



Legislation Text

File #: 2018-0462, **Version:** 1

DATE: October 9, 2018

SUBJECT:

ORDINANCE AMENDING ARTICLE 10 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE, STORMWATER MANAGEMENT AND DISCHARGE CONTROL, TO MAKE EDITORIAL AND CLARIFYING CHANGES IN CONFORMANCE WITH SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD ORDER NO. R9-2013-0001 (MUNICIPAL PERMIT)

EXECUTIVE SUMMARY:

The District maintains legal authority to enforce its storm water program and to effectively prohibit illegal discharges to San Diego Bay from the public tidelands that it holds in trust through Article 10 of the District Code, Stormwater Management and Discharge Control Ordinance ("Article 10"). The District first adopted Article 10 in 2000 to comply with the Regional Water Quality Control Board's San Diego County Municipal Storm Water Permit Order No. 2001-01 ("Municipal Permit"). From time to time the District amends Article 10 (as well as other District Code provisions) in order ensure conformance with applicable rules and regulations and enforcement practices, and to make clarifications where appropriate. The District amended Article 10 in 2007 and 2015 with these goals in mind. District staff now recommends additional amendments to Article 10 to make editorial and clarifying changes as set forth in the Attachment A. The proposed amendments include typo corrections and added text intended to provide improved definition regarding the District's administration of its storm water program. These changes will help support the District's continued efforts to protect Bay water quality and ensure the District's continued compliance with the Municipal Permit.

RECOMMENDATION:

Adopt an ordinance amending Article 10 of the San Diego Unified Port District Code, Stormwater Management and Discharge Control, to make editorial and clarifying changes in conformance with San Diego Regional Water Quality Control Board Order No. R9-2013-0001 (Municipal Permit).

FISCAL IMPACT:

This item has no immediate fiscal impact. Future costs of compliance such as inspections, monitoring, best management plan implementation and construction and enforcement will be budgeted for in the Environmental Protection program implementation; and in the District's capital improvement and major maintenance budgets in their respective fiscal year and will be 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 thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- 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.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The Municipal Permit requires “[e]ach Copermittee to establish, maintain, and enforce adequate legal authority within its jurisdiction to control pollutant discharges into and from its MS4 through statute, ordinance, permit, contract, order, or similar means.” Municipal Permit Section II.E.1. The District maintains legal authority to enforce its storm water program through Article 10. Article 10 has been amended multiple times since adopted in 2000 in order to clarify the storm water and other environmental regulations that apply on District tidelands. As set forth in Attachment A, District staff now recommends additional amendments to Article 10 to make editorial and clarifying changes which will help support the District’s continued efforts to protect Bay water quality and ensure the District’s continued compliance with the Municipal Permit.

District staff continues to evaluate Article 10 as applied through District enforcement practices and priorities and in light of evolving Regional Board directives. In particular, District staff understands that the Regional Board is in the process of updating the Municipal Permit and that those updates may result in substantive changes to the District’s storm water requirements.

District staff anticipates returning the Board with additional and potentially more comprehensive proposed revisions to Article 10 in six to twelve months. It is expected that the future amendments will be made to help streamline and refine the District’s enforcement process, consider new storm water regulations relating to the State Trash Amendments, strengthen the District’s project review and approval process as it relates to storm water regulations, and conform to the requirements of a new Municipal Permit as required. District staff intends to conduct stakeholder outreach prior to presenting the Board with proposed comprehensive changes.

General Counsel’s Comments:

The Office of the General Counsel reviewed this Agenda and approved the proposed ordinance as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, an ordinance amending Article 10 of the San Diego Unified Port District Code, entitled Stormwater Management and Discharge Control, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections

15307 (Actions by Regulatory Agency for Protection of Natural Resources) and/or 15308 (Actions by Regulatory Agency for Protection of the Environment) because the project in question would assure maintenance of a natural resource and would involve procedures for protection of the environment. A CEQA Exemption was previously issued for this project on April 22, 2015. 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 Section 15378(c) of the State CEQA Guidelines, the term “project” refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies, and does not mean each separate governmental approval. Accordingly, the proposed Board action is a subsequent discretionary approval of a previously approved project. No further action under CEQA is required.

The proposed Board action complies with Section 87 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 Board direction or action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations. Therefore, issuance of a CDP or exclusion is not required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

John Carter
Deputy General Counsel
Office of the General Counsel

Attachment(s):

Attachment A: Revised Article 10