



July 29, 2025

City Council
City of San Diego

Re: San Diego Coastkeeper Opposition to Staff Item 331, Resolution and Finding related to Water Based Instructional Activities

Dear Council President LaCava and Councilmembers,

I am writing on behalf of San Diego Coastkeeper, its members and supporters to urge you not to approve the staff's request to make a finding that the permitting requirements of the Nonprofit Surf Program should be enforced despite AB2939 and changes to the Public Resource Code. The staff's request for you to approve what is essentially an exemption to AB2939 is ill-conceived, arbitrary, and completely lacking in factual evidence which is required by law. Approving this request will undoubtedly result in inequitable access to the City of San Diego's beaches and parks, which are held in the public trust for the use and enjoyment of the public.

Voting yes will also send you further down the path towards a public dispute that pits equitable access and community rights against public safety, a dispute which will benefit neither party and make it more difficult to work towards a compromise that meets both the needs of the public served by these programs and the lifeguards and park rangers entrusted with public safety.

San Diego Coastkeeper has engaged on this issue because ensuring and expanding equitable public access to our shared, public trust waters goes to the core of our mission to protect and restore swimmable, fishable and drinkable waters in San Diego. Our city is renowned for its beautiful beaches, Mission Bay and other parks that offer the general public



essentially unrestricted access to use and enjoy these resources. Outdoor Outreach, Un Mar de Colores, YMCA Camp Surf and other nonprofits offering these water-based activities are providing an essential public service to families and kids who otherwise may not have the means or time to head to the beach on the weekends but want to enjoy our beaches and Mission Bay safely.

Outdoor Outreach and other groups spearheaded the effort to introduce and pass AB2939, precisely because they were encountering bureaucratic resistance when they attempted to move their programs out of Imperial Beach and Coronado's polluted coastal waters to cleaner, healthier beaches further north. It is Coastkeeper's understanding that despite multiple meetings between these nonprofits, Lifeguards, Parks and Rec and other city officials over the past nearly two years, they recently reached an impasse in their effort to negotiate an equitable permitting structure that would keep families safe and allow the organizations to run their programs in a way that would best serve their constituents. Instead of continuing to negotiate and work in good faith towards a solution, city staff are attempting to short circuit this process and look to the Council to put its stamp of approval on the fundamentally flawed Nonprofit Surf Program permitting system ("Surf Program").

The Surf Program only runs from Memorial Day to Labor Day, does not allow weekend activities, and only allows organized activities at six beach locations. It is Coastkeeper's understanding that no Mission Bay Beaches are included in the program. In contrast, paid Concessionaire programs operate in Mission Bay, San Diego Bay, La Jolla Shores and other city locations seven days a week, under a different permitting regime than the Surf Program. And the general public is generally free to go to any public beach at any time of year, on any day, without restriction save beach closures due to water contamination or other incidental safety concerns. Coastkeeper will defer to Outdoor Outreach, Un Mar and the other organizations that run these programs to explain exactly why these restrictions make the Surf Program virtually unworkable in its current form. But it appears there are different rules for

different groups of people using the beach, and they are being instituted and enforced without factual support, sufficient transparency and public input. This approach is clearly arbitrary, inequitable and in the context of AB2939 and the Public Resource Code, not in compliance with state law.

In order to make a finding that the Surf Program permitting is necessary to address the City's liability in running its parks and beaches, the finding must be supported by "substantial evidence." While this is typically a term of art in litigation that denotes a standard of proof, in this case "substantial evidence" is not defined and so must be taken at its plain meaning. Something is substantial if it "has substance," is real and true, or is "firmly constructed."¹

For the City to meet the required evidentiary standard, it must provide concrete data, such as incident reports, legal claims, or comparative risk assessments, demonstrating that these groups pose a unique and heightened liability risk. General safety concerns alone are insufficient. It is essential that the City present actual evidence, rather than policy preferences or generalized statements, to justify the need for additional permitting requirements.

Furthermore, the City has not clearly defined the type of liability it seeks to address. The staff report alludes to safety concerns related to water activities but fails to specify:

- The precise legal liability the City believes it faces.
- Whether this liability is significantly different from that posed by other beachgoers, such as a family or group of up to 30 individuals, who engage in similar activities.
- Whether this risk is already mitigated by existing legal protections, such as those provided under Government Code §§ 831.2, 831.7, and 831.21, which offer public agencies immunity from most liability related to hazardous recreational activities (e.g.,

¹ See Merriam Webster online dictionary, at <https://www.merriam-webster.com/dictionary/substantial#dictionary-entry-1>

surfing and other water activities) occurring on public property. Relevant case law, including *Lupash v. City of Seal Beach* (75 Cal. App. 4th 1428, 1999), *Decker v. City of Imperial Beach* (209 Cal. App. 3d 349, 1989), and *Haytasingh v. City of San Diego* (286 Cal. Rptr. 3d 364, 2021), reinforces this legal framework.

In this case, the staff's claim of substantial evidence is as empty as it is conclusory. The Staff Report for Item 331 does not contain any evidence or specific examples of the liability and public safety concerns cited by staff. It simply states that the substantial evidence supporting the finding is found in the Staff Report.² The Staff Report asserts that "Unregulated water-based instructional programs pose a demonstrable risk to participants and the general public due to inconsistent safety practices and lack of coordination with City lifeguards."³ Yet it provides no examples of inconsistent safety practices, and virtually no details or specifics regarding what constitutes a "demonstrable risk." Is it the risk of large crowds, or a concern that lifeguards do not have sufficient resources? Are there specific risks related to specific locations, or specific activities? Is surfing perceived as riskier than swimming? Without any documented evidence, examples or details, the public is left to speculate as to what part of these nonprofit programs are giving rise to the liability concerns, and to wonder why these programs are being singled out, when the whole purpose of AB2939 was to ensure broader, equitable public access to California beaches. Bottom line, the City Council must have substantial evidence to support the finding requested by City Staff to properly approve Staff's request. Without it, the City Council is violating both the spirit and the letter of AB2939.

² Staff Report at 6.

³ Staff Report at 5.



Coastkeeper is also concerned about the Staff's decision to fast track this finding request without adequate opportunity for public comment. The Staff provided no justification for using this procedural approach on such a critically important issue. This lack of public transparency alone should persuade the Council to reject this request and remand this issue back to Staff to continue working towards an equitable solution.

Coastkeeper urges the City Council to reject Staff's request for this unsupported, adversarial and narrow-minded determination to impose a fundamentally flawed and inequitable permitting regime on nonprofit organizations whose mission is to bring kids and families to the beach and Mission Bay to enjoy these incredible resources safely. Instead, the Council should direct Staff to re-engage with Outdoor Outreach, Un Mar de Colores, YMCA Camp Surf and other nonprofits to develop a cooperative approach that honors both the need for public safety (which absolutely no one disputes) and the need to provide equitable access to our shared coastal parks and beaches.

Thank you for your consideration of our comments.

Respectfully,

A handwritten signature in black ink that reads "Phillip Musegaas".

Phillip Musegaas

Executive Director and Waterkeeper