and any public beach of the City between the hours of ten (10:00) p.m. ~~twelve (12:00) midnight~~ and four (4:00) a.m. of the following day. In the event of special circumstances so warranting, the City Manager, in his or her judgment, is authorized and empowered to modify the hours established herein by first filing each such modification and the specified period thereof with the City Clerk. In addition, the City Council may by resolution modify the hours established herein for any business establishment which operates on the public pier or public beach if the Council determines in its sole discretion that such modification will not be contrary to the public health, safety or welfare.

Section 5. This Ordinance shall take effect 30 days after its adoption or upon securing any approvals, if necessary, and as applicable by the California Coastal Commission, whichever is later.

Section 6. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

Section 7. The City Clerk shall certify the adoption of this ordinance and cause it, or a summary of it, to be published within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

Section 7. The custodian of records for this ordinance is the San Clemente City Clerk, and the records compromising the administrative record for this Ordinance are located at 910 Calle Negocio, San Clemente, CA 92673.

APPROVED AND ADOPTED this ____ day of June, 2023.

ATTEST:

Laura Campagnolo, City Clerk

Chris Duncan, Mayor

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1752 having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of June, 2023, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, 2023.

Laura Campagnolo, City Clerk

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney