

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****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**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, the District amended Code Section 4.37 (Code 4.37) in May 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, and

WHEREAS, the enforcement of the amended Code 4.37 began July 1, 2021, and staff provided continuous outreach to the charter community to implement the new program and work with the District's marina and sportfishing landing tenants to address any issues, and

WHEREAS, during this first year of the program, staff is gathering input from tenants, charter operators, and the public, and plans to update the Board and all stakeholders of the results of the first year "pilot program" in early fall of 2022 following the summer charter season; and

WHEREAS, staff is now proposing a minor amendment to Code 4.37 to adjust the definition of charter vessels within the Code section to remove kayaks, canoes, and paddleboards from the list of vessel types regulated by this Code section, and

WHEREAS, 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

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activities is not recommended at this time and staff will continue to evaluate and consider future needs and applicability for regulation of kayaks, canoes, and paddleboards; and

WHEREAS, the staff continues conduct outreach to the charter community to implement the new program and work with the District's marina and sportfishing landing tenants to address any issues that should not be affected by leases to 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; and

WHEREAS, the proposed amendment 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.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District do ordain as follows:

Section 1. That Article 4, Section No. 4.37 of the San Diego Unified Port District Port Code is hereby amended to read as follows:

**SECTION NO. 4.37 – REGULATION OF CHARTER VESSEL OPERATIONS
IN SAN DIEGO BAY AND DISTRICT TIDELANDS**

(a) Purpose.

1. California law requires the San Diego Unified Port District (District) to control, regulate and manage the harbor of San Diego upon the tidelands and the waters of San Diego Bay for the promotion of commerce, navigation, fisheries and recreation thereon (San Diego Unified Port District Act, *Harbors and Navigation Code*, Appendix 1, *et seq.*). This Section sets forth the regulations and requirements for Charter Vessel Operations in San Diego Bay and District tidelands. Each Charter Vessel Operation, whether operating from a Marina, Sportfishing Landing or any other

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location, shall comply with the requirements set forth in this Section 4.37, as well as all applicable United States Coast Guard rules and regulations, and all other applicable local, state and federal laws and regulations for the use of District Facilities, including any health orders issued by the United States, the State of California, or San Diego County. Furthermore, each Charter Vessel decal Operation operating from a District tenant Marina or Sportfishing Landing shall pay for and display a valid Charter Vessel Operation Decal signifying that a District tenant Marina or Sportfishing Landing has verified the Charter Vessel Operation's compliance with the requirements set forth in this Section 4.37. Charter Vessel Operations are prohibited from using District Facilities other than District tenant Marinas or Sportfishing Landings, with tenant permission and in compliance with each tenant's lease where charters may operate, and this Section 4.37, for docking, embarking or debarking of Passengers, or to park any vehicle or trailer carrying a Charter Vessel. To the extent authority is delegated to the staff of the District and to others to implement this Section, that authority shall be exercised so as to achieve these purposes.

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2. Charter Vessel Operation Decal Fees shall be limited to the District's reasonable regulatory costs for printing decals. As such, the Charter Vessel Operation Decal Fees are exempt from the definition of a "tax" under California Constitution Article XIII C, Section 1, Subdivision (e)(3).
3. Unless such dates are deferred by the Executive Director, this Section shall become effective, and enforcement thereof shall commence on July 1, 2021, except that Subsection (e)3, Charter Vessel Operation Decal Requirements for Charter Vessel Operation operating from District tenant Marinas and Sportfishing Landings, shall become effective, and enforcement thereof shall commence on September 1, 2021.

(b) Definitions.

1. "Bareboat Charter" means an arrangement for the chartering or hiring of a vessel whereby no crew or provisions are included as a part of the charter; rather, the vessel or boat owner gives complete possession, command and navigation of the vessel to a Charterer and the Charterer is solely responsible for providing qualified crew and provisions for the duration of the charter. Bareboat Charters do not have Passenger(s) for hire.

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2. "Boating Club" means: (1) an organization that is existing under the laws of California or another state that is in good standing with the Secretary of State of the state under which it is organized and existing; (2) that has members who pay an initiation fee to join and thereafter monthly membership fees; (3) that allows members to use multiple Seaworthy vessels in its fleet; (4) that allows use of vessels in its fleet by members exclusively for recreational use (including instruction provided in the cost of the membership) and prohibits commercial use of vessels in its fleet; (5) that requires current vessel liability insurance for the vessels in its fleet in the minimum amount of \$300,000, with a pollution endorsement; (6) that is permitted to operate pursuant to a current sublease or wharfage agreement that complies with the master lease agreement for each Marina or Sportfishing landing where the organization operates, that is on file with the District; and (7) that requires verification that its members can safely operate the vessels that they are permitted to use. For purposes of this subsection, a Boating Club meeting the above requirements that operates out of a yacht club with a master lease with the District that allows certain non-members such as school age children participating in high

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school sailing or other similar instruction or a non-member using a Boating Club vessel for instruction, community outreach, or non-professional or amateur competition shall be considered as members of a “Boating Club”.

3. “Charter Vessel” means a boat, vessel or any type of water craft which is less than one hundred (100) gross tons and carrying one hundred and fifty (150) passengers or fewer and includes but is not limited to, fishing charter, Bareboat Charter, sailing charter, Six Pac Charter, Small Passenger Vessel charter, Uninspected Passenger Vessel, personal watercraft, or jet ski, that operates on San Diego Bay or on District Facilities, for the purpose of taking passengers on the water, for business or pleasure. Charter Vessel does not include a kayak, canoe, or paddleboard.
4. “Charter Vessel Operation” means the leasing or hiring of one or more Charter Vessel(s) for any use on San Diego Bay, District tidelands or of District Facilities, including the embarking and debarking of Passengers for any Consideration, or an agreement where the Charterer has use of a Charter Vessel for any Consideration, or for a period of time, shall be deemed under this chapter to be the owner and takes on legal obligations for the Passengers carried, including Passengers for Hire.

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5. “Charter Vessel Operator” means a Charter Vessel owner, operator, or the agent of either with responsibility for the operation of a Charter Vessel.
6. “Charter Vessel Operation Decal” means a decal, or pair of decals (port and starboard) if specified by the District, provided by the District to District tenant Marinas and Sportfishing Landings to be issued to Charter Vessel Operations that begin or end their Charter Vessel Operation at the District tenant Marina or Sportfishing Landing, and for which such District tenant Marina or Sportfishing Landing has verified the Charter Vessel Operation’s compliance with the requirements of this Section 4.37 and with the tenant’s lease.
7. “Charterer” means a person or organization that charters a vessel.
8. “Consent to Boarding” means Charter Vessel Operator’s agreement to allow boarding of a Charter Vessel Operation by the District, the District’s Harbor Police Department, or United States Coast Guard, to determine the Charter Vessel Operator’s compliance with the provisions of this Section 4.37 and all applicable law.
9. “Consideration” means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an

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individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

10. "District" means the San Diego Unified Port District, or any department thereof.
11. "District Clerk" means the Clerk of the San Diego Unified Port District or his or her designee.
12. "District Facilities" means District tidelands which include, but are not limited to, docks, piers, boat launch ramps, anchorages, landings, and embarkation and disembarkation locations for vessels.
13. "Executive Director" means the Executive Director of the San Diego Unified Port District or his or her designee.
14. "Marina" means any business that allows any Charter Vessel Operation on land or submerged land that: (i) has docks or slips; or (ii) is otherwise used as a vessel docking facility for berthing privately-owned recreational pleasure vessels or, as the context may require.
15. "Passenger" means an individual carried on a vessel, except:
 - a) the owner or an individual representative of the owner, or in the case of a vessel under Charter, an

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individual Charterer or individual representative of the Charterer; if more than one person represents an owner or Charter, all shall be counted as Passengers except the first;

- b) the master, captain or skipper; or
- c) a member of the crew engaged in the business of the vessel who has not provided Consideration for carriage and who is paid for on-board services.

16. "Passenger(s) for Hire" means Passenger(s) for whom Consideration is provided as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, Charterer, Charter Vessel Operator, agent, or any other person having an interest in the vessel.

17. "Recreational Vessel" means a vessel:

- a) operated for pleasure; or
- b) leased, rented, or chartered to another for pleasure.

18. "Seaworthy" means a vessel properly equipped, sufficiently constructed, and watertight in order to withstand stress of the wind, waves, and other environmental conditions that the vessel might reasonably be expected to encounter; and, a vessel in good condition which is not likely to sink or become a nuisance or a menace to navigation, and which is capable of getting

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underway and navigating safely using its own propulsion system

19. “Small Passenger Vessel” means a vessel required to be annually inspected by the United States Coast Guard of less than one hundred (100) gross tons as measured pursuant to the provisions of 46 U.S.C. Section 14502, or an alternate tonnage measured pursuant to 46 U.S.C. Section 14302 as prescribed under 46 U.S.C. Section 14104 that is:
- a) a vessel for hire that carries more than six (6) Passengers, including at least one Passenger for Hire; or
 - b) chartered with crew provided or specified by the owner or the owner’s representative and carrying more than six (6) Passengers; or
 - c) chartered with no crew provided or specified by the owner’s representative and carrying more than twelve (12) Passengers; or
 - d) a submersible or wing-in-ground craft, regardless of tonnage, carrying at least one (1) Passenger for Hire; or
 - e) a ferry carrying more than six (6) Passengers.

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20. "Sportfishing Landing" means a San Diego Unified Port District leasehold dedicated exclusively for discharging and taking on Passengers for Hire on Charter Vessels.
21. "Uninspected Passenger Vessel" means an uninspected vessel:
- a) of at least one hundred (100) gross tons as measured pursuant to the provisions of 46 U.S.C. Section 14502, or an alternate tonnage measured pursuant to the provisions of 46 U.S.C. Section 14302, as prescribed by the Secretary under 46 U.S.C. Section 14104,
 - 1) carrying not more than twelve (12) Passengers, including at least one (1) Passenger for Hire; or
 - 2) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than twelve (12) Passengers; and
 - b) of less than one hundred (100) gross tons as measured pursuant to the provisions of 46 U.S.C. Section 14502, or an alternate tonnage measured pursuant to the provisions of 46 U.S.C. Section

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14302, as prescribed by the Secretary under 46 U.S.C. Section 14104,

- 1) carrying not more than six (6) Passengers, including at least one (1) Passenger for Hire; or
- 2) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six (6) Passengers.

(c) Noncompliant Charter Vessel Operations Prohibited.

No person shall conduct a Charter Vessel Operation in San Diego Bay or District Facilities without being in compliance with this Section 4.37. However, this Section 4.37 shall not apply to:

1. Any person who operates a Charter Vessel from a federal facility such as a United States Naval base or United States Coast Guard facility; or
2. A common carrier operating with authority granted by the California Public Utilities Commission or a ferry; or
3. A Charter Vessel operating from one of the District's cruise ship terminals or other District-identified passenger water transportation center located on District Facilities; or
4. Any person who is a current member of a Boating Club who is operating a vessel that is part of a Boating Club's

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fleet of vessels. Those operating a vessel that is part of a Boating Club's fleet must, while operating such vessel, maintain aboard the vessel a membership card or other written confirmation that the operator is a current member of the Boating Club. Members of a Boating Club are not permitted to receive cash or other monetary consideration from any Passenger aboard a vessel that is part of the Boating Club's fleet; such an operation will not be exempted from the provisions of this Section. Non-members of a Boating Club operated from a yacht club with a master lease with the District as set forth in subsection (b) 4 shall also be exempted as long as proof of affiliation with a school, public outreach organization or other Boating Club not based at the yacht club is maintained aboard the vessel.

- (d) Charter Vessel Operation Prohibited at Shelter Island Boat Launching Facility and Parking Lot and all District Facilities other than District Tenant Marinas and Sportfishing Landings.

No Charter Vessel Operation shall in any way use the Shelter Island Boat Launching Facility or parking lot or any District Facilities other than District Tenant Marinas and Sportfishing Landings, with tenant permission in compliance with tenant's lease and this Section 4.37, for docking, embarking or debarking

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of Passengers, or to park any vehicle or trailer carrying a Charter Vessel. Without limitation as to other District facilities, the Shelter Island Boat Launching Facility and parking lot shall be utilized as a launching facility solely for recreational small craft vessels or fishing vessels with no Passengers for Hire.

(e) Regulation of Charter Vessel Operations.

All Charter Vessel Operations on San Diego Bay must meet the requirements set forth in this Section.

1. The owner(s), agent(s) or operator of each Charter Vessel, and any crew members of each Charter Vessel shall conform to all rules, regulations and policies prescribed by the District in writing, any ordinances of the District and city in which the Charter Vessel is operated; any State of California or San Diego County health order, and any federal or state laws, including without limitation regulations prescribed by the United States Coast Guard, as any of the same now exist or may hereinafter be adopted or amended.
2. Furthermore, each Charter Vessel Operator shall meet the following requirements:
 - a) United States Coast Guard Licensing: Each Charter Vessel Operation carrying a Passenger for Hire, Small Passenger Vessel, and Uninspected

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Passenger Vessel shall have aboard at all times during Charter Vessel Operation a Captain licensed by United States Coast Guard.

b) Insurance: Each Charter Vessel Operator shall maintain insurance as follows:

- 1) Each Charter Vessel Operator shall procure and maintain in effect at all times a commercial marine liability insurance policy covering bodily injury, personal injury, and property damage caused by the Charter Vessel Operator, issued by an insurance company currently licensed by the California Department of Insurance, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence, with a pollution endorsement providing for an aggregate and per occurrence minimum limit of Nine Hundred Thirty-Seven Thousand, One Hundred Dollars (\$937,100) covering legal liability arising from the sudden and accidental release of pollutants, with the exception of Charter Vessels set forth in subsection 3) below.

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- 2) Due to current Charter Vessel insurance market volatility and resulting unavailability or infeasibility in procuring and maintaining excess Charter Vessel insurance, the District will not require Charter Vessel excess insurance for Charter Vessels permitted to carry more than six (6) passengers; however, the Executive Director may, in his or her sole discretion, review the insurance requirements set forth in this section after a period of one (1) year from the effective date of this ordinance, and thereafter update the insurance requirements annually, in accordance with administrative policies, with no amendment to this Section required.
- 3) Insurance requirements for Charter Vessels that are personal watercraft, or jet ski may be set by the Executive Director, in accordance with administrative policies, with no amendment to this Section required.
- 4) All liability insurance policies shall contain a cross-liability clause, shall name as

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additional insured by written endorsement the "San Diego Unified Port District, its officials, employees and agents", and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the insurer's liability.

- 5) All insurance policies shall be endorsed to provide thirty (30) days' written notice to the District of cancellation, non-renewal or reduction in coverage or limits; should a Charter Vessel Operator be unable to obtain such an endorsement from its insurer, then the obligation to provide thirty (30) days' written notice to the District of cancellation, non-renewal, or a reduction in coverage or limits shall be the responsibility of the Charter Vessel Operator.
- 6) Proof of the insurance coverage required by Subsections (d) 1. b) 1) through 5) shall be maintained for inspection on each Charter

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Vessel or made immediately available upon request.

- c) Charter Vessel Documentation and Registration:
Each Charter Vessel shall be either registered or documented pursuant to applicable federal or state law. Any Charter Vessel that is a Small Passenger Vessel or an Uninspected Passenger Vessel shall also have and maintain a valid Certificate of Documentation – Coastwise Service, or other designation as allowed by applicable law for a Charter Vessel.
- d) Certificate of Inspection: Each Small Passenger Vessel which requires a Certificate of Inspection, shall be inspected by the United States Coast Guard and shall obtain and retain in full force and effect a Certificate of Inspection.
- e) Drug Testing Program: Any Charter Vessel Operation, Inspected or Uninspected, when carrying passengers for hire, must have in full force and effect for any employee, licensed captain and any crewman who is required on board the Charter Vessel, a drug testing program that complies with

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federal and state law, if applicable, and United States Coast Guard regulations.

- f) Indemnification: Each Charter Vessel Operator shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the District, its officers, employees and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including attorney's fees and costs, or demands arising directly or indirectly from any and all Charter Vessel Operations, except claims and litigation arising out of the gross negligence or willful misconduct of the District.
- g) Business License: Each Charter Vessel Operator shall obtain and maintain in full force and effect a business license/certificate from the city in which the Charter Vessel Operator's business is primarily located.
- h) Seaworthiness: All Charter Vessels must be demonstrated to be Seaworthy and remain Seaworthy.
- i) Each Charter Vessel Operator shall comply with Coast Guard requirements for keeping passenger and crew manifests and other information for each

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departure, and shall make all such information immediately available to the United States Coast Guard, Harbor Police, and/or the District.

a) Each Charter Vessel Operator, whether operating out of a Marina, Sportfishing Landing or any other facility, by doing so consents to boarding of a Charter Vessel at any time by the United States Coast Guard, Harbor Police, or the District, pursuant to applicable law.

3. Charter Vessel Operation Decal Requirements for Charter Vessel Operation operating from District tenant Marinas and Sportfishing Landings.

a) Each Charter Vessel operating from a District tenant Marina or Sportfishing Landing must visibly display a valid Charter Vessel Operation Decal, located as specified by the District, signifying that a District tenant Marina or Sportfishing Landing has verified the Charter Vessel Operation's compliance with the requirements set forth in this Section 4.37 and the tenant's lease.

b) Charter Vessel Operation Decals shall jet on the date printed thereon unless such dates are extended by the Executive Director.

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- c) Each Charter Vessel Operation Decal shall bear a unique identification number which can be traced to the District tenant Marina or Sportfishing Landing that issued the decal and the Charter Vessel and Charter Vessel Operator to which it was issued.
- d) District tenant Marinas and Sportfishing Landings may only issue a Charter Vessel Operation Decal after verifying the Charter Vessel Operation's compliance with this Section 4.37, and only if the Charter Vessel Operation's use of the tenant property is in compliance with the terms of tenant's lease.
- e) District tenant Marinas and Sportfishing Landings may obtain Charter Vessel Operation Decals from the District by paying the Charter Vessel Operation Decal Fee for each decal at the time such decals are received, not when issued by the tenant.
- f) For every Charter Vessel Operation Decal issued, the issuing District tenant Marina or Sportfishing Landing shall completely fill out, sign, and return to District, a District-provided form/checklist and requested supporting documents. The Executive

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Director may set procedures for the reporting of Charter Vessel Operation Decal issuance by District tenant Marinas and Sportfishing Landings, with no amendment to this Section required.

- g) After issuing a decal, if a District tenant Marina or Sportfishing Landing chooses to revoke a decal which it issued, due to the Charter no longer having permission to use the tenant's facility, non-compliance with this Section 4.37, or any reason not prohibited by law, the tenant shall inform the Charter Vessel, Charter Vessel Operator, and the District. The District shall list the decal as "revoked" in District's database as of the date of notice to District from the tenant. Charter Vessel and Charter Vessel Operator shall immediately upon such notice remove and destroy the revoked decal.
- h) If a Charter Vessel or Charter Vessel Operator who has been issued a decal violates, or is alleged to have violated, this Section 4.37, including without limitation subsection (e)1, District may inform the tenant which issued the decal of such violation or alleged violation.

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(f) Penalties.

Any violation of this Section may be punished in accordance with Article 0, Section 0.11 (General Penalty) of this Code, including without limitation, as a misdemeanor or infraction and/or through assessment of Civil Penalties, and also by any other penalty or remedy available at law or in equity. Any fines for a misdemeanor or infraction shall be as set forth in Section 0.11, and any Civil Penalties imposed under these provisions shall be as follows:

1. A first offense in 12 consecutive months - \$500;
2. A second offense in 12 consecutive months- \$2,500;
3. For each additional offense in 12 consecutive months - \$5,000.

Remedies shall be cumulative, and no election of remedies shall apply.

(g) Conflict.

To the extent that any provision of this Section conflicts with or is inconsistent with the provisions of any other District ordinance, regulation, or policy, including but not limited to Board of Port Commissioners Policy No. 380, Sportfishing, and San Diego Unified Port District Code Section 8.02, the provision(s) of this Section shall supersede said Policy and Code provisions.

(h) Invalidity.

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If any section, subsection, sentence, clause, phrase or portion of this Section is held to be invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions which shall be enforced to the fullest extent permissible by law to attain the purposes of the Section.

(Enacted February 20, 2001 – Ordinance No. 2123)

(Amended May 11, 2021 – Ordinance No. XXXX)

Section 2. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of June 2022, by the following vote: