



## Legislation Text

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**File #:** 2020-0223, **Version:** 1

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**DATE:** June 23, 2020

**SUBJECT:**

**PRESENTATION AND UPDATE ON THE REOPENING OF DISTRICT AMENITIES AND FACILITIES AND EFFORTS SUPPORTING TENANTS IN CONCERT WITH THE COUNTY OF SAN DIEGO ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS AND DIRECTION TO STAFF**

**EXECUTIVE SUMMARY:**

On May 19, 2020 the Board of Port of Commissioners (Board) received a presentation titled Presentation and Direction to Staff on the Reopening of District Public Facilities in Consideration of New County of San Diego COVID-19 Social Distancing Protocols. This is an update to that presentation. In addition, staff has developed an approach to marketing support and continues to advocate at the State and Federal level for safely increasing public access to the tidelands and for tenants as they reopen their businesses.

Staff anticipates that guidance and requirements mandated from Federal, State, and County agencies will continue to evolve during this COVID-19 health crisis, which could have implications on this and future Board actions.

Staff recommends receiving the presentation and providing direction to staff. Staff recommends continuing to reopen amenities and facilities as appropriate in accordance with the County of San Diego Order of the Health Officer and Emergency Regulations.

**RECOMMENDATION:**

Receive staff's presentation and provide direction on staff's proposed approach.

**FISCAL IMPACT:**

All efforts described in this presentation are currently funded in the FY2020 budget. No additional funds are being requested.

**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 financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

On May 19, 2020 the Board of Port of Commissioners (Board) received a presentation titled “Presentation and Direction to Staff on the Reopening of District Public Facilities in Consideration of New County of San Diego Covid-19 Social Distancing Protocols.” At that time, the District was working with more stringent regulations issued by the State and the County. Along with State orders, the County of San Diego Order of the Health Officer and Emergency Regulations (Order) is the most specific and direct regulatory driver for allowable activities during this pandemic. The Order has gone through multiple iterations which has allowed for certain activities and businesses to reopen gradually. Attachment A is the most recent Order as of the date of publication of this Agenda (effective June 16, 2020).

Port tenants have been reopening consistent with the Order. As locals and visitors return to the tidelands, District staff believes it is critical to support tenant efforts to reopen and attract visitors to their businesses. District staff has developed an approach to provide marketing support to assist tenants in reopening their businesses per the County of San Diego Order of the Health Officer and Emergency Regulations. In addition, the District has been advocating at the State and Federal level to support businesses struggling through these difficult times as they reopen. These efforts have resulted in beneficial outcomes such as the reopening of sports fishing charters.

The District has also been able to reopen public amenities and facilities in accordance with each revision to the Order. Boat launches, parking lots, piers, beaches, and parks along the Tidelands are open with a few exceptions. All District comfort stations are open in compliance with the current Order.

## **Coastal Development Permit Waiver**

On April 14, 2020, the California Coastal Commission authorized the issuance of a Coastal Development Permit (CDP) waiver (Attachment B), allowing for the temporary closure of all District Managed parks and facilities, including associated restrooms, as well as the use of temporary installations, such as chain link fencing, barricades, and signage, to implement the closures. This waiver applies until the Governor’s Executive Order N-33-20 “Stay at Home Order” and the San Diego County Public Health Officer’s Public Health Order are no longer in effect, at which time the District must reopen all parks and facilities and remove all temporary development within one week. The County’s recent modification of the Public Health Order to enable the re-opening of parks and beaches under required social distancing protocols does not constitute lifting of the Order, meaning the CDP waiver is still in effect and does not constrain the Board’s direction.

## **Recommendation and Next Steps**

Staff anticipates that guidance and requirements mandated from Federal, State, and County agencies will continue to evolve during this COVID-19 health crisis. The District will be ready to meet

these evolving requirements. Staff recommends continuing to reopen amenities and facilities in accordance with the County of San Diego Order of the Health Officer and Emergency Regulations. Staff recommends the Board receive staff's presentation and provide direction as needed.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed and approved this agenda as to form and legality.

### **Environmental Review:**

The presentation and the Board's direction to staff do not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board's direction that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The presentation and Board direction in no way limit the exercise of this discretion. Therefore, no further CEQA review is required.

The presentation and the Board's direction comply with Section 35 of the Port Act, which allows the Board 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 presentation and the Board's direction is consistent with the Public Trust Doctrine.

The presentation and the Board's direction do 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 because they would not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required at this time. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The presentation and the Board's direction in no way limit the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

Cid Tesoro, Assistant Vice President, Infrastructure

Attachment(s):

Attachment A: County of San Diego, Health Officer Order (effective June 16, 2020)

Attachment B: Coastal Development Permit Waiver