



Legislation Text

File #: 2022-0164, **Version:** 1

DATE: June 14, 2021

SUBJECT:

ORDINANCE AMENDING SAN DIEGO UNIFIED PORT DISTRICT CODE, ARTICLE 4, SECTION 4.37 - REGULATION OF CHARTER VESSEL OPERATIONS IN SAN DIEGO BAY AND DISTRICT TIDELANDS, REMOVING APPLICABILITY TO KAYAKS, CANOES, AND PADDLEBOARDS

EXECUTIVE SUMMARY:

San Diego Unified Port District (District) Code Section 4.37 (Code 4.37) was amended in May of 2021 to address all charter vessel operations in San Diego Bay and District tidelands with the goals of ensuring public safety, protecting consumers, regulating and policing unpermitted charters, and leveling the playing field for charter operators.

Enforcement of the amended Code 4.37 began on July 1, 2021, and staff has been providing continuous outreach to the charter community to implement the new program and working with the District's marina and sportfishing landing tenants to address any lease issues. During this first year of the program, staff is also gathering input from tenants, charter operators, and the public, and plans to update the Board and all stakeholders on the results of the first year "pilot program" in early fall of 2022, following the busy summer charter season.

Staff is now proposing a minor amendment to Code 4.37 to adjust the definition of charter vessels within this code section to remove kayaks, canoes, and paddleboards from the list of vessel types regulated by this Code section. In recent months staff has determined that the rental of kayaks, canoes and paddleboards are of a different operational nature than that of other charter vessel operations and that the full regulations of Code 4.37 related to these activities is not recommended at this time. Future consideration will be given to any changes in regulation of rental of kayaks, canoes and paddleboards as part of our stakeholder outreach and one-year review of the initial pilot program.

Removing kayaks, canoes and paddleboards from the charter vessel definition in the Port Code Section 4.37 will allow restoration of recreational opportunities in the District's park areas and areas of the bay with fewer marinas and other recreational boating operations which existed before Code 4.37 was revised last year.

The proposed amended Code 4.37 is attached as Attachment A: Proposed Revised San Diego Unified Port District Code Section 4.37, and Attachment B is a redline to the current Code 4.37. If approved, the amended Code 4.37 would become operative 30 days after approval of the ordinance. Should the Board approve the proposed amendment, staff would provide outreach to the charter community, kayaks, canoes and paddleboard operators, and work with the District's marina and sportfishing landing tenants to address any questions or concerns.

RECOMMENDATION:

Adopt an Ordinance Amending San Diego Unified Port District Code, Article 4, Section 4.37 - Regulation of Charter Vessel Operations in San Diego Bay and District Tidelands, removing applicability to kayaks, canoes, and paddleboards.

FISCAL IMPACT:

The approval of the proposed amendment to UPD Code Section 4.37 should have no fiscal impact.

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 healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

Historically, kayak and paddleboard operators (Operators) provided the public with rentals of such smaller non-motorized vessels at certain District beaches and park areas adjacent to the bay under park permits issued by the District, as well as through many District marina leaseholds. As amended last year, Code 4.37 currently defines charter vessels to include many types of vessels including kayaks, canoes, and paddleboards. Further, Code 4.37 prohibits charter vessel operations at any District facilities other than District tenant marinas and sportfishing landings.

During the initial year of enforcing the new provisions in Code 4.37, the District received feedback that some Operators who had been receiving permits from the District were affected by the prohibition in Code 4.37 to operate rentals from District facilities such as bayfront parks and beaches. These Operators were primarily based in areas of the bay with fewer marinas, therefore limiting their opportunities to operate from a tenant leasehold as required by Code 4.37. The proposed new amendment to Code 4.37 would remove kayaks, canoes, and paddleboards from the regulations in Code 4.37. Staff will continue outreach and consider whether future new regulations of kayak, canoe and paddleboard rentals is recommended. Those Operators currently renting kayaks, canoes, or paddleboards from District marinas would not be affected since the leases would still provide applicable use and rental provisions for their operations, except they would no longer be subject to the rules set forth in Code 4.37, such as the requirement for decals.

If approved by the Board, staff and Harbor Police would educate stakeholders and the public on the

amendments of the revised Code 4.37, Therefore, staff recommends the Board adopt the proposed amendment to Code 4.37.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action, including without limitation, does not constitute a "project" under the definition set forth in CEQA Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. The proposed amendment to Code 4.37 is to adjust the definition of charter vessels within this code section to remove kayaks, canoes, and paddleboards from the list of vessel types regulated by this Code section. Charter operations currently occur throughout the bay and operations would not be intensified due to amending Article 4, Section 4.37 of the Port Code. No further action under CEQA is required.

The proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the Board action is consistent with the Public Trust Doctrine.

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 Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

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

PREPARED BY:

Annette Dahl
Department Manager, Real Estate

Simon Kann
Assistant General Counsel, Office of the General Counsel

Attachment(s):

Attachment A: Proposed Revised San Diego Unified Port District Code Section 4.37 -
REGULATION OF CHARTER VESSEL OPERATIONS IN SAN DIEGO BAY AND
DISTRICT TIDELANDS

Attachment B: Redline Comparison of Proposed Revised San Diego Unified Port District Code
Section 4.37.