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Title: CONDUCT A PUBLIC HEARING AND ADOPT AN ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15301 AND 15311, AND AMENDING SAN DIEGO UNIFIED PORT DISTRICT (SDUPD) CODE ARTICLE 8, SECTION 8.07 - REGULATION OF MOTORIZED MOBILITY DEVICES AND PEDICABS ON DISTRICT TIDELANDS

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Attachments: 1. 12. 2023-0088 Attachment A - Proposed Amendments to SDUPD Code Sections 8.07 (Strike-out / Underline Version), 2. 12. 2023-0088 Attachment B - Proposed Amendments to SDUPD Code Sections 8.07, 3. 12. 2023-0088 Attachment C - Public and Stakeholder Feedback, 4. 12. 2023-0088 Draft Ordinance, 5. 12. 2023-0088 Public Comments Received, 6. 12. 2023-0088 Public Comments Received - Motorized Mobility Ordinance, 7. 12. 2023-0088 Public Comment Received - Motorized Mobility Ordinance, 8. 12. 2023-0088 Public Comment Received - Motorized Mobility Ordinance

Date	Ver.	Action By	Action	Result
5/9/2023	1	Board of Port Commissioners		

DATE: May 9, 2023

SUBJECT:

CONDUCT A PUBLIC HEARING AND ADOPT AN ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15301 AND 15311, AND AMENDING SAN DIEGO UNIFIED PORT DISTRICT (SDUPD) CODE ARTICLE 8, SECTION 8.07 - REGULATION OF MOTORIZED MOBILITY DEVICES AND PEDICABS ON DISTRICT TIDELANDS

EXECUTIVE SUMMARY:

The proliferation of electric bicycles, electric scooters, electric skateboards, pedicabs and other motorized non-traditional mobility devices has resulted in these devices being readily available for public and private use within the District’s jurisdiction on tidelands. Due to the popularity of motorized mobility devices and potential conflicts with high density pedestrian areas on District tidelands, motorized transportation devices can create public safety hazards when used in areas with pedestrian activity.

After assessing the circumstances on tidelands, and conducting public outreach, Staff recommends amending this Section of the San Diego Unified Port District (SDUPD) Code Section 8.07 - Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands, to protect the safety of pedestrians and other individuals on District tidelands. The proposed ordinance provides that

Motorized Mobility Devices (MMDs) and Pedicabs will be prohibited on pedestrian areas, including, sidewalks, promenades, multi-use pathways, nature trails, plazas, parking garages, parks, and piers. There are exceptions to this prohibition in the proposed in the amended Code Section 8.07:

- 1) Motorized devices defined by the Americans with Disabilities Act (ADA), which are utilized by those with mobility disabilities.
- 2) Segway tour operators, which must have member City Permits.

The proposed ordinance would also prohibit the reckless operation of MMDs, the operation of MMDs while intoxicated by any substance, the operation of MMDs by any person under the age of 16, and enact other prohibitions intended to protect public safety. The proposed ordinance would also impose insurance requirements on Pedicab Operators, Shared Mobility Device Providers, and Segway tour operators.

If the recommendations are approved for SDUPD 8.07, signage will be installed throughout District tidelands along sidewalks, promenades, piers and other pedestrian walkways and areas to inform the public of the District's regulations for MMDs and Pedicabs. Some areas may also be designated for Pedicabs to stage for loading and unloading of passengers along the street and bike lanes.

RECOMMENDATION:

Conduct a Public Hearing and Adopt an Ordinance finding the Board action exempt under the California Environmental Quality Act (CEQA), including but not limited to, CEQA Guidelines Section 15301 and 15311, and amending San Diego Unified Port District (SDUPD) Code Article 8, Section 8.07 - Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands

FISCAL IMPACT:

Funds required for this effort are included in Guest Experiences FY 2023 forecast. Future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

In 2018, MMD's for public use began to appear in the City of San Diego and on District Tidelands.

These MMD's initially came in the form of dockless electric scooters and electric bicycles (eBikes) offered by multiple Shared Mobility Device (SMD) operators such as Bird, Lime, Lyft, Spin, Link, VEO and Wheels. Staff began to work with the City of San Diego who initially permitted the SMD's for operation in San Diego. The City passed an Ordinance to Chapter 8 of the San Diego Municipal Code to regulate them in 2018, which was later amended in May 2019, January 2020 and again in April 2022. Each time regulations were updated to improve safety for both riders of SMDs and pedestrians, as the increase in the number and types of MMDs evolved. In 2018, Pedicabs returned to the streets of downtown after a three-year ban, adding to the motorized forms of MMD's showing up on the waterfront promenades and walkways.

Initially, District staff was working to create a similar SMD Ordinance to the City of San Diego's to regulate the use of SMD's on tidelands, however during COVID-19 the SMD's reduced significantly from approximately 14,000 SMDs to less than a few thousand. The City of San Diego then decided in 2021 to move to a Contract Program with the SMD operators. District staff participated in the City's Request for Proposals (RFP) in the spring of 2022 in an effort to be involved in the selection of the future SMD operators who would operate on District tidelands as well. The City was focused on reducing to only four (4) operators and reducing the total of SMDs to 8,000. After the RFP was completed, four (4) operators were selected; however, only two (2) continued to operate (Bird and SPIN), due in part to the increased restrictions and technology required by the City of San Diego's updated regulations. Subsequently, MMD's continued to emerge, including rented and privately owned eBikes, scooters, hoverboards, motorized Pedicabs and other MMD's, which increased safety issues with these devices operating at higher speeds and in greater quantity in pedestrian areas. Based on the continuous evolving creation of new MMD's, staff shifted efforts to formulate an Ordinance that will regulate the use of all current and future MMD's, whether rented or privately owned, to preserve the safety of pedestrian visitors on tidelands.

Pedicab Operators and Shared Mobility Device Operators

When SDUPD Code Section 8.07 - Regulation of Pedicabs was approved in August 2001, pedicabs were not motorized and were categorized as a 3 wheeled bicycle, which was solely human powered. Today, most pedicabs in operation downtown and on the waterfront are motorized and can reach speeds of 20 - 35 miles per hour. Safety at these speeds is a great concern around pedestrians competing for the space on promenades and sidewalks. At higher speeds, the risk of injury to a pedestrian greatly increases when hit by a Pedicab or any MMD.

The City of San Diego currently has a Permit program with the downtown Pedicab Operators and has several safety requirements in place for their operation, which prohibits them from being operated on sidewalks, and bans their use in the "Restricted Pedicab Zone" around Petco Ballpark three hours prior to a game/event and one hour after. Staff recommends that the new updated Ordinance classify Pedicabs the same as all other MMD's and require them to operate only on streets.

The District has received many complaints from the public and District tenants about Pedicabs operating on the Embarcadero promenade and adjacent sidewalks, including around Seaport Village, the Embarcadero parks and the area around the Shell, which are all very busy pedestrian areas that do not mix well with Pedicabs, as well as other MMD's. It is recommended that all Pedicabs, whether human powered or motorized, should only be allowed to operate on the street and in bike lanes, to keep all pedestrian areas safe and accessible. Staff is working on determining the locations for Pedicab parking zones that will be designated to facilitate loading and unloading of Pedicabs away from the sidewalks and promenades.

After a three-year ban on Pedicabs in San Diego, new regulations were put into place in 2018 for Pedicabs via the City of San Diego's Pedicab Ordinance which include:

- Pedicabs are prohibited from operating on sidewalks unless it is to cross over a driveway to access a location.
- No flashing lights and multi-colored lights, and only the use of static lights of one color.
- Limits on the volume of amplified music prohibiting music that is audible from more than 50 feet away from the pedicab.
- Fares must be clearly visible and fully negotiated before a ride begins.
- All Pedicabs must have a Pedicab Decal displayed.
- It is unlawful to park a Pedicab in a metered or park pay display parking space.
- It is unlawful for an operator to leave his or her Pedicab unattended.

In addition to the City of San Diego's restrictions on Pedicabs, SMDs and MMDs are also currently banned from use on sidewalks as well as the boardwalks of Mission Beach and Pacific Beach after many incidents required this restriction to protect these areas as pedestrian walkways.

Staff's recommendation for Pedicabs and MMDs follow closely with what the City of San Diego has already put in place within its areas with high pedestrian activity. Many areas around the tidelands waterfront already prohibit non-motorized bicycles, scooters, and skateboards from the sidewalks, such as on Harbor Island and in Shoreline Park at Shelter Island.

In addition, the amended SDUPD Code Section 8.07 will require both Pedicab Operators and SMD Operators to have a current Permit or Contract in place with the adjacent member City to operate on tidelands. All regulations by the adjacent City's Permit or Contract must be followed, and the District will require the Operators to provide insurance to the District to operate on tidelands. These requirements will be in addition to the District's Ordinance requiring operations of all MMDs to only operate on streets, subject to all applicable laws, rules, and regulations, including but not limited to, those in the San Diego Municipal Code, member City Municipal Code if applicable, and California Vehicle Code, pertaining to the operation and safety standards of all MMDs, including Pedicabs, eBikes and scooters.

Currently the City of San Diego has four (4) Permits with Pedicab Operators, and two (2) Contracts with Shared Mobility Device Operators (Bird and Spin). The City of Chula Vista had one (1) Permit with Bird for SMDs, which is currently not active. At present, there are no Pedicab or SMD Operators with Permits or Contracts in Coronado, National City, or Imperial Beach. Should that change in the future, this Ordinance would then cover the District's jurisdiction within these member cities as well.

Electric Personal Assistive Mobility Device Operators

There are currently three (3) Segway Tour Operators with Permits for operation with the City of San Diego, which have been operating downtown for several years, and their tours include District tidelands areas along the Embarcadero. These are categorized as Electric Personal Assistive Mobility Devices (EPAMDs) as defined by the California Vehicle Code. The tour operators require a guide on all tours, customers wear helmets, and they keep speed to a minimum while riding on sidewalks and promenades. The EPAMD Operators have operated responsibly and without complaint

from the District tenants and the public on tidelands. Staff recommends allowing this exception for EPAMDs, only if on a guided tour, with the requirement that they must maintain their Permit with the member city to operate and provide the District with insurance to operate on tidelands.

Stakeholder, Outreach, Public Engagement

In April 2023, District staff facilitated one public outreach and one tenant meeting with the San Diego Working Waterfront Group, Port Tenants, community residents, Pedicab, SMD and EPAMD operators. The input and feedback helped guide the recommended changes to SDUPD Code 8.07 with the goal of ensuring public access and safety for all waterfront visitors to District tidelands.

Public Meeting - Regulations for Motorized Mobility Devices and Pedicabs - April 13, 2023, at the Port Administration Building Training Room

This meeting was to present the recommended Code Section 8.07 updates that will apply to all of tidelands, if approved. The proposed updates to the code were shared with the eight (8) attendees at the meeting. Feedback gathered at this meeting included:

- Get the scooters off the walkways and sidewalks.
- Worry about enforcement that is the biggest thing, people will still be in danger.
- The Segway tours go slowly and there has not been any complaints.
- Enforce so that there is room for disabled devices.
- Pedicabs race along and it is dangerous.
- Pedicab operators cannot operate if we are removed from the Harbor.
- Pacific Highway and Harbor Drive do not have bike lanes in all areas, so how can we operate safely on the street?
- Vendors have taken over the sidewalks and there is no space to operate.
- If we get extra insurance, can we operate on the Harbor?
- Vendors are making it difficult for pedicabs and Segways.
- Pedicabs that are still only pedaled will lose their jobs if they cannot be on the promenade.
- Width of pedicabs is the width of some walkways, no room to walk.
- When walking you have big pedicabs bearing down on you with loud music.
- Tourist season coming up and it will only get more dangerous with all the motorized vehicles on the walkways.
- Pedicabs that are capped with speeds will be the ones to get tickets and not the general public on hoverboards and scooters.
- Continuously adjusting for the big businesses, but not allowing for the small businesses to continue.
- No safe space to walk on the Harbor anymore.
- Concerns for having to provide insurance to the District to operate.

A follow up email was sent on April 21, 2023, to all attendees of this public meeting as well as a few who sent emails and called staff, to let them know their feedback would be shared with the Board and that they could attend the Board meeting on May 9th. All attendees were also sent a link to the new Vendor Ordinance since they requested information on what is happening with the vendors regarding enforcement.

Working Waterfront Tenant Meeting - Regulations for Motorized Mobility Devices and Pedicabs - April 24, 2023, Via Teams Meeting

Staff held a second meeting with District tenants to gather their feedback on the proposed changes for MMDs and Pedicabs. This meeting was attended by nineteen (19) District tenants of which most were in the heaviest impacted area along the Embarcadero and the America's Cup Harbor area. Feedback gathered at this meeting included:

- Incidents include some with motorized bicycles on the promenade areas that are within tenant's leased area on walkways.
- Reported collisions with injuries to pedestrians by bicyclists.
- Questions regarding what tenants can do to restrict pedicabs and other mobility devices in their areas on the leasehold.
- Frustration with noise and music from the pedicabs and blocking their business entrances.
- Please include restrictions for blaring loud music from pedicabs.
- Accidents with pedestrians and pedicabs along the promenade of Seaport Village.
- Security cannot catch them or stop them as they move so fast along the promenade.
- How can Harbor Police enforce this once approved?
- Tenants get complaints from their guests about the pedicabs for both speed and noise/music.
- Pedicabs cause traffic issues due to the staging areas.
- Businesses are impacted by the pedicabs and other motorized mobility devices and commend staff for taking this on and support changes in this effort.

Overall, the tenants voiced their frustrations and concerns, and support the recommendation to make changes to regulations addressing the MMD's and Pedicabs which are important to their business operations.

Recommendation

For the reasons discussed above, and following extensive staff research and outreach, Staff recommends adopting the recommended amendments to SDUPD Code Section 8.07 for the purpose of encouraging alternative methods of transportation while protecting public health and safety, and maintaining accessibility under local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act.

CONCLUSION

Based on analysis and information above, staff recommends the Board conduct a public hearing and adopt an Ordinance finding the Board action exempt under the California Environmental Quality Act (CEQA), including, but not limited to, CEQA Guidelines Sections 15301 and 15311, and Amending San Diego Unified Port District (SDUPD) Code Article 8, Section 8.07 - Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda and the proposed ordinance, as presented, as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, to conduct a public hearing and adopt an ordinance amending San Diego Unified Port District Code Article 8, Section 8.07 - Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and 15311 (Accessory Structures), and/or Sections 3.a.(8)(11) and 3.i.(3) of the District's Guidelines for Compliance with CEQA because the project would consist of amending the San Diego Unified Port District Code Article 8 that would involve no expansion of use beyond that previously existing and would not result in a significant cumulative impact due to the continuation of the existing use. 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).

The proposed Board action complies with Sections 21 and 35 of the Port Act, which allow the Board to pass resolutions; and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action is considered excluded development pursuant to Section 8.a(3)(7) (Existing Facilities) of the District's Coastal Development Permit Regulations because the project would consist of amending the San Diego Unified Port District Code Article 8 that would involve negligible or no expansion of use beyond that previously existing. If the Board approves this action, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717. The approval would become effective after the 10th working day after notification to CCC staff unless an appeal is filed with the CCC within that time frame.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

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Attachment(s):

- Attachment A: Proposed Amendments to San Diego Unified Port District Code Sections 8.07 (Strike-out / Underline Version)
- Attachment B: Proposed Amendments to San Diego Unified Port District Code Sections 8.07 (Clean Version)
- Attachment C: Public and Stakeholder Feedback

