

# Mayor extends length of pupping season rope at La Jolla Children's Pool

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***by Pat Sherman***

San Diego Mayor Bob Filner delivered on the promise he made Dec. 15 to extend the guideline rope separating humans and seals at Children's Pool Beach, from 130 feet to 152 feet.

Though the rope was initially intended to be 152 feet in length, with a three-foot opening for divers and spear fishermen to access the shoreline, in 2010 City Staff mistakenly approved Coastal Development and Site Development Permits for a 130-foot rope barrier, which resulted in an opening of more than 20 feet.

Seal advocates fear the wider gap will embolden visitors to disregard the rope and instructional signage suggesting that the public stay a recommended 50 feet from seals during the marine mammals' pupping season.

On Dec. 24, the San Diego City Attorney's office issued a memo outlining procedures required to extend the rope, which includes amending the existing permits issued for the barrier.

According to the memo, if the mayor fails to obtain the proper permit revisions, it could open the city up to litigation, civil penalties or attorney's fees by both private citizens and the California Coastal Commission (CCC). Authority for issuing Coastal Development Permits on projects at Children's Pool was transferred to the CCC a year after the initial rope permits were issued by the city.



“Civil penalties for development in violation of the Coastal Act may be imposed in Superior Court in the amounts of not less than \$500 and not more than \$30,000,” the memo states. “The CCC Executive Director may issue a cease and desist order for any activity that has been undertaken or has been threatened to be undertaken that requires a permit from the CCC for which no permit has been secured.”

City of San Diego Chief Operating Officer Jay Goldstone confirmed that the order to extend the rope was issued by the mayor’s office last week.

“(City) Staff were also instructed to proceed with obtaining the appropriate permits, but given the fact that we are entering the pupping season the Mayor wanted the rope extended immediately,” Goldstone told the La Jolla Light in an email.

David Pierce, a Director with the San Diego Council of Divers, said he feels that public access to the beach is being further denied by the rope extension.

“Does the mayor think he can violate the permits of San Diego?” Pierce questioned.



*The 3-foot opening in the guideline rope at Children’s Pool is offered for divers and spear fishermen to access the shoreline during the seals’ pupping season.*

According to CCC District Regulatory Supervisor Lee McEachern, because the Coastal Development Permit was issued by the city before the CCC was granted jurisdiction over Children's Pool, the CCC is not required to approve any amendments to accommodate the rope extension.

Any city-approved amendments to the existing Coastal Development Permit could be appealed to the CCC, McEachern said.

However, the City Attorney's Dec. 24 memo opines that it is the CCC's responsibility to approve revisions to the existing Coastal Development Permit. The memo cites a 2011 determination by the CCC, which found that the rope project is located "entirely within the coastal zone and entirely within the Coastal Commission's (purview)."

"The CCC retains permit jurisdiction over trust lands, even when a Local Coastal Program has been certified in the area," the memo states. "The CCC would amend the Coastal Development Permit, and the city would amend the site development permit."

The City Attorney's memo does suggest that if the CCC were to weigh in, the agency would likely grant permit amendments allowing the rope extension.

Since the 130 feet approved in the initial permits was a clerical error, "a strong argument could be made that any proposed amendment to the previously issued Coastal Development Permit could be considered immaterial" and thus approved, the memo states.

Should the CCC rule in favor of the amendments, its determination would be posted at the Children's Pool and mailed to all interested persons.



*A sign posted by the city asks people to respect pregnant seals and their mates by remaining at least 50 feet from where they rest on the beach at Children's Pool. The rope is up through May 15.*

“If no written objection is made within 10 days of the mailed notice, the determination of immateriality is conclusive and the permit is approved.”

Regarding the Site Development Permit, the memo states that “a city decision maker must approve any revision in accordance with the San Diego Municipal Code.”

Under the Municipal Code, there are two ways the Site Development Permit can be revised — either through a substantial conformance process (for minor permit modifications), or via a Municipal Code amendment, which is issued when the proposed revision “is not in substantial conformance with the approved permit” or would result in a “change in use from one category to another.”

The guideline rope is up each year from Dec. 15 to May 15, though seal advocates have fought for years to maintain the rope year-round.

In July 2012 the CCC voted unanimously to approve a year-round rope of 152 feet at Children's Pool. Two months later, the San Diego Planning Commission, whose ruling the City Attorney's office says supersedes that of the CCC and City Council, denied the same request for a year-round rope.

The City Council could vote for a Municipal Code change that would give itself ultimate authority to determine whether the rope is approved year-round, a spokesman for the city attorney's office told the Light.

Pierce said the San Diego Council of Divers is "standing by to see the reaction from the Mayor to the City Attorney's memorandum and have no plans to take any action at this time."

Source: <http://www.lajollalight.com/news/2012/dec/27/mayor-extends-length-of-pupping-season-rope-at-la/>