

**DRAFT**

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE xxxx**

**ORDINANCE AMENDING SAN DIEGO UNIFIED PORT DISTRICT CODE ARTICLE 8, SECTION 8.05 – VENDING AND PERFORMING, REGULATED - TO CLARIFY THE INFORMATION ABOUT THE SUITABILITY OF SPECIFIC PUBLIC LOCATIONS OF THE TIDELANDS FOR CONDUCTING VENDING AND PERFORMING, AND TO REVISE THE DESIGNATED AREAS AND ALLOTTED SPACES FOR AUTHORIZED VENDING AND PERFORMING CONSISTENT WITH NEWLY ENACTED GOVERNMENT CODE SECTION 51036, ET SEQ.**

**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**, Section 56 of the Port Act requires the BPC to make local regulations pertaining to the use of all public services in the District, operated in connection with or for the promotion and accommodation of commerce, navigation, fisheries, and recreation on District Tidelands; and

**WHEREAS**, San Diego Unified Port District Code Article 8, Section 8.05, Vending and Performing Regulated (Vending Ordinance), has existed since the District’s inception in 1963 and has been amended by the BPC as needed in 2012 and 2014 to ensure clarity and understanding in the regulation of vending and performing on public tidelands; and

**WHEREAS**, the Vending Ordinance specifies “Designated Areas,” which are areas within the District’s jurisdiction that are designated by the District for authorized vending and performing activity and within in each Designated Area, the Vending Ordinance includes “Allotted Spaces,” which are the sites and the size of each site for each vendor or performer to use; and

**WHEREAS**, between 2014 and the present, changes to public infrastructure and new commercial development, along with recently passed legislation, Senate Bill (SB) 946, entitled “safe Sidewalk Vending Act” and codified

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at California Government Code Section 51036, et seq., have brought about the need for additional amendments to the Vending Ordinance; and

**WHEREAS**, in 2018, the California State Legislature passed SB 946, which limits the regulation of vending and performing by local authorities to restrictions that are directly related to objective health, safety, or welfare concerns for citizens; and limits punishment for vending-related violations to civil fines, effectively decriminalizing unauthorized vending in California; and

**WHEREAS**, under SB 946, a local authority may adopt requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by a city or county (herein referred to as “public park”) if the requirements fulfill any of the following criteria:

- Directly related to the objective health, safety, or welfare concerns; or
- Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities; or
- Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park; and

**WHEREAS**, SB 946 provides a non-exhaustive list of possible regulations, including those concerning locations, hours of operation, sanitation, sidewalk access, health and vendor permitting, compliance with other generally applicable laws, and interference with other special events or permitted activities; and

**WHEREAS**, SB 946 allows local authorities to prohibit stationary sidewalk vendors (as opposed to roaming sidewalk vendors) from vending in a public park if the operator of the public park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire; and

**WHEREAS**, any vending-related regulations enacted by a local authority must be consistent with state law; and

**WHEREAS**, District staff has updated the language of the Vending Ordinance to specifically address the criteria in SB 946 and recommends its adoption; and

**WHEREAS**, in light of developments on the waterfront, District staff has also determined proposed changes to the Designated Areas and Allotted Spaces for authorized vending and performing activity; and

**WHEREAS**, proposed changes to the locations for authorized vending results in the reduction of Designated Areas from 13 to 10, but also resulted in an increase in Allotted Spaces from 73 to 76, meaning a net gain of 3 spaces in which this activity may be conducted; and

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**WHEREAS**, District staff conducted three outreach meetings in November 2019 to present the proposed Vending Ordinance amendments to stakeholders who included vendors, performers and District tenants, take their input and answer their questions; and

**WHEREAS**, based on this input, District staff made changes to the Vending Ordinance to further clarify what types of items are authorized for vending, and better explain the District's rationale for restricting commercial vending.

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

Section 1. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (a) – DEFINITIONS

In addition to the definitions and interpretation set forth in Section 0.03 of this Code, and for purposes of this Section, the following words or phrases shall mean:

- "Allotted Space" or "Allotted Spaces" — the space or spaces located inside a Designated Area. Depending on the Designated Area in which the Allotted Space is located, an Allotted Space shall measure four (4) feet by four (4) feet, four (4) feet by eight (8) feet, eight (8) feet by six (6) feet, ten (10) feet by six (6) feet, or ten (10) feet by ten (10) feet.
- "Broadway Landing" – the District-designated public park in the City of San Diego, consisting of the non-leased portions of space bordered on the west by the North Embarcadero Promenade, on the east by North Harbor Drive, on the north by an imaginary line extending from the southern edge of B Street Pier to Harbor Drive and on the south by an imaginary line extending from the northern edge of Navy Pier to North Harbor Drive.
- "Broadway Pier" – the District-designated public park in the City of San Diego, located at the foot of Broadway, west of the sidewalk bayward of North Harbor Drive.
- "Cesar Chavez Park" - the District-designated public park in the City of San Diego, bordered by Cesar Chavez Parkway, Crosby Street, the waterline, and a wall, including the recreational pier.
- "Chula Vista Bayfront Park" - the District-designated public park in the City of Chula Vista, on the peninsula at the end of Marina Way, including the boat launching ramp.

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- "Chula Vista Bayside Park" — the District-designated public park located in the City of Chula Vista, bordered by Bayside Parkway on the north and the waterline immediately preceding the Chula Vista Harbor with a fishing pier on it.
- "Chula Vista Marina View Park" - the District-designated public park in the City of Chula Vista, bordered by Marina Way, Marina Parkway, a fence line, and the waterline.
- "Coronado Landing Park" — the District-designated public park located in the City of Coronado, at the foot of Orange Avenue along the waterline from the walkway bayward, bordered on the east by the parking lot east of the ferry landing, and on the west by the end of the sand area and eastern end of the adjoining rocks, excluding the fishing pier and ferry landing.
- "Coronado Tidelands Park" — the District-designated public park located in the City of Coronado, bordered by the sidewalk on Glorietta Boulevard, Mullinix Drive southerly to the waterline, and a fence line.
- "Designated Area" or "Designated Areas" — the fourteen (14) areas on Tidelands designated by the District for the uses designated in this Section. A map depicting the Designated Areas is attached to this Section and is also available for inspection and copying in the Office of the District Clerk.
- "Donation" — a gift; a voluntary act which is not required and does not require anything in return.
- "Dunes Park" - the District-designated public park in the City of Imperial Beach, bordered by the sidewalk on Seacoast Drive, the beach, and fence lines.
- "Embarcadero Marina Park North" — the District-designated public park located at the southern end of Kettner Boulevard in the City of San Diego, on the peninsula south of the sidewalk at Seaport Village.
- "Embarcadero Marina Park South" — the District-designated public park located southwest of the Convention Center in the City of San Diego, on the peninsula south of the sidewalk that crosses Marina Parkway, including the fishing pier.
- "Fifth Avenue Landing Park" - the District-designated public park in the City of San Diego, bordered on the north by the parking lot of the Fifth Avenue Landing leasehold, to the west by the South Embarcadero Promenade, on the east by Convention Way and on the south by San Diego Bayfront Park.
- "Food" or "Food Products" — any type of edible substance or beverage.

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- "Goods" or "Merchandise" — any items that are not a food product.
- "Grand Caribe Shoreline Park" - the District-designated public park in the City of Coronado, located at the end of the Grand Caribe Causeway, bordered by the waterline and a fence line.
- "Handcrafts" — objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, welding or beading including but not limited to objects such as jewelry (articles made of precious metals, metal, stones, glass or gems such as necklaces, bracelets, earrings, or rings used or intended for personal adornment), pottery, silver or metal work, leather goods, and trinkets. Handcrafts are not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have. Handcrafts do not include Visual Art.
- "Harbor Island Park" – the District-designated public park on Harbor Island, bordered on the north by Harbor Island Drive, on the south by the waterline, on the west by the entrance to the public parking lot, and on the east by the point where the grass narrows to a uniform width along the waterline.
- "Lane Field Park" – the District-designated public park in the City of San Diego, along the east side of North Harbor Drive from the corner of West Broadway up to the fence line of the Navy property and across from Broadway Pier and B Street Pier.
- "North Embarcadero Promenade" (Promenade) — the District-designated public park approximately eight (8) foot to twenty (20) foot wide manmade promenade in the City of San Diego that runs parallel to San Diego Bay from the north edge of Laurel Street to the northern edge of Seaport Village located at 849 West Harbor Drive, San Diego.
- "Pepper Park" - the District-designated public park in the City of National City, located at the southern end of Tidelands Avenue, bordered by fence lines and the waterline, including the boat launching ramp and fishing pier.
- "Perform," "Performs," "Performing," "Performance" or "Performances" — to present or engage in any of the following activities on public property for the purpose of providing entertainment to the public: playing musical instruments, applying henna tattoos, face painting, creating "balloon" art, fortune telling, tarot card reading, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, engaging in magic, creating Visual Art in its entirety, or similar artistic endeavors, or other constitutionally protected entertainment. "Perform," "Performs," "Performing," "Performance," or

