

Coastal Commission May Not Review City Nuisance Abatement Ordinance Passed In Good Faith

The California Coastal Commission lacks jurisdiction to review a city's adoption of a nuisance ordinance because a municipality's enactment of an ordinance is not an appealable action. However, the city must demonstrate that it exercised its nuisance abatement power, pursuant to Coastal Act section 30005(b), in good faith, and not as a pretext for avoiding its obligations under the Coastal Act. [City of Dana Point v. California Coastal Commission](#), No. D060260 (4th District, June 17, 2013). coast2 copyA proposed development of 125 luxury homes was situated between a newly created public park above it and a newly dedicated public beach below it. Public access trails ran through the project, linking the park and beach. As portions of the project neared completion, the City adopted a nuisance ordinance mandating limited hours of operation of the trails and the installation of pedestrian gates on those trails. A private citizen, the Surfrider Foundation, and two Coastal Commissioners filed administrative appeals with the Coastal Commission challenging the ordinance. The Coastal Commission concluded that limiting trail access hours and installing gates required a Coastal Development Permit under the Coastal Act. The City sued, contending that it had legitimately exercised its nuisance abatement powers under section 30005(b), and that the Commission therefore lacked jurisdiction. The court of appeal held that the Commission lacked jurisdiction under the Coastal Act to consider whether the actions mandated by the nuisance abatement ordinance required a Coastal Development Permit because the City's action was not a quasi-adjudicatory permitting decision. However, the court also held that when a city exercises its nuisance abatement powers under section 30005(b), the City must demonstrate that the ordinance was enacted in good faith, rather than as a pretext to avoid obligations under the Coastal Act. Surfrider Foundation had filed a separate action against the City, claiming that the City lacked a rational basis for adopting the nuisance abatement ordinance. The trial court found that the City acted arbitrarily and capriciously in enacting the ordinance. The court of appeal remanded the City's case to the trial court to determine whether the City properly exercised its nuisance abatement powers. The *Surfrider* case was stayed pending a final decision in the City's case. The trial court's conclusion in the *Surfrider* case suggests that on remand in the City's case, the trial court will likely conclude that the City enacted the ordinance in order to avoid its obligations under the Coastal Act, and thus that the Commission may exercise jurisdiction over the gates and hours of operation on the trails. *City of Dana Point* is the latest turf battle between local jurisdictions and the Coastal Commission to reach the courts of appeal. See our post "[Coastal Commission Steps Over the Line By Imposing Local Coastal Plan Amendment](#)," June 8, 2012.

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