

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 reasonably 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.

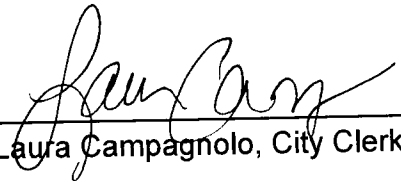
Section 6. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions 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 comprising the administrative record for this Ordinance are located at 910 Calle Negocio, San Clemente, CA 92673.

APPROVED AND ADOPTED this 20th day of June, 2023.

ATTEST:



Laura Campagnolo, City Clerk



Chris Duncan, Mayor

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

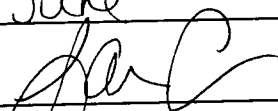
I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1752 having been regularly introduced at the meeting of June 6, 2023, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 20th day of June, 2023, and said ordinance was adopted by the following vote:

AYES: CABRAL, ENMEIER, KNOBLOCK, LOEFFLER, MAYOR DUNCAN

NOES: NONE

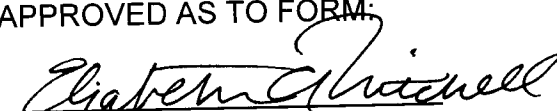
ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 20th day of June, 2023.



Laura Campagnolo, City Clerk

APPROVED AS TO FORM:



Elizabeth A. Mitchell, City Attorney