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- "Performances" shall not include (a) the provision of personal services such as hair weaving or massage, (b) the application of substances or Handcrafts to others' skin or body parts including but not limited to piercings, or ink, paints or dyes applied with a needle or machine (non-Henna tattoos), (c) the creation of Visual Art which is mass produced or produced with limited variation, or (d) the creation of Handcrafts. This list of exclusions is not intended to be exhaustive.
- "Performer" — a Person who Performs. Performer includes the employers, employees, and agents of a Performer.
  - "Person" — natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.
  - "Point Loma Marina Park" – the District-designated public park in the City of San Diego, located bayward of North Harbor Drive and bordered immediately to the east by the Point Loma Marina leasehold.
  - "Portwood Pier Plaza" - the District-designated public park in the City of Imperial Beach, consisting of the public areas bordered by the sidewalks on Seacoast Drive and Elder Avenue, the beach, and an alley, including the fishing pier.
  - "Ruocco Park" - the District-designated public park in the City of San Diego, located at the southwest corner of Pacific Highway and North Harbor Drive, bordered on the west by the North Embarcadero Promenade, on the south by a seafood company leasehold, on the east by Pacific Highway and on the north by North Harbor Drive.
  - "San Diego Bayfront Park" - the District-designated public park in the City of San Diego, bordered on the south by the South Embarcadero Promenade, on the west by Fifth Avenue Landing Park, on the north by Convention Way, and on the east by a hotel leasehold.
  - "Sculpture" — a three dimensional work of art that is created through shaping solid material such as wood, stone, clay or metal by carving, modeling, or similar methods and intended for display as a piece of art.
  - "Shelter Island Shoreline Park" – the District-designated public park in the City of San Diego, located bayward of Shelter Island Drive to the waterline, bordered on the north by the northwestern fence line of the parking lot north of the traffic circle, on the west by the public dock, and on the east by the private leaseholds, including the fishing pier and boat launching ramp.

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- “South Embarcadero Promenade” – the District-designated public park consisting of a manmade promenade approximately eight (8) to twenty (20) feet wide in the City of San Diego that runs parallel to San Diego Bay from the northern edge of Seaport Village located at 849 West Harbor Drive to the fence on northwest side of the Tenth Avenue Marine Terminal.
- “Spanish Landing Park” – the District-designated public park in the City of San Diego, bordered on the north by North Harbor Drive, on the south by the waterline, on the west by the intersection of the waterline with the Navy Estuary Bridge, and on the east by the end of the grassy area east of Cancer Survivors Park.
- “Tidelands” — those areas in the member cities of Chula Vista, Coronado, Imperial Beach, National City and San Diego under the control and jurisdiction of the San Diego Unified Port District and not under lease to private parties. Tidelands shall include without limitation streets, parking lots, sidewalks, alleys, plazas, parks, piers, beaches, sea walls and open public lands.
- “Tuna Harbor Park”- in the City of San Diego the District-designated public park located bayward of North Harbor Drive, bordered on the north by the roadway parallel to the USS Midway Museum, on the south by the grassy area at the north end of Seaport Village, and on the west by the waterline, including the area north of “G” Street between the waterline and the northern curb line of the parking lot, excluding “G” Street.
- “Vend” or “Vending” — to sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter Food, Goods, Handcrafts, Merchandise, Visual Arts, or services in any public area, whether stationary or roaming, from a stand, pushcart, motor vehicle, or by a person with or without the use of any other device or other method of transportation. To require someone to pay a fee or to set, negotiate, or establish a fee before providing goods or services constitutes vending. Requests for donations or accepting donations in exchange for merchandise also constitute vending.
- “Vendor” — a Person who vends. This includes a vendor who is an employee or agent of another.
- “Visual Art” — Sculptures or drawings or paintings, applied to paper, cardboard, canvas, or other similar or technologically equivalent medium through the use of brush, pastel, crayon, pencil, stylus, or other similar object.

