

**DRAFT****SAN DIEGO UNIFIED PORT DISTRICT  
ORDINANCE xxxx****ORDINANCE AMENDING ARTICLE 4, SECTION  
4.37 - REGULATION OF SIX PAC CHARTER  
VESSELS, TO SECTION 4.37 - REGULATION OF  
CHARTER VESSEL OPERATIONS IN SAN  
DIEGO BAY AND DISTRICT TIDELANDS**

**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**, currently, there are both legal and unregulated charter vessel operations occurring in San Diego Bay and on District tidelands; and

**WHEREAS**, while the District has regulated Six Pac charter vessel operations via ordinance since 2001, the current regulations do not apply to numerous other types of charter vessel operations; and

**WHEREAS**, the proposed amendments to existing San Diego Unified Port District (UPD) Code Section 4.37 are intended to address all charter vessel operations with the goals of ensuring public safety, protecting consumers, and creating an even playing field for all charter vessel businesses, which include District tenants, subtenants and those charter vessel operators wishing to use District facilities; and

**WHEREAS**, charter vessel operators are broadly defined to include whale-watching boats, party boats, special event charters and sportfishing, among many others; and

**WHEREAS**, since March 2018, the District has held or attended over twenty-five community outreach meetings with key stakeholders and members of the public and completed one benchmark study in order to better understand the nature and extent of charter vessel operations on the west coast and in San Diego Bay; and

**WHEREAS**, in September 2019, staff released a draft of proposed amendments to UPD Code Section 4.37 for review by the public and stakeholders and held a public meeting in October 2019; and

**WHEREAS**, the District accepted comments on the proposed amendments through February 2020; and

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**WHEREAS**, staff received approximately 64 comments concerning the proposed ordinance through that outreach effort, considered them all, and made appropriate changes to the draft; and

**WHEREAS**, additional targeted outreach with various District tenant groups was conducted throughout 2020, additional comments were received and considered, and incorporated into to the draft where appropriate; and

**WHEREAS**, as a result of the benchmarking study, the extensive public and stakeholder outreach, and working with staff from the United States Coast Guard, staff is presenting proposed amendments to UPD Code Section 4.37 for the BPC's consideration and recommends approval; and

**WHEREAS**, the proposed amendments, to be effective on June 1, 2021, will enable consistent enforcement of all applicable federal, state and local ordinances and regulations pertaining to charter vessel operations for those conducting charter vessel businesses from a marina, sportfishing landing, and those charter vessel operators picking up and/or dropping off passengers for hire utilizing District facilities such as the Shelter Island guest dock, Pepper Park boat launching facility, Chula Vista boat launching facility and potential other sites to be determined; and

**WHEREAS**, the proposed amendments to UPD Code Section 4.37 will require every charter vessel operation to obtain a Charter Vessel Operations Permit (Permit), at a cost to be determined, and pay the District for use of District property through a sublease or wharfage agreement with a marina or sportfishing landing; and

**WHEREAS**, charter vessel operators not conducting business from a District marina or sportfishing landing will be required to enter into a license agreement with the District which will provide for the payment of a fee for the use of District property; and

**WHEREAS**, permit fees and license agreement fees are not set by the proposed ordinance but will be determined in the future in accordance with any applicable law; and

**WHEREAS**, the Permit provisions will include terms requiring compliance with all federal, state and local laws and regulations, including Coast Guard regulations, procuring and maintaining certain insurance, seaworthiness, drug testing of captain and crew where required, the maintenance of passenger and revenue logs, and other requirements; and

**WHEREAS**, should the BPC approve the proposed amendments, staff recommends that the District begin issuing Permits via an operator to be selected via a Request for Proposals that would be issued upon BPC approval of the ordinance.

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

**That Article 4, Marine Operations, 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 other District approved location, shall obtain a Charter Vessel Operation Permit and authorized decals designating each Charter Vessel as holding a valid Charter Vessel Operation Permit to operate in San Diego Bay or District tidelands, subject to certain requirements and compliance with all 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 State of California or San Diego County. 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.
2. This Section requires those who use District tidelands so as to trigger this Section to obtain a Charter Vessel Operation Permit and License Agreement, as applicable, and pay annual permit fees and License Agreement fees. Charter Vessel Operation Permit fees shall be calculated to recover the reasonable regulatory costs for issuing the Charter Vessel Operation Permit, and for performing investigations, inspections, and audits, and the administrative enforcement and adjudication thereof. As such, the Charter Vessel Operation Permit Fees are exempt from the definition of a “tax” under California Constitution Article XIII C, Section 1, Subdivision (e)(3). License Agreement fees are for the use of District property, and shall be calculated based on the reasonable value of the use of District property. As such, to the extent such License Agreement fees are “imposed” for purposes of California law, such fees will be exempt from the definition of a “tax” under Article XIII C, Section 1, Subdivision (e)(4) of the California Constitution.

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3. This Section shall become effective, and enforcement thereof shall commence on June 1, 2021, unless such date is deferred by the Executive Director or his/her designee.

(b) Definitions.

1. "Appellant" means an Applicant or Charter Vessel Operator that has filed an appeal pursuant to this Section of an Application for a Charter Vessel Operation Permit that was not granted or granted on terms and conditions to which the Appellant objects, or a Charter Vessel Operation Permit which was suspended or revoked.
2. "Applicant" means a Charter Vessel Operator applying for a Charter Vessel Operation Permit pursuant to this Section.
3. "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.
4. "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 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".
5. "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, jet ski,

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kayak, canoe or paddleboard that operates on San Diego Bay or on District Facilities, for the purpose of taking passengers on the water, for business or pleasure, and has a Charter Vessel Operation Permit issued pursuant to this Section.

6. "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.
7. "Charter Vessel Operator" means a Charter Vessel owner, operator, or the agent of either with responsibility for the operation of a Charter Vessel.
8. "Charter Vessel Operation Permit" means a Charter Vessel Operation Permit and accompanying decals issued by the District for each Charter Vessel to a Charter Vessel Operation pursuant to this Section that authorizes a Charter Vessel Operator to conduct business in the District's jurisdiction, which includes but is not limited to San Diego Bay and District tidelands. For purposes of this definition, a Charter Vessel Operation Permit is required for those Charter Vessel Operators who begin or end their Charter Vessel Operation in San Diego Bay or District tidelands and includes voyage destinations outside of the District's jurisdiction.
9. "Charterer" means a person or organization that charters a vessel.
10. "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 a Charter Vessel Operation Permit, License Agreement, and applicable law.
11. "Consideration" means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an 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.
12. "District" means the San Diego Unified Port District, or any department thereof.
13. "District Clerk" means the Clerk of the San Diego Unified Port District or his or her designee.
14. "District Facilities" means San Diego Bay and District tidelands which include, but are not limited to, docks, piers, boat launch ramps, anchorages, landings, and embarkation and disembarkation locations for a Charter Vessel Operation.
15. "Executive Director" means the Executive Director of the San Diego Unified Port District or his or her designee.

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16. "Gross Charter Vessel Operation Income" means the total income derived from any Charter Vessel Operation, from whatever source derived and whether for cash or credit, including deposit. Bad debt losses shall not be deducted from Gross Charter Vessel Operation Income. Gross Charter Vessel Operation Income shall not include the cost of Mexican fishing permit fees and/or California fishing license fees paid by Charterer or Passengers.
17. "Hearing Officer" means a person designated by the Executive Director to hear an appeal pursuant to this Section.
18. "License Agreement" means an agreement entered in to between the District or its designee and a Charter Vessel Operator, pursuant to subsection (a) 2. above.
19. "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.
20. "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 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
21. "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.
22. "Recreational Vessel" means a vessel:
  - a) operated for pleasure; or
  - b) leased, rented, or chartered to another for pleasure.
23. "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 underway and navigating safely using its own propulsion system. Vessels such as a kayak, canoe, or paddleboard must be Seaworthy as defined in this subsection, except the requirement to get under way using its own propulsion system.
24. "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

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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.
25. "Sportfishing Landing" means a San Diego Unified Port District leasehold dedicated exclusively for discharging and taking on Passengers for Hire on Charter Vessels.
26. "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 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) Unpermitted Charter Vessel Operations Prohibited.

No person shall conduct a Charter Vessel Operation in San Diego Bay or District Facilities without a Charter Vessel Operation Permit issued pursuant to this Section. This Section shall not apply to:

- 1. Any person who operates a Charter Vessel, including any vessel common carrier, from a federal facility such as a United States Naval base or United States Coast Guard facility; or
- 2. A ferry; or
- 3. A passenger water transportation center located on District Facilities; or

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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 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 be 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.

No Charter Vessel Operation shall in any way use the Shelter Island Boat Launching Facility or parking lot for docking, embarking or debarking of Passengers, or to park any vehicle or trailer carrying a Charter Vessel. 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. The Executive Director, or his or her designee, may determine whether other District Facilities including other boat launch ramps, are suitable for use by Charter Vessel Operations.

(e) Regulation of Charter Vessel Operations.

Charter Vessel Operations may be permitted on San Diego Bay and District Facilities as set forth in this Section and subject to the following requirements. In order to obtain and retain a Charter Vessel Operation Permit, the owner(s), agent(s) or operator of each permitted 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. Failure to comply with any of the above-stated laws, rules, regulations or policies or any provision of this Section, shall be grounds for denial, or for suspension or revocation, of a Charter Vessel Operation Permit.

1. Charter Vessel Operation Permitting Requirements. In order to obtain and retain a Charter Vessel Operation Permit, any person engaged in a Charter Vessel Operation, whether permitted by a Marina, Sportfishing Landing or the District must obtain and retain in full force and effect for the full term of the Charter Vessel Operation Permit each of the following:
  - a) United States Coast Guard Licensing: Each Charter Vessel Operation carrying a Passenger for Hire, Small Passenger Vessel, and Uninspected Passenger Vessel shall have aboard at all times during Charter Vessel



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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.
- 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 a Charter Vessel's Charter Vessel Operation Permit, in accordance with administrative policies, with no amendment to this Section required.
- 3) Insurance requirements for Charter Vessels that are personal watercraft, jet ski, kayak, canoe or paddleboard as set forth in subsection (b) 5 shall be set forth in the Charter Vessel Operation Permit.
- 4) All liability insurance policies shall contain a cross-liability clause, shall name as 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

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- 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 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, as required by applicable law.
  - d) Certificate of Inspection: Each Small Passenger Vessel for which a Charter Vessel Operation Permit is sought and 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 for the entire term of the Charter Vessel Operation Permit.
  - e) Drug Testing Program: Each Charter Vessel Operator and Uninspected Passenger Vessel operator that requires a Certificate of Inspection issued by the United States Coast Guard for a Charter Vessel must have in full force and effect for any employee who is required on board the Charter Vessel a drug testing program that complies with 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 the issuance of a Charter Vessel Operation Permit by the District, any and all Charter Vessel Operations conducted pursuant to a Charter Vessel Operation Permit, or a Charter Vessel Operator's use of District Facilities, 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 for the term of the Charter Vessel Operation Permit a business

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license from the city in which the Charter Vessel Operator's business is primarily located.

- h) Seaworthiness: No Charter Vessel Operation Permit may be issued to a Charter Operator for a Charter Vessel unless it is demonstrated to be Seaworthy and, should a permitted Charter Vessel become unseaworthy, the District may revoke or suspend the permit.

2. General Requirements for all Charter Vessel Operations.

- a) Each Charter Vessel requires both a valid Charter Vessel Operation Permit and one of the following: (a) for Charter Vessel Operations picking up passengers at a District approved facility outside of a tenant leasehold: a License Agreement to operate issued from the District, or (b) for Charter Vessel Operations picking up Passengers at a Marina or dockage area on District tidelands under a master lease: a valid sublease or wharfage agreement with that Marina tenant in a form acceptable to the District in its sole discretion, or (c) for Charter Vessel Operations picking up Passengers at a Sportfishing Landing on District tidelands under a master lease: all applicable documentation required to operate a Charter Vessel at each Sportfishing Landing pursuant to that landing's lease with the District. No Charter Vessel Operation Permit may be issued until the Applicant has completed, fully executed, and provided all required documents required by this Section.
- b) Upon receipt of a Charter Vessel Operation Permit, and decals, each Charter Vessel Operator shall affix the decals in a visible location of each Charter Vessel to which the permit applies, as specified in the Charter Vessel Operation Permit, based upon vessel size and type, to ensure maximum visibility. No person shall conduct a Charter Vessel Operation without obtaining a Charter Vessel Operation Permit and displaying said decals on each Charter Vessel used. Decals shall not be reassigned or transferred in any manner. Each decal shall expire on the soonest of (i) December 31st of the year in which the Charter Vessel Operation Permit and decals were issued, (ii) the day the permitted Charter Vessel Operator ceases to use the vessel in Charter Vessel Operations, or (iii) when title to the vessel is transferred to one other than the permittee, voluntarily or otherwise.
- c) Each Charter Vessel Operation Permit is non-exclusive, non-transferrable, and expires annually unless renewed.

3. Charter Vessel Operation Requirements.

- a) Prior to each departure of a Charter Vessel Operation, each Charter Vessel Operator shall provide the Marina,

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Sportfishing Landing, or District, via email, a Passenger manifest listing each crew member's and each Passenger's name, address and telephone number, and the Gross Charter Vessel Operation Income for that charter. Each Charter Vessel Operator shall keep a true and correct written count signed by the Charter Vessel Operator under penalty of perjury of all Passengers who embark on and disembark from the vessel. Prior to each departure from port, the Charter Vessel Operator shall communicate the Passenger count orally or in writing to the Marina, Sportfishing Landing, or District, and make a copy available ashore at the Charter Vessel Operation's normal berthing location or with a representative of the Charter Vessel Operation for inspection on request by the United States Coast Guard, Harbor Police, or the District.

- b) Failure to comply with any part of Subsection a) above, as well as any permitting requirement set forth in Section (d)1. a) through h) above, shall subject the Charter Vessel Operator to the suspension or revocation of its Charter Vessel Operation Permit, may subject the Charter Vessel Operator to the summary termination of a Charter Vessel Operation voyage, as well as any of the penalties enumerated in Section (i), below.
  - c) Any Charter Vessel Operator not operating out of a Marina or Sportfishing Landing shall only operate out of a public dock, boat launch or other District Facility that is approved by the District. The District is authorized to prohibit Charter Vessel Operations from any District Facility which is deemed inappropriate in light of the purposes of this Section by the Executive Director.
  - d) Each Charter Vessel Operator, whether operating out of a Marina, Sportfishing Landing or District 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.
4. Charter Vessel Operation Payment Requirements.
- a) Charter Vessel Operation Permits Issued to Charter Operators operating outside of a Marina or Sportfishing Landing and for picking up Passengers from a District Facility: Each person or Charter Vessel Operator the District issues a Charter Vessel Operation Permit to shall pay the District an annual permit fee, and fees pursuant to a validly executed License Agreement, and provide a detailed monthly report of all Gross Charter Vessel Operation Income received, certified as true and correct.
  - b) Charter Vessel Operation Permits issued to Charter Vessel Operators operating in a Marina:

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- 1) Each person or entity the District issues a Charter Vessel Operation Permit to that operates out of a Marina shall pay the District an annual Charter Vessel Operation Permit fee and provide a detailed monthly report of all Gross Charter Vessel Operation Income received, certified as true and correct, as provided in a Marina's master lease with the District, and as provided in a valid sublease or wharfage agreement that substantially complies with the requirements of this subsection.
  - 2) Every Charter Vessel Operation shall pay the Marina pursuant to its sublease or wharfage agreement with the Marina, and
  - 3) Each Marina shall pay the District that amount of income derived from each Charter Vessel Operation, in accordance with its lease with the District to operate the Marina on District tidelands. Said payments shall be subject to audit by the District.
- c) Charter Vessel Operation Permits issued to Charter Vessel Operators operating in a Sportfishing Landing:
- 1) Each person or entity the District issues a Charter Vessel Operation Permit to that operates out of a Sportfishing Landing shall pay the District an annual Charter Vessel Operation Permit fee and provide a detailed monthly report of all Gross Charter Vessel Operation Income received, certified as true and correct, as provided in a Sportfishing Landing master lease with the District.
  - 2) Every Charter Vessel Operation shall pay the Sportfishing Landing pursuant to its sublease or wharfage agreement with the Sportfishing Landing, as applicable, and
  - 3) Each Sportfishing Landing shall pay the District that amount of income derived from each Charter Vessel Operation, in accordance with its lease with the District to operate the Sportfishing Landing on District tidelands. Said payments shall be subject to audit by the District.
- d) Charter Vessel Operation Permit and License fees shall be established separately from this ordinance in accordance with applicable law.
5. Revenue Collection.
- a) Each Charter Vessel Operator permitted by the District and operating using public facilities pursuant to a License Agreement shall timely pay the District the annual Charter Vessel Operation Permit fee and license fees as set forth in his, her or its License Agreement. A

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payment not received on or before the date due is subject to penalty as set forth in the Charter Vessel Operation Permit or License Agreement.

- b) Each Charter Vessel Operator permitted by the District and operating in a Marina or Sportfishing Landing shall make timely payments to the Marina or Sportfishing Landing pursuant to its applicable sublease or wharfage agreement, and each Marina or Sportfishing Landing shall make timely payments to the District of all charter vessel percentage rent as set forth in its lease with the District. A payment not received on or before the date due is subject to penalty as set forth in such lease.
- c) Failure to comply with any portion of Subsections a) and b) above, may subject the Charter Vessel Operator, Marina or Sportfishing Landing to any of the penalties enumerated in Section (i) below.
- d) The District retains the right to audit the records of any Charter Vessel Operation, Marina or Sportfishing Landing, and may charge the cost of the audit to the Charter Vessel Operator, Marina or Sportfishing Landing if the variance between the payment received and the audited amount exceeds five percent (5%).

6. Record-Keeping Requirements.

- a) Each Marina and Sportfishing Landing shall conform to all written rules, regulations, and policies prescribed in its lease and otherwise by the District, any applicable ordinances of the District and City in which the Marina or Sportfishing Landing is located, any state or federal laws, and any applicable State of California or San Diego County health order, as any of the same now exist or may hereinafter be adopted or amended.
- b) Each Marina and Sportfishing Landing shall post or display a copy of this Section No. 4.37 in a prominent place on leasehold and website in a manner reasonably calculated to provide notice to Charter Vessel Operators of this Section No. 4.37.
- c) Each Marina, Sportfishing Landing or Charter Vessel Operator shall maintain for inspection by the District, Harbor Police, or the United States Coast Guard, a file for each permitted Charter Vessel which contains copies of certificates of insurance, certificates of inspection, certificates of documentation, vessel registration, and any and all permits and licenses required for the operation of the Charter Vessel, and any and all permits and licenses required for crew members to operate the Charter Vessel.

(f) Appeals of Denials or Conditions of Charter Vessel Operation Permit.

- 1. Should the District refuse to issue a Charter Vessel Operation Permit and decals to an Applicant, the Applicant may appeal such decision, in writing, to the Executive Director within ten

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(10) calendar days of Applicant's receipt of the decision, providing any evidence, testimony or documents in support of the appeal.

2. The Executive Director shall have ten (10) calendar days to respond in writing to Applicant detailing the reasons for the decision and shall affirm, overrule or modify the District's refusal to issue a Charter Vessel Operation Permit. The decision of the Executive Director is final as to the District but subject to judicial review pursuant to *Code of Civil Procedure* sections 1094.5 and 1094.6.
3. If the Executive Director intends to rely on any evidence other than the application and the evidence the Appellant submitted with the appeal, he or she shall inform the Appellant of that evidence and provide at least ten (10) days for the Appellant to submit written comment on, or offer rebuttal evidence as to, that additional evidence before acting pursuant to paragraph 2 of this subsection.

(g) Suspension or Revocation of Charter Vessel Operation Permit.

1. The Executive Director may suspend or revoke a Charter Vessel Operation Permit for failure to comply with any provision of this Section. Prior to the suspension or revocation of any Charter Vessel Operation Permit, the Charter Vessel Operator shall be given ten (10) calendar days written notice of the proposed suspension or revocation ("Notice of Intent to Suspend/Revoke Charter Vessel Operation Permit") which shall include the reasons therefor. In the case of an emergency or a threat to public safety, the safety of Passengers, crew, or due to the existence of an unsafe condition on any Charter Vessel, the Harbor Police, or the District may immediately suspend or revoke a Charter Vessel Operation Permit without notice. Notice shall be provided as soon as practicable and all appeal rights set forth in this section shall be followed. In the case of a Charter Vessel Operator that has a License Agreement with the District, any suspension or revocation of a Charter Vessel Operation Permit by the District, if upheld, shall constitute a breach of a License Agreement and subject to the remedies set forth therein.
2. Any suspension or revocation imposed after a "Notice of Intent to Suspend or Revoke Charter Vessel Operation Permit" shall become effective on the day after the ten (10) day appeal period has expired, if no timely appeal is filed pursuant to paragraph (g) of this Section above.
3. If a Charter Vessel Operator files a timely appeal pursuant to paragraph (g) of this Section above, any suspension or revocation of the Charter Vessel Operation Permit shall be stayed pending final determination of the appeal.

(h) Appeal Procedure for Charter Permit Suspension or Revocation.

1. A Notice of Intent to Suspend or Revoke Charter Vessel Operation Permit issued under paragraph (f) above, shall notify a Charter Vessel Operator of the right to file a written appeal to

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- the Executive Director which shall be delivered or mailed to the District Clerk. The Charter Vessel Operator shall have ten (10) calendar days from the date of the Notice of Intent to Suspend or Revoke a Charter Vessel Operation Permit, to file the appeal.
2. The Executive Director may assign a Hearing Officer to hear the appeal or conduct it personally. The matter shall be heard no later than fifteen (15) calendar days from the date of the filing of the appeal unless the Appellant agrees otherwise. The Hearing Officer shall notify the parties, in writing, of the time, date and place of the hearing. The notice of hearing may be sent to Appellant by mail, by personal delivery, or by email if the Appellant agrees to email notice.
  3. The hearing shall be an informal administrative proceeding and the formal rules of evidence shall not apply, although decisions must be supported by substantial evidence. The parties may be represented by counsel and may produce and examine witnesses.
  4. The Executive Director or Hearing Officer may affirm, overrule or modify the Notice of Intent to Suspend or Revoke Charter Vessel Operation Permit, and the decision of the Hearing Officer shall be final. The decision of the Hearing Officer specifying his or her findings shall be furnished to the parties within fifteen (15) calendar days after the hearing is concluded except for good cause stated in any later decision. For purposes of judicial review, the decision shall be final when it is filed with the District Clerk.
  5. The Executive Director or Hearing Officer's decision shall be subject to judicial review pursuant to *Code of Civil Procedure* Sections 1094.5 and 1094.6.

(i) Penalties.

Failure to comply with any requirement of this Section shall subject all persons responsible for that failure to the following fines.

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.

In addition to any of the penalties enumerated in this Section, any violation of this Section may also be punished in accordance with Article 0, Section 0.11 (General Penalty), and Article 0, Section 0.13 (Permit Violations) of this Code and by any other penalty or remedy available at law or in equity. Remedies shall be cumulative, and no election of remedies shall apply.

(j) 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.



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(k) Invalidity.

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.

1. This Section shall become effective, and enforcement thereof shall commence on June 1, 2021, unless such date is deferred by the Executive Director or his/her designee.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 19<sup>th</sup> day of January 2021, by the following vote: