



Amy Howorth, Mayor
City of Manhattan Beach
City Council Chambers, City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

August 18, 2014

Re: Proposed Adoption of Modified Ordinance No. 14-0014-Pier and Fishing Regulations

Dear Madame Mayor and Honored Council Members,

Despite an effort by state staff to collaborate with the City of Manhattan Beach (City) on the above referenced proposed ordinance amendment, the City Council remains poised to consider and approve the proposed ordinance's adoption through its consent calendar process on August 19, 2014.¹ On behalf of the state managers with jurisdiction over this issue, including the California Coastal Commission (Coastal Commission), the California Fish and Game Commission (Fish and Game Commission), the Department of Fish and Wildlife (DFW), the California Department of Parks and Recreation (State Parks), and the California Natural Resources Agency, I write to ask that you delay voting on this matter and work with the state to achieve an amicable and lasting solution. The state, like the City, recognizes the importance of health and safety, but the draft ordinance ignores nearly a century of established Constitutional law that vests the Fish and Game Commission with the exclusive authority to regulate fishing in the State of California, as well as the Coastal Commission and State Parks with the authority to ensure the lease for the Pier is fairly and legally managed, and that access is not unduly denied to either the water or its resources.

Though the City's supporting documents suggest amendments that regulate fishing gear type are immediately necessary for the safety of those who are swimming near the Manhattan Beach Pier (Pier), the regulations directly, as opposed to incidentally, regulate fishing in a manner that exceeds the City's authority to protect the public health and safety. Accordingly, the State urges the Council to remove this item from its agenda and consider working through the existing state processes identified herein so that any new rules near the Pier can be tailored to deal with actual, rather than perceived threat.

¹ Please find attached letters previously issued by the various state managers to the City in regard to this issue, along with the proposed draft Modified Ordinance No. 14-0014-Pier and Fishing Regulations and the August 19, 2014 agenda.

The State Recognizes the Importance of Health and Safety of All Who Use the Pier and Sees Itself as a Partner with the City in this Regard

The state respects and appreciates the City's desire to ensure the safety of all who recreate on the Pier and surrounding waters. As owner of the Pier, as well as being responsible for ensuring fair access and legitimate and sustainable fishing practices, the state takes seriously the City's concerns that some fishing practices may be leading to increased sightings of juvenile white sharks around the proximity of the Pier, and encourage aggression that might be directed at swimmers if such sharks are inappropriately hooked. The state understands that this could pose a threat both to users of the ocean waters around the Pier as well as these juvenile sharks, preventing the type of historic harmony that has previously been enjoyed in this area. That said, the City cannot ignore existing processes designed to ensure state oversight of its management of the Pier—which is state property—as a result of a public perception that the threat is greater than it is, or that the only solution is to regulate fishing.

There is an Existing Process for the City and the State to Work Together in Determining What, if Any, New Fishing Regulations are Warranted as a Result of this Incident

The City is not in a unique position and should avail itself of the state's extensive expertise in this area of regulation. There are many local communities who enjoy unique resources, such as the Pier, which require multiple recreational users to coexist with one another and the natural environment while ensuring the resource can be sustainably and safely enjoyed by the maximum amount of users.

In this case, the City should work through state managers to take advantage of existing state process that seeks to ensure local governments have access to the state's expertise and authority. In this regard, the City can petition the California Fish and Game Commission to determine what if any restrictions on fishing are appropriate at the Pier. (See Government Code section 11340.6.) Upon receiving the petition the Fish and Game Commission must hold at least one hearing to consider whether to grant or deny it. (See Government Code section 11340.7.)

If the Fish and Game Commission grants the petition, it will then hold a series of no less than three public hearings so that DFW and the other listed state entities can work with the City and the public to determine what regulations could be tailored to ensure maximum public safety without penalizing legitimate recreational users, and present a proposal to the Fish and Game Commission for review and possible approval. (See Fish and Game Code sections 205, 207.) This process is only restrained by public notice requirements which direct that each meeting agenda for the Fish and Game Commission is posted for at least 10 days, and the final proposal itself, which could necessitate other procedural requirements depending upon content. This approach, in addition to recognizing the jurisdictional purview of the Fish and Game Commission, would have the added benefit of resulting in coordination with the Coastal Commission and State Parks.

The City's Approach Could Result in its Regulations Being Invalidated for Lack of Authority

The City simply lacks the authority to amend its municipal code in this manner. (See, article IV, section 20 of the California State Constitution, see also THE HONORABLE PETER R. BONTADELLI, 70 Ops. Cal. Atty. Gen. 210, 1987 WL 247263 (Cal.A.G, Sept. 3, 1987, attached.) Since 1902, the Fish and Game Commission has had exclusive authority to regulate fishing activity, gear and methods. While in some instances the City may have concurrent jurisdiction over activity such as fishing, the test for determining whether an ordinance such as this is appropriate despite the Commission's exclusive jurisdiction over the regulation of fishing requires that the principal purpose of the ordinance be for public safety, and that the ordinance affect the preempted field of fishing *only incidentally*. (*Id.*, see also *People v. Mueller* (1970) 8 Cal.App.3d (1970) 949, attached.)

In this instance, the regulations are entirely focused on regulating gear type—rather than holistically on all public uses. There is nothing incidental about their impact on fishing, as their title clearly evidences (they are called “fishing regulations” by the City). Further, the proposed changes ignore alternative options available to the City to minimize the risk of shark attacks on swimmers and boarders, including the enforcement of an existing swimming limitation that requires swimmers be no farther than 200 yards from shore (nearly 100 yards short of the end of the Pier) and a 100 feet from the Pier itself, outreach about the ecology of the area, and early warning systems that life guards and other responders can implement if aggressive sharks are identified within that area. (City Code section 12.08.040, see also Los Angeles County Code 17.12.480, subsection G.) In short, nothing in the City’s record supports its contention that the proposed regulations will be effective in addressing the City’s stated public safety concerns, or are the least burdensome approach available to achieve the City’s desired outcome.

History bears out that sharks, swimmers, fisherman and other recreational users can co-exist in these waters. Thus, regulations that ban certain gear types may not be the most effective means to address swimmer safety concerns, if they can be proven effective at all. This is why the Coastal Commission denied the emergency closure request, indicating that one isolated incident of a shark biting a long-distance swimmer does not demonstrate “that public property or life is in imminent danger.”² For all the aforementioned reasons, it makes sense to work with the state in partnership to develop a lasting solution to the issues being grappled with by the City. Thus, the state urges the City to consider working with it, rather than reactively managing the Pier in a manner that would require the state to assert its jurisdiction before it can assist the City in addressing its concerns.

Sincerely,

² See, Letter from Coastal Commission to the City dated July 31, 2014, as signed by Coastal Commission District Manager Teresa Henry.

Catherine Kuhlman

Catherine Kuhlman,
Deputy Secretary for Ocean and Coastal Policy

Enclosures

CC:

Craig Shuman, Deputy Director for Marine Region, Department of Fish and Wildlife

Sonke Mastrup, Executive Director California Fish and Game Commission

Teresa Henry, District Manager, Coastal Commission