

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2681**

**ORDINANCE AMENDING UNIFIED PORT DISTRICT  
CODE SECTION 4.14, REGULATION OF IN-WATER  
HULL CLEANING**

**WHEREAS,** the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I; and

**WHEREAS,** Section 21 of the Port Act authorizes the Board of Port Commissioners (Board) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS,** on July 12, 2011, the Board approved Ordinance 2645 adopting an In-Water Hull Cleaning regulations requiring that all businesses engaging in in-water hull cleaning obtain a permit to conduct business on District tidelands; and

**WHEREAS,** since November, 2011 District staff began enforcing permit requirements after a ninety (90) day grace period; and

**WHEREAS,** to date, 55 businesses have received permits, with approximately 160 hull cleaners working for permitted businesses and staff has conducted over 40 inspections; and

**WHEREAS,** staff has received four complaints relating to in-water hull cleaning from outside sources and investigated, resulting in six verbal warnings and four citations; and

**WHEREAS,** following the July 2011 adoption of the ordinance staff has engaged in numerous outreach with such groups as Dockmasters, the San Diego Port Tenants Association's marine recreation committee, the California Professional Divers Association to obtain feedback and to determine whether any modifications to the ordinance were necessary; and

**WHEREAS,** staff determined that the ordinance should be amended to add a standard clause requiring permittees to adhere to all permit terms and conditions which was inadvertently omitted from the original ordinance as well as to clarify the definition of "business" to clarify the definition to specify businesses involved in or engaged in in-water hull cleaning.

**NOW THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

#### SECTION 4.14 – REGULATION OF IN-WATER HULL CLEANING

##### Section 1.

##### (a) Purpose

California law requires the District to protect, preserve and enhance the quality of water in San Diego Bay (San Diego Unified Port District Act, Harbors and Navigation Code, Appendix I) and prohibits the discharge of waste to waters of the state in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance (California Water Code section 13050). Pursuant to Clean Water Act Section 303(d), portions of San Diego Bay have been identified as impaired due to high concentrations of dissolved copper in the water column, which resulted in a requirement imposed by the San Diego Regional Water Quality Control Board to reduce copper loading through a Total Maximum Daily Load (TMDL). The in-water hull cleaning of vessels has been identified as a source contributing to copper loading. Therefore, the District is adopting this Section to help implement its statutory responsibilities by requiring that in-water hull cleaning in San Diego Bay as a business be conducted only by persons holding a valid permit issued by the District.

##### (b) Definitions

For purposes of this Section, certain words and phrases not otherwise defined in District Code Section 0.03 shall be defined as follows, unless the context requires a different meaning:

1. "In-Water Hull Cleaning" means the cleaning of recreational or commercial vessel hulls while the vessel is in the water. This includes cleaning, by hand or mechanical means, the underwater portions of the hull up to the waterline. This does not include underwater dive services used for other activities, including but not limited to, regular servicing of zinc anodes, underwater maintenance and repair of drive shafts, through-hull components and other maintenance-related efforts.

2. "In-Water Hull Cleaning Permit" means a permit issued by the District for In-Water Hull Cleaning as a Business. Permits may be issued to an individual or a business on behalf of numerous individuals. The permittee shall be responsible for the activities of all Persons performing work under the Permit.

3. "Best Management Practices" or "BMPs" means schedules of activities, good housekeeping practices, pollution prevention and educational practices, maintenance procedures, tools and other management practices used to prevent or reduce the discharge of pollutants directly to receiving waters to the maximum extent practicable. BMPs may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this Section.

4. "Business" means any public or private activity, facility, or person involved in, engaged in, or that provides In-Water Hull Cleaning services for compensation. These activities do not include industrial activities, nor do they include any Federal, State, Municipal, or other government agency activities.

5. "Facility" means marinas, mooring companies, yacht clubs and any other area in which In-Water Hull Cleaning is conducted.

(c) In-Water Hull Cleaning Permits

1. No Business shall perform In-Water Hull Cleaning without first having secured an In-Water Hull Cleaning Permit from the District.

2. All Persons performing In-Water Hull Cleaning as part of a Business shall possess, maintain, and show proof that they are operating pursuant to a valid In-Water Hull Cleaning Permit, upon request.

3. Each Facility shall require all Persons it admits to its leasehold to perform in-Water Hull Cleaning as a Business to show proof that they are operating pursuant to a valid In-Water Hull Cleaning Permit before any In-Water Hull Cleaning is conducted.

4. Each Facility shall maintain a copy of a valid In-Water Hull Cleaning Permit Persons it admits to its leasehold to perform In-Water Hull Cleaning as a Business. Copies shall be kept on the leasehold for no less than ninety (90) days after the expiration of the In-Water Hull Cleaning Permit. District shall have the right to inspect the permit copies at any reasonable time, upon request.

5. Each Facility that becomes aware that any In-Water Hull Cleaning is being or has been conducted on its leasehold without a permit required by this Section shall notify the District within one business day of discovery.

6. Each Business with an In-Water Hull Cleaning Permit shall comply with each and every provision of the In-Water Hull Cleaning Permit. Failure to comply may result in the suspension or revocation of the Business's In-Water Hull Cleaning Permit or any penalty(ies) enumerated in Subsection (f) of this Section.

(d) Use of Best Management Practices for All Persons

1. No Person shall perform In-Water Hull Cleaning without complying with Best Management Practices generally recognized by the industry as being effective and environmentally sound.

2. No Person shall perform In-Water Hull Cleaning that results in visible paint plume or cloud.

(e) Federal or State Preemption

The provisions of this Section do not apply where Federal or State law Regulates In-Water Hull Cleaning if the Federal or State law preempts local regulation or if the Federal or State law is more restrictive.

(f) Penalties for Violation of Section 4.14

1. A violation of this Section shall be punished in accordance with District Code Section 0.11.

2. Violations of this Section also may be grounds for suspension, revocation or modification of any District permit, license or approval.

3. Violations of this Section may be grounds for the refusal to issue or renew an In-Water Hull Cleaning Permit.

4. Penalties and remedies under this Section may be cumulative and in addition to other administrative, civil or criminal remedies. Nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

(g) Right of Appeal

1. If the District suspends, revokes, modifies or refuses to issue an In-Water Hull Cleaning Permit, the permittee may appeal, in writing, to the Executive Director within Ten (10) calendar days of the date of the action taken by the District.

2. The written appeal shall state whether a hearing is requested and shall contain all reasons why the permittee or applicant for a permit believes the action of the District to be improper.

3. If no written appeal is filed, or if the appeal is untimely or fails to state the reasons why the permittee or applicant for a permit believes the action of the District to be improper, the right to a hearing is waived and the decision of the District is final.

4. If a written appeal is timely and completely filed and a hearing is requested, the District shall appoint an impartial hearing officer within Thirty (30) days and establish a date, time and place for the hearing. This time may be extended based on good cause or the agreement of the parties. The decision of the hearing officer is final.

Section 2. This ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of August, 2012, by the following vote:

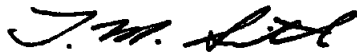
AYES: Burdick, Malcolm, Moore, Nelson, Peters, Smith, Valderrama

NAYS: None.

EXCUSED: None.

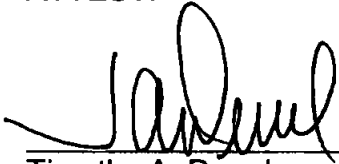
ABSENT: None.

ABSTAIN: None.



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Louis M. Smith, Chairman  
Board of Port Commissioners

ATTEST:



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Timothy A. Deuel  
District Clerk

(Seal)