

**CEQA and COASTAL DETERMINATIONS
and
NOTICE OF APPROVAL**

Project: Amendment of San Diego Unified Port District Code Article 8, Section 8.05 – Regulation of Vending and Expressive Activity
Location: Port Tidelands
Parcel No.: Various
Project No.: 2023-127
Applicant: Larry Hofreiter, Director, Department of Parks & Recreation, San Diego Unified Port District, 3165 Pacific Highway, San Diego, CA 92101
Date Approved: November 14th, 2023

PROJECT DESCRIPTION

The proposed project would involve amending the San Diego Unified Port District Code (Port Code) Article 8, Section 8.05 – Regulation of Vending and Expressive Activity, by the San Diego Unified Port District (District) that would take effect on District Tidelands in the cities of San Diego, National City, Coronado, Chula Vista, and Imperial Beach, California. Port Code Article 8, Section 8.05 was amended in February 2023 to implement a permitting system for vendors engaged in the sale of food and commercial merchandise at specific public locations, establish outdoor noise limitations related to all vending and expressive activity, increase the number of designated areas and allotted spaces for vending and expressive activity, and clarify the District's penalties and enforcement procedures (Coastal Act Categorical Determination of Exclusion Project No. 2023-017). The District's Department of Parks & Recreation was advised to return to the Board of Port Commissioners to evaluate the effectiveness of the program. The following recommendations will be considered at the November Board of Port Commissioners meeting:

1. Adjust the Allotted Spaces for vending and expressive activity as follows:
 - a. Decrease the total number of Allotted Spaces from 77 to 67 along the Embarcadero.
 - b. Reduce the number of Allotted Spaces in Designated Areas 7 and 8 (behind Seaport Village) from 31 to 15.
 - c. Increase the number of Allotted Spaces in Designated Area 4 (on wooden deck near Midway Museum) from 12 to 17, additional two (2) additional commercial spaces and (3) additional expressive spaces.
 - d. Modify Designated Area 3 (between Portside Pier restaurant and the B Street Cruise Ship Terminal) to include eight (8) commercial spaces and four (4) expressive spaces, formerly six (6) commercial spaces and six (6) expressive spaces.
 - e. Reduce the size of spaces in Designated Area 1 (near the Grape Street Pier) from 10ft x 10 ft to 6 ft x 8 ft and modify them to allow four (4) expressive spaces and two (2) commercial spaces, formerly three (3) commercial spaces and three (3) expressive spaces.
2. Extend the Temporary Commercial Use Permits from November 30, 2023 end date to December 31, 2023 end date for the first commercial permit cycle.
3. Introduce a one (1) year term for the Commercial Use Permits beginning January 2024.
4. Reduce the time commercial and expressive vendors can leave their equipment unattended from three (3) hours to two (2) hours.
5. Add language giving the District's Executive Director and/or their designee the authority to revoke a Commercial Use Permit if the vendor does not meet the minimum use obligations outlined in the terms and conditions of the permit.

6. Require commercial vendors to prominently display their District issued permit at all times while vending.
7. Non-substantive edits to align the ordinance with current administrative practices or requirements.

The proposed project would result in a 12% reduction to the total number of Allotted Spaces on Tidelands to improve sight lines to San Diego Bay and the general public's experience along the waterfront. The proposed amendments to the program would better utilize public park space based of occupancy and survey data that was collected for both commercial and expressive vending.

The following categorical determinations are based on the project submittal and all project information known to the District as of the date of this determination.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CATEGORICAL DETERMINATION

Categorical Exemptions: CEQA Guidelines Section 15301 (Class 1)/District Guidelines for Compliance with the CEQA Section 3.a: Existing Facilities and CEQA Guidelines Section 15304 (Class 4)/District Guidelines for Compliance with the CEQA Section 3.d: Minor Alterations to Land

- 3.a. Existing Facilities: Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.

AND/OR

- 3.d. Minor Alterations to Land: Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including, but not limited to:

- (6) Minor temporary use of land having negligible or no permanent effects on the environment.

The proposed project is determined to be Categorically Exempt pursuant to the CEQA Guidelines and the Sections of the District's *Guidelines for Compliance with CEQA* as identified above. These are appropriate for the proposed project because it would consist of amendments to the Port Code to improve the commercial vending and expressive activity program along the waterfront involving no expansion of use beyond that previously existing. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

Pursuant to CEQA Guidelines Section 15062, a 35-day statute of limitations for this CEQA exemption shall apply from the date a Notice of Exemption is posted with the San Diego County Clerk, or a 180-day statute of limitations for this CEQA exemption shall apply if no Notice of Exemption is filed.

CALIFORNIA COASTAL ACT

PORT MASTER PLAN CONSISTENCY

Applies to all Planning Districts.

Land Use Designations: Commercial Recreation; Park/Plaza; and Promenade

The proposed project conforms to the certified Port Master Plan because it would involve amending the Port Code Article 8, Section 8.05 consistent with the existing certified land use designations. The proposed project would not change the use of the site nor would it interrupt or expand the existing conforming uses of the site.

CATEGORICAL DETERMINATION

Categorical Exclusions: Section 8.a: Existing Facilities and Section 8.d: Minor Alterations to Land

- 8.a. Existing Facilities: The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.

AND/OR

8.d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

- (5) Minor temporary uses of land and water having negligible or no permanent effects on the environment, including festivals, boating activities, parades, and running or bicycling events

The proposed project is determined to be Categorically Excluded pursuant to the Sections of the District's *Coastal Development Permit Regulations* as identified above. These are appropriate for the proposed project because it would involve amending the Port Code to improve the commercial vending and expressive activity program and the general public's experience along the waterfront that would involve a negligible expansion of use beyond that previously existing.

Pursuant to California Coastal Act Section 30717, there is a 10-working-day period to appeal this "Coastal Act Categorical Determination of Exclusion" to the California Coastal Commission.

CALIFORNIA PUBLIC TRUST DOCTRINE

The proposed project complies with Section 87.(a)(5) of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

RANDA CONIGLIO
Acting President/CEO

Determination by:
Lillian Mattes
Assistant Planner
Development Services

Signature: Lillian Mattes
Date: 11/15/2023

Deputy/Assistant General Counsel

Signature: Shiraz D. Tangri
Date: 11/15/2023