

# City Council to appeal Children's Pool ruling

*Judge ordered S.D. to clean the beach*

**By Terry Rodgers**  
STAFF WRITER

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Reversing a previous vote, the San Diego City Council agreed in closed session yesterday to appeal a court order requiring the city to dredge or excavate a portion of Children's Pool Beach in La Jolla.

The decision was 5-1, with Councilman Scott Peters of La Jolla casting the dissenting vote, the City Attorney's Office reported. About two weeks ago, the council had voted not to appeal.

Councilwoman Donna Frye, who made yesterday's motion to appeal the case, said she didn't know why the council reversed itself but was pleased with the result.

"The judge's ruling to restore the Children's Pool back to how it was in 1941 is illogical," she said.

Frye believes the judge overstepped his authority by prescribing a specific remedy. A judge cannot force a legislative body such as the City Council to take a discretionary action that requires environmental review, public hearings and deliberations, she said.

"The council is a body with discretionary powers, and I don't think (a judge) can make us predetermine what our findings would be," Frye added.

Peters said he voted against the appeal because "I have no reason to expect that the court order will be overturned. . . . Cleaning up Children's Pool and making it swimmable again is the right thing to do."

On Aug. 26, Superior Court Judge William C. Pate ruled that San Diego had failed to comply with a tidelands grant that transferred the cove from state to city ownership.

Under the grant's terms, the city must "manage and maintain" the cove as a safe swimming area for children.

In his ruling, Pate said San Diego violated the grant by limiting public access to the beach and allowing a colony of more than 100 harbor seals to dominate the cove. Bacteria from the seals' waste has caused perpetual contamination of the water and sand since 1997.

Pate gave the city six months to dredge sand from the cove in hopes that it will increase water circulation and improve water quality.

The project, which could cost as much as \$500,000, requires an environmental impact report and approval from the state Coastal Commission. Permits from federal agencies such as the Army Corps of Engineers and the National Marine Fisheries Service may also be required.

Deputy Mayor Toni Atkins said she voted to appeal the ruling because the council needs to preserve its authority to make legislative and land-use decisions.

The judge's ruling puts the city "in a Catch-22 situation" where it is ordered to dredge a beach without regard for other legal requirements, she said.

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