

# San Diego City Council Appeals for the Seals

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*by Bianca Bruno*

SAN DIEGO (CN) — After hearing pleas from seal lovers Tuesday, the San Diego City Council agreed to appeal a state judge's ruling that the city ordinance closing Children's Pool Beach during pupping season is pre-empted by the Marine Mammal Protection Act and cannot be enforced.

The council voted 7-1 to appeal the order, with Council President Sherri Lightner casting the only dissenting vote, and Councilman Scott Sherman absent.



After years of tension between seal lovers and people who want to see the Children's Pool returned to its original purpose — as a safe cove and entry point for children to learn to swim — the city voted in May 2010 to enact an ordinance to protect resting, pregnant and nursing harbor seals and their pups.

Friends of the Children's Pool then sued the city and the California Coastal Commission for closing the beach from December 15 to May 15, when the seals mate and give birth.

The case was transferred to Orange County Superior Court, where Judge Frederick Horn ruled in May that the city ordinance closing the beach during pupping season was pre-empted by the Marine Mammal Protection Act and cannot be enforced.

Before the City Council met and then went into closed session Tuesday, a handful of seal supporters told the council why they should appeal Horn's order.

Seal Conservancy President Dr. Jane Reldan, a 25-year resident of La Jolla, said closure of the Children's Pool – which she called by its original name, Casa Beach – has "worked extremely well" the past two pupping seasons.

Reldan submitted 500 letters of support to the council written by seal supporters around the world, including Great Britain, Germany, Spain, Chile and Canada.

Closing the Children's Pool during pupping season has decreased the number of police calls by 87.5 percent, Reldan told the council.

Frequent emergency calls about people harassing and assaulting the seals was a major issue in the past. Beachgoers have been caught on camera kicking the seals.

The Children's Pool has become a major tourist destination, drawing 1.5 million visitors to the small beach in 2015 to get a glimpse of the seals, Reldan said.

But former city lifeguard Joel Tracey, with the San Diego Council of Divers, said the City has spent millions of dollars litigating the seal controversy and has not disclosed how many taxpayer dollars they've spent, despite requests from City Council President Sherri Lightner and others.

Tracey estimates the city has spent at least \$20 million on litigation and hiring a park ranger and other employees to monitor the Children's Pool.

He said closing the beach for five months a year pushes swimmers and divers to use other access points on the beach that are more dangerous in rough winter waters.

The National Oceanic and Atmospheric Administration is the only agency who can enforce the Marine Mammal Protection Act and cite people who harass seals on the beach, Tracey said. He called employing a full-time ranger who has no enforcement powers, and sending police officers or lifeguards to respond to calls of people harassing the seals a waste of city money.

"It would be nice if NOAA would show up and enforce the Marine Mammal Protection Act," Tracey said.

Seal Conservancy Executive Director Adrian Kwiatkowski called the beach closure during pupping season an "elegant compromise" which allows divers and

swimmers to use the beach during the summer while giving the seals the safety they need during breeding season.

Horn's order means the "peace will now begin to unravel," Kwiatkowski said. He said that despite the costs of an appeal, there will be "greater costs for our image as a city" if the council does not appeal the order.

Council President Sherri Lightner said in a statement that she voted against the appeal because she does "not believe it will be successful and will not be a good use of taxpayer dollars."

"I believe those taxpayer funds would be better spent to develop a coastal management plan to address the proliferation of marine mammals along our coastline," she said.

The case will go to the Fourth District State Court of Appeals.

Source: <http://www.courthousenews.com/2016/06/15/san-diego-council-appeals-for-the-seals.htm>