

ORDINANCE NO. 2017-_____

**AN ORDINANCE OF THE CITY OF SANTA CRUZ REVISING
CHAPTER 13.14 TO THE SANTA CRUZ MUNICIPAL
CODE PERTAINING TO SURF SCHOOLS**

BE IT ORDAINED By The City Of Santa Cruz As Follows:

SECTION 1. Chapter 13.14 of the Santa Cruz Municipal Code is revised to read as follows:

**Chapter 13.14
SURF SCHOOL REGULATIONS**

Sections:

13.14.010	Application of Chapter and Definitions
13.14.020	Surf School Restrictions
13.14.030	Surf School Permits and Permit Fees
13.14.040	Restrictions on Surf School Activities on City Streets, Sidewalks, and Other Public Property
13.14.050	Penalties and Enforcement
13.14.060	Exemptions

13.14.010 APPLICATION OF CHAPTER AND DEFINITIONS.

- A. The purpose of this chapter is to regulate commercial use, reduce conflicts among users, and promote public safety, health, welfare and enjoyment of the Cowell Beach Recreation Area and the adjacent neighborhood areas. The rules of this chapter shall apply to allow only surf schools which are authorized and have received a permit from the City of Santa Cruz Parks and Recreation Department to operate in the Cowell Beach Recreation Area.
- B. As used in this chapter, “Cowell Beach Recreation Area” means the beach, land, waters adjoining or abutting Collins Cove to Cypress Point that is owned or under the jurisdiction and control of the City of Santa Cruz, hereinafter “City.” The boundaries of the Cowell Beach Recreation Area extends into the ocean waters of Monterey Bay at least 300 yards from the shore to include all tide and submerged lands, filled and unfilled, consistent with Chapter 1291 of the 1969 Act of the California State Legislature that conveyed this area to the City.
- C. As used in this chapter, the term “surf school” is defined as any person, business or other entity which, for compensation (including, but not limited to, payment, giving of goods, making a donation, barter, or other form of remuneration for work or services performed) provides instruction, training, or coaching to individuals on how to board surf, body surf, boogie board, kayak surf, windsurf, kite surf, stand up paddle, or perform any other ocean or water sport entailing the use of sport-related equipment such as, but not limited to, boards, paddles or boats.

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- D. No surf school is allowed to operate, including providing instruction, training or coaching in the Cowell Beach Recreation Area without a City authorized permit.

13.14.020 SURF SCHOOL RESTRICTIONS.

- A. **Maximum Surf Schools Permitted/Surf Schools Students.** City may issue a maximum of four (4) surf school permits to operate at Cowell Beach Recreation Area. The total number of surf school students during any single period of time in the water at the Cowell Beach Recreation Area shall not exceed thirty-two (32) students. If more than 32 surf school students engage in surf school activities at Cowell Beach Recreation Area at the same period of time, a permitted surf school with more than eight (8) students during this period will be in violation of this section. No surf school students shall be allowed in the ocean between sunset and 7:00 a.m.
- B. **Student to Instructor Ratio.** The maximum student to instructor ratio for surf schools which provide board surfing, stand up paddle, body surfing or boogie board lessons shall be four (4) students per one (1) instructor in the Cowell Beach Recreation Area; the maximum student to instructor ratio for surf schools which provide other types of water sport lessons shall be two (2) students per one (1) instructor.
- C. **Surf School Instructor Qualifications.** Every surf school instructor shall be fully trained and proficient in ocean safety, surfing and surf instruction. Each and every surf school instructor must also submit proof of current certifications by the Red Cross or American Heart Association in First Aid and CPR.
- D. **Surf School Uniforms.** Surf schools, while conducting their operations at Cowell Beach Recreation Area, shall assure that all students and instructors wear uniform shirts or vests identifying their respective surf schools. Said shirts or vests shall be sufficiently distinctive in color or design so as to allow anyone, including but not limited to, Parks & Recreation personnel, lifeguards, and the public to differentiate between the permitted surf schools. The City, when issuing surf school permits, may designate the color shirt or vest to be employed by a surf school for this purpose. The name of the surf school or logo shall be displayed prominently on the back of the vest. The colors of a surf school's instructor uniform shirts and student uniform shirts shall be the same; however, the instructor's shirt shall be imprinted with the designation "INSTRUCTOR" so as to allow for the ready differentiation between the surf school's instructor and the surf school's students.
- E. **Surf School Board Surfing Equipment.** Surf schools which provide board surfing lessons at Cowell Beach Recreation Area shall supply students with equipment in good condition, and while conducting said lessons, use only soft foam boards with flexible rubber fins and leashes.
- F. **Surf School Insurance.** Surf schools shall not be permitted to conduct operations at Cowell Beach Recreation Area unless and until they have provided to the City proof of satisfaction of insurance requirements as prescribed by the City.

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- G. Indemnification. No permitted surf school shall conduct operations anywhere within Cowell Beach Recreation Area without first executing an agreement by which it obligates itself to indemnify, defend, and hold harmless the City and designated City agents. Surf schools shall also require their students to sign a waiver, agreeing to indemnify, defend and hold harmless the City and specified City agents. The required indemnification/hold harmless agreements shall be in a form approved by the City Attorney.
- H. Other Applicable Regulations. Authorized surf schools with a permit shall comply with all other applicable local, state, and federal statutes and regulations, including but not limited to, Santa Cruz Municipal Code Chapters 13.08 and 13.10 pertaining to beaches and parks and the commercial use of beaches and parks, Santa Cruz Municipal Code Chapter 5.04 pertaining to business license taxes and applicable California Labor Code statutes governing employment, including statutes governing wages, hours and worker's compensation. Surf schools must also comply with any additional requirements, information, conditions, and restrictions as are necessary for the enforcement and administration of this chapter and to protect the public safety, health, welfare and enjoyment.
- I. Entry and Exit Restriction. Permitted surf schools are authorized and required to stage and to enter and exit the water only at Cowell's Beach from the Cowell's Beach parking lot, and only use the areas designated for surf schools in the Cowell Beach Recreation Area by the City.
- J. Safety Plan. Surf schools must provide the City with an approved safety and emergency response plan.

13.14.030 SURF SCHOOL PERMITS AND PERMIT FEES.

- A. Permit Required. No surf school shall conduct instructions or any operations at Cowell Beach Recreation Area without first obtaining a permit to do so from the City Parks and Recreation Department. The permit shall assure, at a minimum, compliance with the surf school regulations set forth in Section 13.14.020. The permit may impose additional requirements, information, conditions, and restrictions as are necessary for the enforcement and administration of this chapter and to protect the public safety, health, welfare and enjoyment.
- B. Permit Issuance.
 - 1. The City Parks and Recreation Department may issue up to a total of four (4) permits, including the City's concessionaire or licensee, authorizing surf school activities at Cowell Beach Recreation Area. The City Parks and Recreation Department may issue fewer than four permits, in its discretion, to effectuate the purposes of this chapter. The permits shall be non-transferable, and they shall expire five (5) years after the date of issuance. The Parks and Recreation Department shall establish standard forms and procedures for the issuance of surf school permits pursuant to a competitive process, such as a Request for Proposal.

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2. The Parks and Recreation Department shall review all timely submitted surf school permit applications. The Parks and Recreation Department shall consider the following factors when evaluating applicants for a surf school permit:
 - a. The timeliness and completeness of the application including all required attachments for a surf school permit;
 - b. The qualifications (including, but not limited to the skill, training, and experience) of the applicant and/or applicant's agents connected with applicant's surf school activities;
 - c. Whether the applicant and/or applicant's agents associated with applicant's surf school activities have ever violated any city, state, or federal laws;
 - d. Whether the applicant and/or applicant's agents associated with applicant's surf school activities have ever violated this chapter, or the terms of a surf school permit or had the same or similar type of permit suspended or revoked;
 - e. Whether the applicant and/or applicant's agents associated with applicant's surf school activities have ever made a false, misleading, or fraudulent statement:
 - (i) in the application for a surf school permit,
 - (ii) in any report or record required to be filed with the City, or
 - (iii) in response to inquiries by the City;
 - f. Whether the issuance of a permit to the applicant is in the interests of the public health, safety and welfare.
 3. Permits shall be issued based on a competitive process, such as a Request for Proposal. The City Parks and Recreation Department may assess an application fee as set by the director to account for administration costs.
 4. Permits will be awarded to the most qualified applicants, in consideration of the above factors. The City shall also give priority to the City's surf school concessionaire or licensee in issuing the permits.
 5. Applicants selected to be issued permits must timely satisfy all permit requirements including payment of the permit fee; otherwise may forfeit issuance of the permit.
- C. Permit Fees. The City Parks and Recreation Department shall assess permit fees to surf schools, which shall be due and payable in full prior to the time of permit issuance. The amount of the fee shall be set by the director of Parks and Recreation Department and shall correspond to the costs incurred by the City in administering this chapter, including, but not limited to, cleaning and maintaining the Cowell Beach Recreation Area to the extent necessitated by surf schools' use, regulating surf schools in accordance with this chapter, and providing public safety services attributable to surf schools at Cowell Beach Recreation Area.
- D. No Property Right. The issuance of a permit to a surf school does not give the permittee any vested property rights.

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- E. Non-Transferability of Permit. The surf school permit is non-transferable, so that if the permittee transfers or assigns any interest or title in the surf school identified in the permit to another person or business entity by any arrangement, the permit shall be deemed revoked, expired and void. Any new transferee, assignee, or successor owner of the surf school shall have no right to use the surf school permit. The permittee shall notify the City Parks and Recreation Department in writing 30 days prior to any changes in ownership that may affect the validity of the permit. Failure to provide notice to the City has no effect on the City's right to enforce this provision or this chapter.
- F. Revocation/Suspension/Modification of Permits.
1. The City Parks and Recreation Department may revoke, suspend, or impose additional conditions on a surf school permit on one or more of the following grounds:
 - a. The permittee or permittee's agent associated with the permittee has made a false, misleading or fraudulent statement of material fact in the application for permit; in the information required to be submitted to the city; or in response to inquiries by the City.
 - b. The permittee or permittee's agent associated with the permittee engaged in conduct that:
 - i. Resulted in a citation or conviction against the permittee or agent associated with the surf school;
 - ii. Violated local, state or federal law;
 - iii. Constituted a public nuisance;
 - iv. Breached any condition, requirement, or restriction of the surf school permit; or
 - v. Constituted a hazard to public peace, health, or safety.
 2. A surf school permit may be revoked, suspended, or additional conditions may be imposed by the Parks and Recreation Department by providing written notice to the permittee setting forth the basis of the intended action and giving the permittee an opportunity to present responding information to the Parks and Recreation Department within five calendar days.
 3. After the five-day period, the director of Parks and Recreation Department shall determine whether to revoke the permit, suspend the permit, or impose additional conditions upon the permit and thereafter, give written notice to the permittee. The permit shall be deemed to be valid until the written notice of the decision has been issued.
- G. Appeals. The applicant or permittee may appeal a decision of the Parks and Recreation Department to deny, revoke, suspend, or modify a surf school permit. The permit shall be deemed to be suspended during the pendency of any appeal. An appeal must be initiated by submitting a written statement (signed under penalty of perjury) and payment of an appeal fee to the City Clerk within ten calendar days of the date of the notice of the director's decision. The City Manager, or the City Manager's designee, shall conduct an

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impartial hearing within twenty-one days from the notice of appeal. Notice of the hearing shall be provided by the City Clerk to the appellant not less than five days prior to the hearing date. The appellant shall have the opportunity to present an opening statement, evidence, and a closing statement. Thereafter, the City Manager, or the City Manager's designee, in his or her discretion, shall consider the relevant evidence and the record of the matter, and determine whether to affirm, set aside, or modify the decision appealed therefrom. Thereafter, the appellant shall be notified of the final decision via first class mail. The decision of the City Manager, or the City Manager's designee, shall be final, subject only to judicial review pursuant to Code of Civil Procedure Sections 1094.5 and 1094.6.

