

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, Shelter Island Yacht Basin, or “SIYB”, is a semi-enclosed man-made recreational yacht basin located in the north end of San Diego Bay, California. It is located on the western side of the Shelter Island Planning District, bounded on the east by Shelter Island Drive, with the mouth and only entrance to the basin on the western side adjacent to Shelter Island Point to the south and Kellogg Beach to the North. SIYB is composed of marinas and yacht clubs, an anchorage, a fuel dock, and other facilities that support recreational boating; and

WHEREAS, in 2005, the San Diego Regional Water Quality Control Board (“Regional Board”) set a Dissolved Copper Total Maximum Daily Load (“TMDL”) for the Shelter Island Yacht Basin (“SIYB”). In establishing the SIYB TMDL, the Regional Board found that dissolved copper levels in SIYB violate water quality objectives and thereby threaten and impair the designated beneficial uses of marine habitat and wildlife habitat in this area; and

WHEREAS, the Regional Board attributed approximately 98 percent of all copper loading to SIYB to copper-based antifouling paints applied to the hulls of recreational boats. The Regional Board found that a 76 percent overall reduction of residual copper loading to SIYB is required to meet the SIYB TMDL by December 1, 2022, and named the District, SIYB marina owners and operators, underwater hull cleaners, and boat owners as dischargers responsible for meeting copper reductions set forth in the TMDL; and

WHEREAS, on July 12, 2011, the Board approved Ordinance 2645, codified as San Diego Unified Port District Code Section 4.14, Regulation of In-Water Hull Cleaning, adopting an In-Water Hull Cleaning regulations requiring that requires, among other provisions, that all ~~businesses~~ Businesses engaging in in- water hull cleaning obtain and maintain in good standing an In-Water Hull Cleaning Permit ~~permit~~ to conduct business on District tidelands; and

WHEREAS, long-term annual water quality monitoring conducted in SIYB by the District has documented that dissolved copper concentrations remain elevated above the 3.1 µg/L water quality objective; and

WHEREAS, effective July 1, 2018, the California Department of Pesticide Regulation (DPR) promulgated a new regulation on the permissible release rates for Copper-Based Antifouling Paints or Coatings. This regulation was implemented to lower the amount of copper used in antifouling paints, which was intended to reduce the concentrations of dissolved copper in marinas across the state of California and support compliance with water quality standards; and

WHEREAS, DPR found that achieving the release rates in DPR's new regulations requires implementation of best management practices for In-Water Hull Cleaning of vessels whose hulls contain Copper-Based Antifouling Paints or Coatings; and

WHEREAS, a long-term monitoring study was initiated in 2019 by the DPR to determine the efficacy of the new paints by measuring (1) baseline copper concentrations in eight waterbodies across the state of California, including SIYB; and (2) trends in dissolved copper across waterbodies including SIYB; and

WHEREAS, the DPR released the findings from their 2019 long-term monitoring in a report entitled, *Study 319 Report: Monitoring of Dissolved Copper in California Coastal Waterbodies* (DPR Report) that summarized the results of the initial year of the long-term monitoring program and found that dissolved copper concentrations in all eight waterbodies, including SIYB, were higher than their respective reference sites and confirmed that Copper-Based Antifouling Paints or Coatings on vessel hulls are the source of dissolved copper in marinas and boat basins; and

WHEREAS, the DPR Report found that when compared to no In-Water Hull Cleaning, abrasive hull cleaning tactics may contribute up to 62% higher dissolved copper loading, and the use of BMP methods during hull cleaning may still contribute up to a 45% higher dissolved copper load when compared to no In-Water Hull Cleaning; and

WHEREAS, the DPR also recognized that for all the included waterbodies, future reductions in dissolved copper concentrations will also be dependent on hull cleaning mitigation strategies; and

WHEREAS, in 2019, further amendments to the District's In-Water Hull Cleaning regulations were proposed and staff received feedback from stakeholders that identified the need for more water quality data to evaluate connections between water quality and IWHC; and

WHEREAS, through adoption of this Ordinance, the District determines that a temporary pause of In-Water Hull Cleaning for vessels having a Copper-Based Antifouling Paint or Coating in SIYB would improve water quality in the SIYB; and

WHEREAS, through adoption of this Ordinance, the District determines that a temporary pause of In-Water Hull Cleaning for vessels having a Copper-Based Antifouling Paint or Coating in SIYB with concurrent water quality testing is appropriate and necessary to assess the copper reductions resulting from In-Water Hull Cleaning.

~~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~~ adopted this Section to help implement its statutory responsibilities by requiring that in-water hull cleaning in San Diego Bay as a ~~business~~ Business be conducted only by persons holding a valid permit issued by the District. This Section is being amended to require a temporary pause of In-Water Hull Cleaning of Copper-Based Antifouling Paint or Coatings in Shelter Island Yacht Basin to improve water quality and further assess the improvements resulting from this mitigation measure.

(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.

4.5. "Copper-Based Antifouling Paint or Coating" means any recreational or commercial vessel hull paint formulated with cuprous oxide or other copper compounds as the active biocide ingredient. Unless there is documentation sufficient to establish that the hull of a vessel is not painted or coated with Copper-Based Antifouling Paint or Coating, all vessels shall be presumed to be painted or coated with Copper-Based Antifouling Paint or Coating.

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

5.7. Shelter Island Yacht Basin, or "SIYB", means a semi-enclosed man-made recreational yacht basin located in the north end of San Diego Bay, California. It is located on the western side of the Shelter Island Planning District, bounded on the east by Shelter Island Drive, with the mouth and only entrance to the basin on the western side adjacent to Shelter Island Point on the south and Kellogg Beach on the North. SIYB is composed of marinas and yacht clubs, an anchorage, a fuel dock, and other facilities that support recreational boating.

(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 for all 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) Temporary Pause of In-Water Hull Cleaning of Copper-Based Antifouling Paint or Coating Within the Shelter Island Yacht Basin

The following provisions apply exclusively to the In-Water Hull Cleaning of vessels within Shelter Island Yacht Basin during an approximately eight-week pause beginning on December 19, 2021, and extending through February 9, 2022, and to no other area within the District's jurisdiction.

1. No Person shall perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.

2. No Person shall contract for, authorize, or allow entry to a Facility for a Person to perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.

3. No Facility shall contract for, authorize, or allow entry to a Facility for a Person to perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.

4. In addition to any other penalties and remedies authorized by the District Code, the minimum civil penalty imposed pursuant to District Code Subsection 0.11 for any violation of sub-section 4.14(e)(1)-(3) shall be \$1,000. The District shall have the right to impose and collect this minimum civil penalty for any violation of sub-section 4.14(e)(1)-(3) occurring within the pause, in addition to any other penalties and remedies authorized by the District Code, even after the expiration of sub-section 4.14(e)(1)-(3) pursuant to sub-section 4.14.(e)(5).

5. Sunset. Sub-sections 4.14(e)(1)-(4) of this Section shall automatically expire on February 10, 2022; provided, however, that the District's authority to impose and collect civil penalties and to impose other remedies for violations in accordance with sub-section 4.14(e)(4) shall survive this automatic expiration.

(e)(f) Federal or State Preemption; Compliance with More Restrictive Federal or State Laws

~~The provisions In addition to the requirements of this Section, all Persons must comply with any do not apply where Federal or State law that is more restrictive than the requirements of this Section. 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)(g)~~ 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~~ Person from seeking any other remedies, penalties or procedures provided by law.

~~(g)(h)~~ Right of Appeals

A Person subject to enforcement for a violation of this Section may appeal that violation in accordance with the provisions of Section 0.11(i) of this Code.

- ~~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.

2681

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this ____ day of _____, 2021, by the following vote: