

**Resolution 02-13**  
of the  
**San Mateo County Harbor District**  
regarding

**Adoption of Amendments to District Ordinance Code Sections Regarding  
General Provisions, Harbor Rules and Regulations, and Commercial  
Activities**

**Whereas**, the Board of Harbor Commissioners ("Board") determined that the Harbor District's Ordinance Code needs to be amended regarding General Provisions, Harbor Rules and Regulations, and Commercial Activities; and

**Whereas**, on December 5, 2012, the Board introduced several amendments to the Ordinance Code and directed the General Manager to publish a notice in compliance with the provisions of Harbors and Navigation Code Section 6070.2 to provide for public review and comment on the proposed ordinance amendments; and

**Whereas**, the proposed amendments cover definitions, code and permit violations, protection of vessels, live-aboard tenants, sewage control, the Pillar Point Outer Harbor, removal of vessels, dinghies, vehicle parking, and permitting for non-lessee commercial fish-buyers, and are set forth in the Attachment to this Resolution.

**Therefore, be it resolved** that the Ordinance Code of the San Mateo County Harbor District is hereby amended as set forth in the Attachment to this Resolution which is hereby incorporated by reference therein.

Approved this 16<sup>th</sup> day of January, 2013 at the regular meeting of the Board of Harbor Commissioners by a recorded vote as follows:

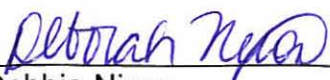
For: Bernardo, Brennan, Tucker

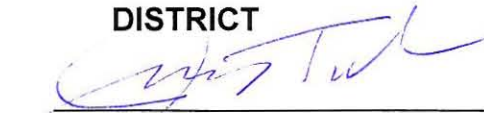
Against: None

Abstaining: None

Absent: Padreddii, Parravano

Attested

  
\_\_\_\_\_  
Debbie Nixon  
Deputy Secretary

**DISTRICT**  
  
\_\_\_\_\_  
James Tucker  
President

## ATTACHMENT TO RESOLUTION 02-13

### AMENDMENTS TO HARBOR DISTRICT ORDINANCE CODE

#### 1.1.1 Title of Code.

This Code shall be known as the "District Code." It shall be sufficient to refer to this Code as the District Code in any prosecution for the violation of any provision hereof. It shall also be sufficient to designate any ordinance adding to, amending, or repealing the provisions of this Code as an addition or amendment to, or a repeal of, the District Code, or a portion thereof.

#### 1.1.2 Authority.

Except as otherwise provided in this Code, this Code consists of all the regulatory, penal, and administrative laws of general application within the District.

#### 1.1.3 Territorial Jurisdiction.

The provisions of this Code shall refer only to the omission or commission of acts within the territorial limits of the District and to that territory outside the District over which the District has jurisdiction or control by virtue of the Constitution of the State or any law, or by reason of ownership or control of property.

#### 1.1.4 Scope and Interpretation.

(A) Unless the provisions of this Code otherwise specifically provide, or the context of this Code indicates to the contrary, the general provisions, rules of construction, and definitions set forth in this chapter shall govern the construction of this Code. The provisions of this Code and all proceedings under it are to be construed with a view to effect its objects and to promote justice.

(B) Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Code as those governing the interpretation of state law.

#### 1.1.5 ~~1.1.1~~ Effect of Code on Past Actions and Obligations.

Adoption of the Ordinance codified in this section or the repeal hereby of any Ordinance of the San Mateo County Harbor District shall not affect the rights or liabilities of the Harbor District or any person, which rights or liabilities accrued prior to the effective date hereof, nor be construed as a waiver of any license, penalty, permit or affect any lease or right to use property of the San Mateo County Harbor District, which rights existed at the date of the adoption of this code. All rights and obligations which have accrued pursuant to the Ordinances and Resolutions of the San Mateo County Harbor District shall continue in full force and effect.

#### 1.1.6 Application to Future Ordinances.

All provisions of this Chapter compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this Code unless otherwise specifically provided.

#### 1.1.7 Headings and Captions.

Title, chapter, article, and section headings contained in this Code shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any title, chapter, article, or section of this Code. Headings and captions used in this Code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

#### 1.1.8 Purpose.

This Code is adopted to effectuate the purpose of the District as enumerated in the legislation conveying tide and submerged land to the District, to wit the safe establishment, improvement and conduct of a harbor, including any marine airport or marine aviation facilities, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and for the construction, maintenance and operation thereon of structures and facilities for public recreational purposes.

#### 1.2.1 Definitions.

Berther. The word "berther" means any vessel or owner thereof, who is entitled through the payment of fees, to berth or moor alongside or within the ~~marina Harbor facilities of the District.~~

Harbor. The word "harbor" means the all areas of water and facilities under the control of the District inside and outside of area inside the breakwaters as enumerated in the enabling legislation establishing the Pillar Point Harbor dated May 2, 1960, and the Joint Powers Authority Agreement for Oyster Point Harbor dated July 6, 1977.

Marine Sanitation Device. The words "marine sanitation device" mean a holding tank or receptacle designed to receive, retain, ~~or hold~~ or discharge sewage. as governed defined by Section 3.1.17.7 of this Code.

Marina. The word "marina" ~~is synonymous with the word "Harbor" and carries the same definition.~~ means that area of the District in and around the piers which has docks, berths, supplies and other facilities for small boats. The outer harbor area of

~~Pillar Point Harbor between the inner and outer breakwaters is not considered to be part of the "marina".~~

Outer Harbor. The words "outer harbor" refers to the area of water between the inner and outer breakwaters of Pillar Point Harbor.

Transient Vessel. The words "transient vessel" shall mean boats not permitted to be moored in the Harbor.

#### 1.2.4 Violation—Penalty General Penalty.

~~Any person violating any of said provisions of this Ordinance Code may be cited by the Harbormaster, or other Law Enforcement Officer having jurisdiction, and a conviction of said violation shall be punishable under California Penal Code Section 19 as authorized by Harbors and Navigation Code Section 6070.4. (Ordinance 63 (part), 1987)(Amended through codification process of 1995, Ordinance 74-96) No person shall violate any provision or fail to comply with any requirement of this code. A person violating a provision or failing to comply with any of the mandatory requirements of this code is guilty of a misdemeanor per Harbors and Navigation Code Section 6070.4 unless the violation is designated as an infraction.~~

#### 1.3 Code and Permit Violations – General Penalty

Notwithstanding any other provision of this code, whenever violation of any section contained in this code is punishable as a misdemeanor, the prosecuting attorney having jurisdiction to prosecute such misdemeanor may specify that the offense is an infraction and proceed with prosecution as an infraction, unless the defendant, at the time of his or her arraignment or plea, objects to the offense being made an infraction, in which event the complaint shall be amended to charge a misdemeanor and the case shall proceed on a misdemeanor complaint.

#### 1.3.5 Violations Of A Misdemeanor Or Infraction—Punishment:

~~1.3.5.1 No person shall violate any provisions or fail to comply with any of the mandatory requirements of this code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this code shall be guilty of a misdemeanor unless the violation is designated as an infraction.~~

~~1.3.5.2 Any person convicted of a misdemeanor under the provisions of this code shall, except as otherwise specified herein, be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail, or by both such fine and imprisonment.~~

~~1.3.5.3 Any person convicted of an infraction for violation of the provisions of this code shall be punished by a fine for the first offense of not less than fifty dollars (\$50.00); for the second offense a fine of not less than one hundred dollars (\$100.00); for the third and all subsequent offenses, a fine of not less than two~~

hundred fifty dollars (\$250.00). (Ordinance. 65-90 § I, 1990: prior code § 1.201)(Amended through codification process of 1995, Ordinance 74-96)

#### 1.3.5 Misdemeanors.

Any person convicted of a misdemeanor for violation of any provisions of this code shall be punished by imprisonment in county jail or by fine, or both consistent with California Penal Code Section 19 as authorized by Harbors and Navigation Code Section 6070.4.

#### 1.3.6 Arrest Procedure.

~~1.3.6.1 Notice to Appear. If any person is arrested for violation of any provision of this code, and such person does not demand to be immediately taken before a magistrate as prescribed in the Penal Code of the State of California, the arresting officer shall prepare in duplicate a written notice to appear in court on a form adopted by the Board, which form shall contain the name and address of the person, the offense charged, and the time and place where and when such person shall appear in court, unless waived by the person, the time specified in the notice to appear shall be at least ten days after arrest if the duplicate notice is to be filed by the officer with the magistrate. The form shall also contain thereon a promise to appear and a place for the signature of the person being cited.~~

~~1.3.6.2 Bail. Upon filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail which in his or her judgment, in accordance with Section 1275 of the Penal Code, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case.~~

#### 1.3.6 Infractions.

Any person convicted of an infraction for violation of any provisions of this code shall be punished by a fine for the first offense of not less than fifty dollars (\$50.00); for the second offense a fine of not less than one hundred dollars (\$100.00); for the third and all subsequent offenses, a fine of not less than two hundred fifty dollars (\$250.00).

#### 1.3.7 Separate Offenses.

Each person is guilty of a separate offense for each and every day during any portion of which the violation of this code is committed, continued or permitted by that person.

### 1.3.8 General Penalty—Continuing Violations.

In addition to the penalties provided herein, any condition caused or permitted to exist in violation of a provision of this Code is a public nuisance and may be summarily abated as such. Each day that the condition continues it is a new and separate offense. In any action, administrative proceeding, or special proceeding brought by the San Mateo County Harbor District to abate a public nuisance, the prevailing party shall be entitled to reasonable attorneys' fees. Recovery of attorneys' fees shall be limited as follows:

A. To those actions or proceedings where the city District has elected to recover attorneys' fees at the initiation of such actions or proceedings.

B. The amount of attorneys' fees in any action, administrative action, or special proceeding awarded to a prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the city District in the action or proceeding.

C. The District finds that in addition to any other procedures, fines, or penalties, that where it is necessary for the District to file a civil action in court to obtain compliance with District codes or ordinances, the court may, in its discretion, assess a civil penalty of up to \$5,000 against the violating parties in connection with the code enforcement action in the event the District is the prevailing party. The court shall consider some or all of the following factors:

(1) The duration of the violation(s).

(2) The frequency or recurrence of the violation(s).

(3) The seriousness of the violation(s).

(4) The history of the violation(s).

(5) The person's conduct after issuance of the notice of violation.

(6) The good faith effort by the person to comply.

(7) The economic impact of the penalty on the person.

(8) The impact of the violation upon the community.

(9) Any other factors that justice may require.

### 1.3.9 Procedures for Revocation of Permits

In the event permittees engage in conduct which violates the terms of their permits or conduct, carry on, or allow to be conducted or carried on, conduct which violates their permits, or adversely affects the health, welfare, or safety of persons within the Harbor, the General Manager may notice a revocation hearing. If there is an immediate threat to health, welfare and safety, the General Manager may also order a temporary suspension of their permits, which shall be effective immediately upon written notification to the permittees and remain in effect until action is taken by the Board of Commissioners. No permit shall be revoked until a public hearing is held by the Board of Commissioners. Written notice of such hearing shall be served by the General Manager upon the permittee, either personally or by certified mail. Such notice shall be given the permittee at least ten (10) days prior to the date set for the hearing and shall state:

1. The grounds for revocation; and

2. The time, date and the place where such hearing is to be held by the Board of Commissioners.

At the revocation hearing, permittees shall be given an opportunity to be heard and may call witnesses and present evidence on their behalf. Upon the conclusion of such hearing, the Board of Commissioners shall determine whether or not the permit shall be suspended, revoked, or modified.

### 3.1.2 Vessels Deemed Within Constructive Control.

All vessels anchoring, mooring, docking, ~~or~~berthing or located within ~~or at~~ facilities ~~operated by the District~~ the Harbor shall be considered under the constructive control of the District and subject to the Ordinances of the District.

### 3.1.10 Protection Of Vessels.

3.1.10.3 Any vessel which is or becomes unattended and which ~~becomes~~ constitutes, in the opinion of the Harbormaster, a hazard to navigation, or endangers the property of the District or other vessels, may be boarded by the Harbormaster who shall take such steps as may be necessary to prevent damage or to correct said hazardous condition.

3.1.10.5 Any action taken by the Harbormaster under the authority of this Section 3.1.10 will shall be at the owner's expense. The Harbormaster shall document the actual cost(s) to the District in taking the action and provide a copy of this documentation with the bill given or sent the owner of the vessel. The owner may appeal charges made pursuant to this section to the Board of Commissioners by giving the General Manager a written request to appeal within ten (10) days of receipt of the bill. Appeals will be heard at the next regularly-scheduled meeting of the Board of Commissioners.

### 3.1.17 Vessels With Valid Live Aboard Permits, Used As Residences And ~~Other Occupied Vessels~~.

3.1.17.3.4 Transient vessels and those moored in the outer harbor of Pillar Point Harbor are not eligible for a liveaboard permit and may not remain overnight unless in compliance with the District's regulations and ordinances governing transient vessels live aboard their vessel.

~~3.1.17.6 Permission to use a vessel as a residence may be revoked if complaints are received by the Harbormaster about loud, boisterous, or unseemly conduct of those on board or violation of these or other marina regulations as set forth herein.~~

3.1.17.7 Sewage must be controlled or contained in the following manner unless a written exemption from this section with alternative regulations is given by the Harbormaster:

3.1.17.7.2 ~~Installation of~~ Live aboard boats shall have a holding tank or other device bearing the approval of the Harbormaster and the U.S. Coast Guard, SOLAS, or other entity authorized to issue said approvals, to contain sewage, and gray water with no outlet to allow tank or device to be emptied except by pumping.

3.1.18.2 No person shall enter ~~the marina area~~ or remain within the harbor marine area outside of the hours set by resolution, of the Board of ~~Harbor~~ Commissioners, without having first obtained written permission to enter or remain from the Harbormaster unless such person has lawful business within the ~~marina area-harbor~~. (Revised 2/18/98, Ordinance 78 - 98.)

3.1.18.4 Any violation of this provision is shall be deemed a misdemeanor punishable by imprisonment in the county jail for not more than six months or by a fine in an amount not to exceed one thousand dollars (\$1,000.00) or both as authorized by California Penal Code Section 19, and, in addition, any violation may be cited under any applicable provisions of the California Penal Code prohibiting trespass.

### 3.1.23 Vessels Moored in the Outer Harbor

3.1.23.1 Once any vessel has entered the outer harbor and remains for forty-eight (48) hours, it must register with the Harbormaster, pay Board authorized fees and must remain moored in the outer harbor.

### 3.2.15 Removal From Pier or Other Facilities.

Any vessel docked at District facilities for more than one day without payment of dockage fees or left unattended in violation of the Ordinances of the District may be removed from the pier and placed on a mooring by the Harbormaster moved to a mooring or removed from the Harbor at the discretion of the Harbormaster. The owner of the vessel must pay all fees and the cost of moving the vessel before it will be released. The General Manager shall ensure that the cost of moving the vessel shall be reflected on the owner's account with the District or shall be available upon request of the owner of the vessel in the event that the owner has no account with the District. The owner of the moved or removed vessel may appeal these charges for moving or removing the vessel by submitting a written request to appeal to the General Manager within ten (10) days of the day the vessel is moved or removed. Appeals will be heard at the next regularly-scheduled meeting of the Board of Commissioners.

### 3.2.24 Violation—Penalties.

Any violation of the provisions of this chapter is a misdemeanor punishable by imprisonment in the county jail for not more than six months or by a fine in an amount not to exceed one thousand dollars (\$1,000.00) or both. (Prior code § 3.307) (Amended through codification process of 1995, Ordinance 74-96)



3.6.14.5 Sanitary facilities (marine toilet, or head, sinks, etc.) shall not be used while the vessel is in waters of the District unless the vessel is equipped with an approved holding tank, incinerator, re-circulation device or their equivalent, approved by the Harbormaster and the United States Coast Guard and in compliance with Section 3.1.17 of this code. It shall be unlawful for any person to discharge sewage or other pollutants into the waters of the District.

3.6.14.7 Failure of any person to comply with the above requirements may cause revocation of the berth agreement or cancellation of permit in addition to any other available remedies under this code.

### 3.11 Skiffs, Dinghies, Row Boats And Other Small Vessels

#### 3.11.1 Authorization Required.

The owner of any boat or vessel, including a skiff, dinghy or rowboat entering the Harbor, must provide proof of ownership and registration to the Harbormaster, obtain written authorization from the Harbormaster to remain and pay all applicable fees established by the District. In the event that the owner has just arrived at the Harbor and must use a skiff or other small boat to get to shore, the owner must immediately inform the Harbormaster of his presence and use of the vessel, among other requirements listed within this code.

### 5.2.1 Commercial Activity Permits – General

1. Replace "5.2.1.6" with "5.2.1.6A"

2. Add a new section 5.2.1.6B as follows:

"5.2.1.6B. Commercial Activity Permits shall be heard by the Commission and acted upon within sixty (60) days, except that the Commission by Resolution authorizes the General Manager to approve and issue Commercial Activity permits whose terms and conditions are attached to this Code section and incorporated by reference herein, to non-lessee wholesale commercial fish buyers."

3. Add a new section 5.2.1.6C as follows:

"5.2.1.6C. Commercial Activity Permits for non-lessee commercial fish buyers shall be obtained by submitting completed applications at either the Pillar Point Harbor office or District Administration office for review by the General Manager. Permits will be approved or denied by the General Manager within thirty (30) days of the date a complete application is submitted. If permits are granted they may be obtained at either the Pillar Point Harbor office or the District Administration office. If a

permit is denied, the applicant may appeal to the Board of Harbor Commissioners by submitting a written appeal request to the General Manager within ten (10) days of notification of denial. In such instance, the General Manager shall cause the appeal to be placed on the agenda of the next regularly scheduled Commission meeting.”

All other terms and conditions of Code Section 5.2.1.6 shall remain operative.

Notification of these Amendments shall be posted at all District offices and on the District’s website. Notice sheets will also be given directly to each lessee on the Johnson Pier at Pillar Point Harbor for distribution to non-lessee fish buyers whose fish they unload.

#### **SUMMARY OF AMENDED PROCESS FOR ISSUING COMMERCIAL ACTIVITY PERMITS FOR NON-LESSEE WHOLESALE COMMERCIAL FISH BUYERS**

Adoption of Resolution 02-13 will authorize the General Manager to issue Commercial Activity Permits, good for one year, directly to wholesale commercial fish buyers who are not lessees or licensees of the District and who want to buy fish at Johnson Pier in Pillar Point Harbor. These buyers will have to submit a permit application to the District. Permit terms and conditions will be as set forth in the Permit Template approved by the Commission by Resolution 02-13 (see attachment), and the General Manager will need to issue such approved permits within thirty days of receipt of an application (although less review time is anticipated). All other terms and conditions of Code Section 5.2.1 *et seq* governing Commercial Activity Permits – General will remain in effect. Once received, permits must be retained by the buyer recipient and permit holders must be prepared to display their permits to District staff and fish unloaders on demand.

This Ordinance Code amendment, if and when approved, will become effective immediately upon adoption by the Commission, unless the Commission sets another effective date.