

RESOLUTION NUMBER R- 291873

ADOPTED ON JUN 28 1999

WHEREAS, the San Diego Municipal Code prohibits sales or services on public parkland except as permitted by the City Manager; and

WHEREAS, the City through its City Manager issues seasonal beach concession permits for beach equipment rentals and food/beverage carts which provide service to the beach-going public [Permits]; and

WHEREAS, the Permits have been issued using the Request for Proposal competitive bid process [RFP Process]; and

WHEREAS, recently concerns have been voiced regarding issuance of the Permits; and

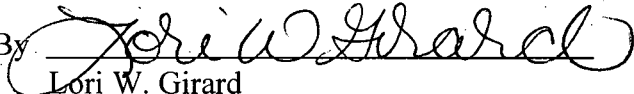
WHEREAS, on May 26, 1999, the Natural Resources and Culture Committee addressed the Permits policy issue, and voted 4-0 to approve the City Manager's recommendation, contained in Manager's Report No. 99-104, attached hereto and incorporated herein by this reference, with certain modifications; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the RFP Process continue to be used to issue the Permits, excluding in the future any beach location that is within 1,000 feet of a business that offers a substantially equivalent service at the time of permit issuance.

BE IT FURTHER RESOLVED, that the beach area businesses in Pacific Beach and Mission Beach be requested to inform the beach-going public of the availability of beach equipment for rent or sale in their stores by placing, within the restrictions of the Sign Code, a

sign to this effect in a clearly visible location.

APPROVED: CASEY GWINN, City Attorney

By   
Lori W. Girard  
Deputy City Attorney

LWG:cdk

06/08/99

Or.Dept:Park&Rec.

R-99-1478



THE CITY OF SAN DIEGO  
**MANAGER'S REPORT**

DATE ISSUED: May 19, 1999

REPORT NO. 99-104

ATTENTION: Natural Resources and Culture Committee,  
Agenda of May 26, 1999

SUBJECT: Beach Concessions

SUMMARY

Issue: Shall City Council give policy direction to the City Manager on the subject of issuing seasonal concession permits to vendors for beach equipment rentals and food/beverage carts?

Manager's Recommendations:

1. Give policy direction to the City Manager that a Request for Proposal process continue to be used to issue seasonal concession permits for beach equipment rentals and food/beverage carts as a public service, excluding in the future any beach location that is within 700 feet of a business that offers a substantially equivalent service at the time of permit issuance. This policy would affect current concession locations as follows:

	<u>Beach Equipment Rental</u>	<u>Food/Beverage</u>
Pacific Beach at Diamond St.	Discontinue	Continue
Pacific Beach at Thomas Ave.	Discontinue	-
Mission Beach at South Belmont	Discontinue	-
South Mission Beach Park	-	Continue
North Ocean Beach	-	Continue
La Jolla Shores	Continue	-
Mission Bay Park - one mobile cart	-	Continue
(possible future location) Law St.	OK for trial	-

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2. Request beach area businesses in Pacific Beach and Mission Beach to inform the beach-going public of the availability of beach rental equipment for rent or sale in their stores by placing a sign to this effect in a clearly visible location, within the restrictions of the Sign Code.

Other Recommendations:

1. Discover Pacific Beach (Business Improvement District in Pacific Beach) recommends that the City discontinue issuing concession permits in Pacific Beach.
2. Coastal Activities League, a group of 28 business owners in La Jolla, Pacific Beach, Mission Beach and Ocean Beach, recommends that the City discontinue issuing concession permits in all these communities.

Fiscal Impact: Out of the current revenue to the General Fund of \$18,500 per year, a loss of \$8,250 - 11,000 would result from the Manager's Recommendation, depending on whether the City continued to receive bids for the remaining beach equipment rental concession locations. The beach equipment rental concession pays the City 26 1/2% of all gross income, against a minimum of \$11,000 for the season. The food/beverage cart concession pays the City 16 1/2% of all gross income, against a minimum of \$7,500 for the season.

