

DATE ISSUED: November 23, 2005

REPORT: 05-229

ATTENTION: Land Use & Housing Committee
Agenda of November 30, 2005

SUBJECT: Surf Instruction Concessions / Enforcement

SUMMARY

Issue:

Should the City Council: A) approve the mid-year amendment to the Budget Ordinance adding .22 FTE Lifeguard I, \$10,800 plus a one-time NPE expenditure of \$20,102 to the Fire-Rescue Department to start regular enforcement on May 1, 2006, and refer the request to annualize the position to 1.34 FTE Lifeguard I, \$65,645 to the FY '07 budget, or B) refer the matter of funding to the FY '07 budget and commence regular enforcement when funding is available.

Managers Recommendation:

Authorize the City Auditor and Comptroller to redirect \$30,902 in unbudgeted FY '06 revenue from the Surf Concession Program to Fire-Rescue Department's budget to fund Phase 1 of a Beach Commercialism Enforcement Program or defer regular enforcement activities until this matter is addressed in the FY '07 budget.

Fiscal Impact:

General fund impact of \$30,902 (.22 FTE Lifeguard I, \$10,800 plus a one time NPE expenditure of \$20,102) to support the Beach Commercialism Enforcement Program May through June 2006. This expenditure can be covered by the revenue generated by the above budgeted revenue levels during FY '06 from the existing agreements with the nine (9) concessionaires. To date, \$95,736 has been collected with an additional \$25,976 expected by the end of the current fiscal year for a total of \$121,712.

BACKGROUND

Municipal Code 63.20.20 states that it is unlawful to conduct any commercial operation on any beach area unless licensed to do so by the City Manager. Over the past several years, the number of unauthorized surf instruction schools and camps operating at the City's beaches and shoreline

parks has increased significantly. This has resulted in conflicts between the different commercial operators and “local surfers.” Additionally, complaints have been received from the La Jolla Shores Association, local businesses and residents regarding crowded beach conditions, lack of parking and water safety issues. In response to these issues, Park and Recreation staff began to take corrective action to regulate commercial surf instruction on City beaches:

1. In the summer of 2002, Park and Recreation, with the assistance of Lifeguard Services Division, designated seventeen (17) shoreline sites and implemented a permit process for surf instruction schools and camps sites.
2. In the summers of 2003 and 2004, the permit process was further refined to foster a stronger business relationship between Surf Instruction Concessions (SICs) and the City.
3. In the summer of 2004, Councilman Scott Peters identified funds to hire staff at La Jolla Shores for a trial summer enforcement program. The program was staffed by the San Diego Lifeguard Services. This assisted in supporting the requirements of the permits and protects the SICs from unfair competition from unauthorized operators.
4. A post-season meeting with SICs at the end of summer 2004 determined that the enforcement program was a success, but it needed to be expanded to all surf sites along the City San Diego coast. In addition, due to a greater demand from SICs to operate at La Jolla Shores, an equitable way to allocate sites needed to be implemented.

DISCUSSION

The Request for Proposal Process

In August of 2004, Park and Recreation, with input from Lifeguard Service, the City Attorney’s Office, Real Estate Assets, and the surf instruction groups, determined that a Request for Proposal (RFP) process was appropriate. All surf instruction operators were invited to bid on any number of sites under the terms of the RFP. In addition, non-profit organizations could respond to the RFP under the terms of the Agreement or apply for a permit under the current City Council adopted fees.

Park and Recreation and READ began collaborating on an RFP process which would result in selected operators entering into agreements with the City. READ consulted with other coastal cities and the State of California, and while only the State had ever utilized an RFP process, nearly all agreed that an RFP was the preferred method given available resources.

The RFP and Concession Agreement were drafted giving careful consideration to a number of important issues including safety, public opinion, small business operators, and funding the administration and enforcement of this activity. The Selection Criteria for the RFP was designed to ensure that SICs on San Diego beaches were professional organizations focused on safety, complied with City regulations, and intent on providing a quality product to residents and tourists. A survey of revenues generated by other municipalities from surf camps and surf lessons led READ to believe that percentage rents would not only meld the interests of the City and the contracted surf operators, but would provide a significant and growing income stream to

the City, that could be used to fund an enforcement program to protect the rights of the public and prevent the unauthorized use of City beaches.

The RFP was issued on December 22, 2004 and on June 1, 2005 the Real Estate Assets Department entered into Concession Agreement with nine (9) surf operators at four City beaches on a total of fifteen (15) sites. The fees are based on a percentage of gross income against a guaranteed minimum fee to be paid to the City. The City is guaranteed a minimum of approximately \$100,000 in FY '06 and \$125,000 in FY '07.

Eleven responses to the RFP were received and the City's selection committee selected nine (9) of those operators to enter into Concession Agreements with the City at a total of fourteen (14) sites along San Diego's shoreline (Attachments 1, 2, 3 and 4) effective June 1, 2005.

Implementation

The concession Agreements have an initial term of one-year with (2) one-year options that require City approval. In addition, the City has the right to terminate the Agreement for any reason with a 90 day written notice. The fees are based on a percentage of gross revenues against a minimum rent. The RFP required a minimum fee of \$7,500/year with a percentage rent of 10% at La Jolla Shores' sites and \$5,100/year with a percentage rent of 10% for all other sites. Staff has estimated revenue projections for the term of the agreements (Attachment 5). The actual fiscal year to date revenue is \$95,736 (Attachment 6). Adding the remainder of the minimum annual fee amounts, the conservative forecast projection for FY06 is \$121,712. At this time, four (4) operators have already exceeded their minimum fee amounts.

During the initial season (summer 2005), Park and Recreation staff kept close contact with the providers and had an end of season meeting with them. Initial input from the SICs was very positive. The security of a Concession Agreement has allowed the operators to plan for the future and to expand their commitment to give back to the community, by way of donating free lessons and surf instruction camp spots for the City's community recreation centers and participation in fund raising events for local charities.

Enforcement

The goal of the Request for Proposal process was to provide a vehicle by which the City could regulate commercial surf instruction and camps on City beaches; reduce conflicts between commercial operations, local businesses and the public; and provide safe, well managed, enjoyable public beaches and parks for citizens. The key to accomplishing this goal is to provide enforcement of the Agreements signed by the SICs and impose penalties to persons or companies conducting surf instructions and/or camps for profit on City beaches without authorization.

The Municipal Code that regulates commercialism in shoreline parks and on beaches is the City of San Diego's Municipal Code 63.20.20 Sale or Rental of Merchandise, Goods, Property, Etc. Prohibited; Exceptions. The Code defines that:

“It is unlawful for any person, firm or corporation to attempt to carry on or to carry on any commercial operation, to rent or sell merchandise of any kind, or to beach or moor any vessel for the purpose of displaying it for rental or sale, in any beach area, as defined in Section 63.20, including Mission Bay Park, unless licensed or otherwise specifically permitted to do so by the Director. This is specifically intended to include a commercial operation which involves delivering merchandise, a rental item, or a service to a beach area whether or not a financial transaction takes place within the beach area. Lessees and others who carry on a commercial operation under the terms of a formal agreement with the City are exempt from this section. Commercial fishers are permitted to use beach areas, provided that their activity does not interfere with recreation.

If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the beach area, it shall constitute prima facie evidence that the actions of the person or persons, firm or corporation responsible for introducing said advertising within the beach area violate this section.”

With the inception of the Surf Instruction Concession Agreements in June 2005, the Park and Recreation Department was left with the responsibility for enforcement of this program. The department was tasked to protect the right to conduct business on our City beaches to those who were awarded permission via the RFP process. This past summer, enforcement was limited on San Diego’s beaches, as there are no park rangers permanently assigned to Shoreline Parks.

Lifeguard Services were not funded in summer 2005 as they were in summer 2004, in such a way as to be able to dedicate staffing to the singular enforcement issue. Lifeguard Services agreed to help, when possible, with enforcement as long as it did not interfere with their primary mission of life saving.

In early August 2005, it became evident to Park and Recreation Department staff that additional enforcement was needed to meet the City’s commitment to those awarded the right to conduct business on the public beaches per the RFP. The Park and Recreation Department temporarily reassigned, for a few hours daily, Park Rangers from Balboa and Mission Bay Parks to provide enforcement on the City’s beaches. The work done on the beaches, by the Rangers, met expectations, but was at the expense of lost services to two major regional parks during the busiest season of the year.

Lifeguard Services do provide Municipal Code enforcement along our beaches and coastal parks, however, this is a secondary function compared to their primary mission of life safety. In particular, during those times of the year when beach activity increases, our Lifeguards’ principal concentration is on prevention and rescue operations. However, with the appropriate support, it is reasonable for the Lifeguards to service the field needs of the concession agreements. These concession agreements will require a high degree of customer attention, focus and enforcement which would necessitate additional dedicated resources so as not to reduce or diminish their capability to meet their primary mission.

For FY 2007, Fire Rescue Department will request additional funding to cover the cost of enforcing violations of Municipal Code 63.20.20 through the expansion of the Beach Ambassador Program. Estimated figures for FY 2007 are as follows:

FY 2007 FUNDING NEEDS

Budget Year	Personnel Expenses	Equipment Outlay (2ATV and 4 Radios)	Total Estimated Expenses
FY 2007	\$65,645	\$20,102	\$85,747

(1) Personnel Expenses includes 1.34 FTE Lifeguard I (salary, fringe and EMT pay) Revenue collected provides for the enforcement to be 100% reimbursable.

Phasing in Kayak and SCUBA Permitting

This proposal is Phase One of a proposed three phase program. Phase Two will consist of developing a comprehensive kayak permitting process to regulate commercial kayak rentals. This would help address the dramatic increase in the associated business activity in the beach area (particularly at La Jolla Shores). Phase Three will include an examination of commercial SCUBA activities at local beaches to determine if it would be appropriate to regulate said business activities.

ALTERNATIVES

1) Approve this and implement enforcement in the spring of 2006 or 2) defer enforcement and refer matter to the FY '07 budget.

CONCLUSION

The cooperative efforts of various City departments and the operators of surf instruction concessions resulted in the development of an RFP process that was a win-win for all concerned. The RFP process and the concession agreements have put in place additional means that provide the citizens with safer water recreation at the beaches and shoreline parks.

The concession agreements produce revenue that could be directed toward enforcement of unlawful commercial activities. Enforcement is key to the Surf Concession Program's viability and the City protecting the rights of its' lawful partners to do business. Without designated funding, the Fire-Rescue Department may be unable to adequately regulate illegal commercial activity on the public beaches.

Respectfully submitted,

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Park and Recreation

Rick Wurts
Marine Safety Captain
Fire-Rescue Department

Approved: Ted Medina
Park and Recreation Director

Approved: Ellen Oppenheim
Deputy City Manager

MB/tbg

Attachments: [1. Shoreline Sites](#)
[2. Shoreline Sites](#)
[3. Shoreline Sites](#)
[4. Shoreline Sites](#)
[5. Revenue Projections](#)
[6. Revenue to Date](#)