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Section 2. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (b) – FINDINGS AND PURPOSES

The Board of Port Commissioners of the San Diego Unified Port District finds and declares as follows:

1. The North Embarcadero Promenade (Promenade)
  - a) Health, Safety, and Welfare. The North Embarcadero Promenade (Promenade) is a designated District park. The Promenade is a major tourist attraction on Tidelands and receives hundreds of thousands of visitors every year. For a public promenade, it is narrow at only eight (8) to twenty (20) feet in width and must accommodate walkers, runners, bicycle and scooter riders, pedicabs, cruise ship passengers, and visitors. Its total distance in the busiest portion of the Promenade which runs from Grape Street through the San Diego Convention Center comprises only 1.3 miles and contains 30 acres of public space. Because of the presence of parking lots immediately adjacent to the Promenade to provide vehicle access to San Diego Bay, visitors parking near the Promenade must be afforded access. Vending and Performing on the Promenade must be regulated because the equipment and activities that accompany Vending and Performing, including tables, displays, chairs, umbrellas, and pushcarts, and impeding and interacting with pedestrians is incompatible with the narrow confines of the Promenade and poses a risk of accidents and injury to walkers, runners, bicycle riders, pedicabs, cruise ship passengers, and visitors as they attempt to navigate narrow paths congested with Vendors and Performers and associated equipment.
  - b) Use and Enjoyment of Natural Resources and Recreational Opportunities. As explained above, the Promenade does not have the capacity to accommodate unregulated Vending and Performing. Inhibiting travel along the promenade also inhibits residents' and visitors' use and enjoyment of recreational opportunities and historic attractions to which the Promenade provides direct access, including Broadway Pier, the Maritime Museum of San Diego, harbor tour vessels, Navy Pier/U.S.S. Midway Museum, restaurants, and other sites.
  - c) Interference with Scenic and Natural Character. Along with access to the recreational opportunities and historic attractions, the Promenade also offers residents and visitors a clear view of the scenic San Diego Bay and the bayfront cityscape. Unregulated

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Vending and Performing along the Promenade would block access and views, interfering with the scenic and natural character of the Promenade.

## 2. Embarcadero Marina Park North and Embarcadero Marina Park South

- a) Health, Safety, and Welfare. Embarcadero Marina Park North and Embarcadero Marina Park South are sites often used for recreation and events that require individual park permits, as well as pre-planning and notice to the District. The paths that run around and through these parks are narrow and intended for ingress and egress from the parks or for walking, bicycling, or other recreational pursuits. These Parks rest mostly as small peninsulas in the San Diego Bay, with both parks having only one route to and from the park. Unregulated Vending and Performing in these parks creates an unsafe environment for pedestrians and other users, as the tables, displays, chairs, umbrellas, and pushcarts, and impeding and interacting with pedestrians is incompatible with the nature of the park and poses a risk of accidents and injury to pedestrians and other users of the parks.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The Parks are available to the public for hosting larger gatherings or smaller get-togethers like picnics. Unregulated Vending and Performing would occupy spaces in the Parks for these events and prevent residents and visitors from using and enjoying the Parks' resources.
- c) Interference with Scenic and Natural Character. Situated directly on San Diego Bay, these Parks offer some of the best views of San Diego Bay as well as Coronado and, as explained above, are popular picnic areas. Unregulated Vending and Performing would change the nature and diminish the purpose of these Parks, by blocking views from the Parks and of the Parks

## 3. Tuna Harbor Park

- a) Health, Safety, and Welfare. The pathways along the perimeter of Tuna Harbor Park are narrow and designed for pedestrian access. These pathways are not designed to accommodate tables, chairs, or other equipment used in the course of Vending and Performing. Unregulated Vending and Performing in the Park would create unsafe conditions for this Park's regular volume of foot-traffic and visitors.

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- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. This Park is a popular gathering place for visitors and residents to view the USS Midway Museum and San Diego Bay from the landside. Unregulated Vending and Performing in the Park would occupy and block spaces and pathways in the Park intended for residents and visitors to picnic, walk, run, and otherwise use and enjoy the Park.
- c) Interference with Scenic and Natural Character. As explained above, this park is a popular gathering place to view the USS Midway Museum and San Diego Bay from the landside. Unregulated vending in this park causes visual clutter/blight along the park and San Diego Bay, and impedes views of the bay and the USS Midway Museum

#### 4. Coronado Tidelands Park

- a) Coronado Tidelands Park is adjacent or near to the Coronado Ferry Landing, and numerous residences. The Park also provides marked baseball, softball and soccer fields for organized athletics and other games, which often draw spectators. It also contains paths for recreational activities including bicycle riding, running or walking, and the use of pedicabs and other four-wheeled bicycles rented from nearby businesses. All sidewalk paths through the park are narrow and designed for pedestrian ingress and egress. Unregulated Vending and Performing in this Park creates safety concerns because it would block access for pedestrians' and others' use of the pathways, impedes views of the bay and the ingress and egress of visitors to the park.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. As explained above, this Park includes marked baseball, softball and soccer fields for organized athletics and other games, which often draw spectators. Unregulated Vending and Performing on these fields or the pathways to these fields would block access and conflict with scheduled and unscheduled athletic activities.
- c) Interference with Scenic and Natural Character. Along with organized recreational activities, this Park provides unimpeded access and views of San Diego Bay, particularly north to downtown San Diego. Unregulated Vending and Performing would change the character of this Park in that it would block such views and the places to take in the views.

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## 5. Orange Avenue Area

- a) Health, Safety, and Welfare. The Orange Avenue Area, located in the City of Coronado, is a subarea identified in the Port Master Plan and is located between Orange Avenue — the former site of the Coronado Ferry Landing — and the multiple-story Oakwood Garden Apartments. The Orange Avenue Area includes shoreline park space, a promenade, and many tables and chairs for outdoor gatherings and events. Given the heavy foot-traffic, narrow pathways, and, where not so narrow, outdoor tables and chairs, unregulated Vending and Performing would obstruct pathways for residents and visitors and create obstacles to travel within the Area. The obstruction and obstacles created by Vending and Performing is incompatible with the nature of the area and poses a risk of accidents and injury to pedestrians and other users of the area.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. As explained above, this area includes shoreline park space and a promenade that are popular destinations for residents and are frequently used for recreational activities such as walking, running, and bicycling. Unregulated Vending and Performing in this Area would inhibit use and enjoyment of these opportunities.
- c) Interference with Scenic and Natural Character. As explained above, this Area offers unobstructed views of downtown San Diego and San Diego Bay. Unregulated Vending and Performing in this Area would obstruct these views and harm the scenic and natural character of the Area.

## 6. Chula Vista Bayside Park

- a) Health, Safety, and Welfare. The Chula Vista Bayside Park is adjacent to the Chula Vista Harbor, a fishing pier and a recreational vehicle (RV) park. The park is frequently used for picnics and other enjoyment of natural resources and recreation purposes including running, walking, bicycle riding, and fishing. For access, the Park provides a narrow trail from the parking lot and through the Park. The trail is designed to accommodate pedestrians and bicycles, but lacks the space necessary to include Vending and Performing without hindering safe movement throughout the Park.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. As explained above, the Park is frequently used for picnics and other enjoyment of natural resources and recreation purposes including running, walking, bicycle riding, and fishing.

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Unregulated Vending and Performing in the Park would take up the space of and create obstacles to these uses.

- c) Interference with Scenic and Natural Character. The Park provides unobstructed views of San Diego Bay, looking west to the Coronado Strand and the ocean. Unregulated Vending and Performing would block these views and harm the open and green natural character of the Park.

#### 7. Shelter Island Shoreline Park

- a) Health, Safety and Welfare. Shelter Island Shoreline Park consists primarily of long, narrow portions of grass that can accommodate small events that do not meet the size threshold for requiring a District special event permit. There are two sections of the park that are somewhat wider. Both are grassy areas located inside of traffic circles located at opposite end of Shelter Island and both are bordered by Shelter Island Drive. Neither has a crosswalk for pedestrian access between the sidewalk along the edge of Shelter Island. In the absence of crosswalks, unregulated vending in either of these locations would cause a safety risk to pedestrians attempting to cross the street to visit a vendor.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park sidewalk is highly used by residents and hotel guests to enjoy the views of San Diego Bay, Point Loma, Coronado and the downtown San Diego skyline. The narrow nature of the sidewalks and the grass areas along the bayfront of the park make the entire length of the park unsuitable for unregulated Vending and Performing, which would impede the walkways and the views from the park.
- c) Interference with Scenic and Natural Character. This park is characterized by panoramic views of San Diego Bay and the areas of grass that lend themselves to the enjoyment of small group and singular activities of a typically quiet and passive to moderately active nature. