

ORDINANCE NO. 20

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT RELATING TO THE PROHIBITION OF THE STORAGE AND HANDLING OF COAL AND PETROLEUM COKE ON DISTRICT-OWNED PROPERTY

The Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District do ordain as follows:

SECTION 1. Findings.

The Board of Commissioners finds and declares:

- A. There is substantial evidence that storing or handling coal on and over District-owned property poses a danger to the health and safety of people living, working, visiting, and recreating on that and adjacent properties;
- B. Coal dust consists of fine particles that include PM2.5, for which there is no safe level of exposure, and which has been associated by the State of California and the World Health Organization with cancer and birth defects;
- C. These fine particles include crystalline silica (quartz), lead, mercury, arsenic, cadmium, and nickel;
- D. Burning of fossil fuels emits mercury, a powerful neurotoxin, into the upper atmosphere where it can travel long distances before being deposited into watersheds as well as inland and coastal waterways where it accumulates in fish threatening human health and Humboldt County's recreational, Tribal, and subsistence fisheries;
- E. Coal is subject to spontaneous combustion and requires specialized firefighting techniques;
- F. Storing and handling coal on District-owned lands would be inconsistent with the District's purpose and mandate, as set forth in its Master Plan and Appendix 2 of the California Harbors & Navigation Code, including but not limited to these goals and principles:
 - i. Establishment of open space areas and areas provided for recreational use with open access for the public;
 - ii. Improvement, protection, and conservation of the wildlife and fish resources and the ecology of Humboldt Bay;
 - iii. Preservation of the long term economically viable and environmentally sustainable, utilization and enjoyment of natural resources;
 - iv. Prevention of pollution of Humboldt Bay;
 - v. Enhancement of the aesthetic appearance of Humboldt Bay;
 - vi. Maintain or enhance the quality of the local water resources;

- vii. Establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities; and
- viii. Protecting the right to fish in the waters of Humboldt Bay including the right of convenient access to said water over said lands for said purpose.

SECTION 2. Intent.

- A. This Ordinance is intended to protect and promote the health, safety, and welfare of the residents, visitors, and workers within the District by reducing the release of pollutants into the environment because of coal and petroleum coke storage and handling.
- B. This Ordinance is also intended to reduce the public health, safety, or welfare impacts caused by the storage and handling of coal and petroleum coke.
- C. This Ordinance is also intended to reduce the adverse impact to ecological and natural resources of the Humboldt Bay, including tide and submerged lands, caused by the storage and handling of coal and petroleum coke.
- D. This Ordinance bans the establishment and/or expansion of storage and handling of coal and/or petroleum coke on District-owned property.

SECTION 3. Definitions.

As used in this Ordinance, the following terms have the following meanings:

- A. *Coal* means a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials ("ASTM") Designation D388-77.
- B. *District* means the Humboldt Bay Harbor, Recreation, and Conservation District formed pursuant to Appendix 2 of the California Harbors and Navigation Code.
- C. *Petroleum Coke* means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.
- D. *Property Owned by the District* means property in which the District holds a proprietary or fiduciary interest to include fee, trust, or leasehold interests. To the extent the District possesses a leasehold interest in lands affected by this Ordinance, this Ordinance shall apply solely to District agents, invitees, and licensees.
- E. *Store or Handle, or Storing or Handling, or Storage or Handling* means to allow or maintain any pile, including without limitation covered and uncovered piles, piles located above ground, underground, or within containers, or to load, unload, stockpile, or otherwise handle an/or manage, temporarily or permanently, coal and/or petroleum coke.

- F. *Small Amounts of Coal or Petroleum Coke* means 25 pounds or less stored or handled in a 24-hour period.

SECTION 4. Prohibition On Storage and/or Handling of Coal or Petroleum Coke.

The storage and handling of coal and petroleum coke on any property owned by the District is prohibited.

SECTION 5. Exemptions.

The following non-commercial uses are exempt from the provisions of Section 4, above: residential, educational, scientific, recreational, religious, craft or cultural uses in which persons store or handle small amounts of coal or petroleum coke.

SECTION 6. Exceptions.

- A. The provisions of this Ordinance are not applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or of the State of California.
- B. Any person claiming to be adversely affected by an unlawful or unconstitutional application of this Ordinance may apply to the Executive Director of the District for an exception, setting forth the basis for the application and requesting an exception. The Executive Director or her/his designee must respond in writing within twenty-one (21) days, granting or denying the exception. Such determination of exception shall be published to the District website.
- C. Within ten (10) calendar days after publication of the determination of exception, any determination by the Executive Director that an exception will be granted or denied may be appealed by any person aggrieved by such action to the Board of Commissioners. If no appeal is filed, the Executive Director's decision is final.
- D. The Secretary of the Board will set the appeal for hearing before the Board of Commissioners at a regular or special meeting within sixty (60) calendar days and give notice to the applicant, the appellant, and by publication pursuant to Government Code § 6061 not less than 10 days prior to the hearing. The hearing will be conducted *de novo*. The Board may continue the hearing from time to time. The Board's findings and determination on the appeal will be final and conclusive.

SECTION 7. Conflicting Provisions.

Where a conflict exists between the requirements in this Ordinance and applicable requirements contained in other Ordinances of the District, the applicable requirements of this Ordinance prevail.

SECTION 8. CEQA.

The Board of Commissioners finds, pursuant to the California Environment Quality Act (CEQA), Guidelines section 15378, that this ordinance is not a Project as defined by CEQA. Furthermore, the ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) as it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

SECTION 9. Publication and Effective Date.

This Ordinance shall be published, within 15 days from the passage thereof, with the names of the members voting for and against it at least once in a daily newspaper of general circulation printed and published in the District. This ordinance shall take effect and be in force thirty (31) days from the date of its publication.

Introduced, passed, and adopted by the Board of Commissioners for the Humboldt Bay Harbor, Recreation and Conservation District on this 14th day of April, 2022, by the following roll call vote:

AYES: Dale, Higgins, Kullmann, Marks, Newman

NOES: ∅

ABSTAIN: ∅

ABSENT: ∅



Greg Dale, President
Board of Commissioners

ATTEST:



Richard Marks, Secretary
Board of Commissioners