Business Impact: There are Pacific Beach and Mission Beach businesses within 700 feet of current seasonal concession permit locations. If transactions increase at these businesses due to discontinuation of the identified Pacific Beach and Mission Beach concession locations, sales tax to the City would increase. The Coastal Activities League requested elimination of all beach concession locations. There are no businesses offering equivalent services within 700 feet of the following current concession locations, so to continue to provide the public service, these are not recommended for discontinuation: food/beverage at Diamond Street, South Mission Beach Park, North Ocean Beach and De Anza Cove area of Mission Bay Park; and beach equipment rental at La Jolla Shores.

In Pacific Beach and Mission Beach, current distances from the beach equipment rental concession to the nearest equivalent service are:

From Thomas Ave. concession location:	178 feet
From Diamond St. concession location:	640 feet
From South Belmont concession location:	371 feet
From Law St. (possible future concession location):	2,040 feet

For the food/beverage cart service, current distance from the concession to the nearest equivalent service is:

From Diamond St. concession location:	752 feet
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## BACKGROUND

The Municipal Code prohibits sales or services on public parkland except as permitted by the City Manager. The Manager permits sales and services which are part of permitted Special Events on parkland. Additionally, the Manager issues just two seasonal concession permits as a service to the beach-going public in specific locations in the beach area. These concession permits are for rental of beach equipment and sale of food and beverage from carts.

The City has issued beach rental concession permits since at least 1971, and food/beverage cart concession permits since 1989 through the Request for Proposal competitive bid process for terms ranging from 3 - 5 years. The concessionaires pay the City a percentage rent against a minimum, pay a faithful performance deposit and possessory interest taxes, and maintain public liability insurance. The concessions operate April or May through September, and the temporary facilities are on site from 9:00 or 10:00 a.m. until 6:00 p.m. each day.

For the beach rental concession, the facility is a 12x12' canopy shading a table, chair and rental items. Current products are: rental of body boards, surfboards (2 surfboards only at La Jolla Shores location), swim fins, beach chairs and loungers.

The portable food/beverage carts are self-contained and do not require utility hook-ups. When perishable food is offered, they are required to be located in proximity to a restroom facility. There is a stationary cart at each of 3 oceanfront locations which sells hot dogs, nachos, chips, ice cream, sodas and bottled water. There is one mobile cart in the De Anza area of Mission Bay Park which sells ice cream. All cart services comply with County Department of Environmental Health regulations.

## DISCUSSION

The current 3-year concession permit for beach equipment rentals expires June 13, 1999, and for food/beverage carts expires June 30, 1999. Pending City Council policy direction, these seasonal concessions are being held-over month-to-month past the June expirations.

Discover Pacific Beach and the Coastal Activities League believe that the two beach concessionaires compete with and detract from their business. The concessionaires believe that they do not. The two issues to decide based on the information presented are: Do the concessions take away transactions which would otherwise accrue to local businesses? If they do, does City Council find this competition acceptable, given the public benefit provided by the concessions, or unacceptable? There is no clear guidance provided by the actions of other government entities. Some offer goods and services to the public which compete with private business, others do not.

## Local Business View

Attached.

## Concessionaire View

Both concessionaires indicate that their permits allow more locations than they are currently using, and that through expensive trial-and-error they identified their current locations as the only ones that are economically viable. They state that given the long history of the concessions, they bid in the expectation that they would have the opportunity to bid at each renewal, and so invested money in their enterprises for which they have not yet realized their expected benefit. The concessionaires believe that the beach area businesses that offer similar products began operation subsequent to the beach concessionaires beginning operation, so those firms reasonably took the beach concessions into account in their business decisions. The concessionaires suggest that the concerns of area businesses can be met by the City lifting the restriction that the concessionaire cannot own or operate a similar business within 600 feet of a concession location. They believe that this would allow area businesses to fairly compete for the beach concessions if they truly believe the concessions have a competitive advantage. Both concessionaires observe that many of the beach-goers who patronize their concessions walk past beach area businesses en route to the beach, so that the beach area businesses have the first opportunity for all transactions.

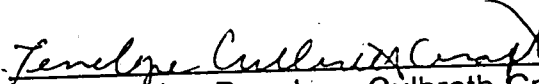
The beach equipment rental concessionaire estimates that 90% of his transactions are with out-of-state visitors who rent equipment on impulse, and would not seek out a rental source off the beach. He adds that his concession benefits local business in two ways: 1) area hotels do not need to stock beach equipment for their guests but can, instead, refer guests to the concession; and 2) concession employees regularly direct people to area businesses for rental of skates, bicycles, wetsuits and kayaks and, in Pacific Beach and Mission Beach, for rental of surfboards.

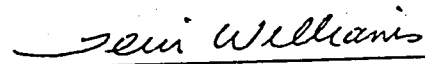
## ALTERNATIVES

1. Provide the City Manager with policy direction to continue the beach equipment rental concession and/or the food/beverage cart concession at all economically viable locations, using the Request for Proposal process to obtain the highest possible return to the City.
2. Provide the City Manager with policy direction to continue to permit beach concessions; however, set a different minimum distance, either greater or less than the recommended 700 feet, from businesses that offer substantially equivalent services.

3. An Additive Alternate to the Manager's Recommendation, Alternative #1 and Alternative #2 would be to implement the concessionaires' suggestion to allow bidders to have similar businesses near the concession locations. If a concessionaire also operated a similar business nearby, transactions could potentially be diverted from the concession to the business. If this occurred, concession revenue to the City would be reduced to the amount of the minimum rent.

3. Provide the City Manager with policy direction to completely discontinue the practice of offering beach concessions.

  
Approved by: Penelope Culbreth-Graft, DPA  
Assistant City Manager

  
Submitted by: Terri Williams  
Deputy Director, Coastal Parks  
(221-8910)

Attachment: May 17, 1999 Summary of Issues from Coastal Activities League  
representing area businesses

RECEIVED  
PARK & RECREATION

MAY 18 1999

COASTAL DIVISION

Memo

5-17-99

To: Terri Williams, SD Parks/Rec *sw*

From: Coastal Activities League, Leon Davis, Govt. Affairs Comm.

Re: Our summary of issues concerning current coastal vending permit policy. **Please note that this statement is not authorized if changed in content or format.**

We believe this policy is **UNFAIR, DESTRUCTIVE** and **INAPPROPRIATE**.

**UNFAIR**

- Creates a privileged class of business that operates without competition
- Creates "no enforcement" zoning areas (signs, taxes and display)
- On-sand vendors pay eight times less rent than year round merchants
- On-sand vendors only have to operate in peak business months
- Local merchants denied access and substantive due process by City staff

**DESTRUCTIVE**

- Directs consumer interest and dollars away from local Business Districts
- Prevents year-round merchants from establishing necessary relationships with regional repeat visitors
- Denies year-round businesses access to a FREE MARKET
- Encourages illegal street vending and panhandling

**INAPPROPRIATE**

- Services offered by on-sand and cart vendors are unnecessary because they are readily available in the established commercial corridor
- There are fifteen times as many year-round merchants offering these services in the established Business Districts as there were in 1975
- Permit policy encourages unfair competition against local businesses
- Protected tidelands should not be commercialized

ATTACHMENT





CITY OF SAN DIEGO  
OFFICE OF DEPUTY MAYOR  
BYRON WEAR  
SECOND DISTRICT

MEMORANDUM

DATE: May 25, 1999  
TO: Natural Resources and Culture Committee  
FROM: Deputy Mayor Byron Wear  
SUBJECT: Beach Concessions--Report No. 99-104 May 26, 1999 Committee Agenda

On May 27, 1998, I authored a memorandum asking the City Manager for a complete review and evaluation of our beach concession policy to determine whether it should be modified. As you are aware, several established beach area merchants contend the present policy represents unfair competition that the city encourages by issuing beach concession permits.

City Manager Report No. 99-104 provides policy direction on this matter and recommends that we continue the RFP process to issue seasonal concession permits for beach equipment rentals and food/beverage carts as a public service, excluding in the future any beach location that is within 700 feet of a business that offers substantially equivalent service at the time of permit issuance.

The effect of a 700-foot exclusion zone would discontinue beach equipment rental concessions at Diamond Street and Thomas Avenue in Pacific Beach as well as South Belmont in Mission Beach but would allow the food/beverage concessions to continue.

I respectfully ask Committee members to support the manager's recommendation *but modify it by increasing the exclusion zone to 1,000 feet*. The effect of this modification would be to discontinue the food/beverage concession at Diamond Street in Pacific Beach. This remains consistent with the effect on the beach equipment rental concession at the same location.

Thank you for your attention to this matter.

R. 291873