13.14.040 RESTRICTIONS ON SURF SCHOOL ACTIVITIES OR OPERATIONS ON CITY STREETS, SIDEWALKS, AND OTHER PUBLIC PROPERTY.

- A. No person, or entity, shall use the public areas referenced in section 13.14.031(B) for the purposes of engaging in surf school related activities or operations. This means that no surf school, regardless of whether it has a permit or not, shall:
1. Direct, or cause surf school students to meet or park in these areas for the purposes of meeting-up, staging, preparing for, or engaging in any surf school related activities; or
 2. Cause surf school's equipment (including, but not limited to, boards, wetsuits, tables, and racks) to be placed on the streets, right of ways, public sidewalks, any other public property, and on the streets listed below in section 13.14.031(B).
- B. This section applies solely to the streets, right of ways, public sidewalks, and any other public property (including planters and vegetation) in the following residential areas:
- (1) Liberty St. (from Bay St. Pelton Ave.);
 - (2) Laguna St. (from Bay St. Pelton Ave.);
 - (3) Lighthouse Ave. (from Bay St. Pelton Ave.);
 - (4) West Cliff Drive (from Bay St. to Pelton Ave.);
 - (5) Bay St. (from Liberty St. to West Cliff Dr.);
 - (6) Cowell St. (from Lighthouse Ave to West Cliff Dr.);
 - (7) Gharkey St. (from Liberty St. to West Cliff Dr.);
 - (8) Santa Cruz St. (from Liberty St. to West Cliff Dr.);
 - (9) Monterey St. (from Liberty St. to West Cliff Dr.);
 - (10) Oregon St. (from Liberty St. to Lighthouse Ave.);
 - (11) Nevada St. (from Liberty St. to Laguna St.);
 - (12) Phelan Court;
 - (13) Eucaluptus Ave.;
 - (14) Ave. A;
 - (15) Manor Ave. W.;
 - (16) Manor Place;
 - (17) Manor Ave. S.;

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(18) Manor Ave.; and
(19) Pelton Ave. (from Liberty to West Cliff Drive).

13.14.050 PENALTIES AND ENFORCEMENT

- A. Any person or entity operating a surf school in the city in violation of any of the provisions of this chapter or in violation of any of the conditions set forth in the applicable surf school permit shall constitute an infraction for the first two violations of this chapter in a one-year period, which shall be punishable by a fine that is the same as the base bail amount set by the Santa Cruz City Council and adopted by the Santa Cruz County Superior Court for violations of this chapter. Three violations within a one-year period shall constitute a misdemeanor, which shall be punishable by a fine of one thousand dollars and/or by imprisonment in the county jail for a period of not more than six months.
- B. In addition to any other remedy provided by this code, this chapter may be enforced by injunction issued by the Superior Court upon a suit brought by the City of Santa Cruz, or upon a suit brought by any aggrieved party. Pursuant to Santa Cruz Municipal Code section 4.04.020, as part of a civil action filed to enforce provisions of this chapter, a court may assess a maximum civil penalty of two thousand five hundred dollars per violation of this chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this chapter.
- C. The City Council declares that this chapter was enacted for the significant public benefit promoting public safety, health, peace and enjoyment in the use of the Cowell Beach Recreation Area by the community for personal recreation, reasonably regulating the use for commercial purposes, and minimizing any adverse impact on the community residing near the Cowell Beach Recreation Area. Therefore, if a private attorney general plaintiff successfully brings an action to enforce this chapter against any offenders of this chapter, it is the desire and intent of the City of Santa Cruz that the successful plaintiff be able to recover its reasonable attorneys' fees under Code of Civil Procedure section 1021.5, or any similar private attorney general successor statute.
- D. The City Council hereby finds and declares that repeated violations of this Chapter constitute a public nuisance and which may be enjoined under all applicable law, including but not limited to, Santa Cruz Municipal Code section 4.04.020 and Code of Civil Procedure section 731. Therefore, pursuant to Santa Cruz Municipal Code sections 4.25.010 and 4.25.020, the prevailing party to an action or proceeding to enjoin a public nuisance arising from violations of this chapter shall recover the amount of its reasonable attorneys' fees.

13.14.060 EXEMPTIONS.

Nothing in this chapter limits the City's authority to grant exemptions from certain provisions within this chapter to authorize City employees or City's contractors or agents to operate within the Cowell Beach Recreation Area and/or to provide public safety, maintenance or other essential City services.

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SECTION 2. This ordinance shall be in force and take effect thirty (30) days after its final adoption.

PASSED FOR FINAL ADOPTION this day of ,2017 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2017-_____ and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk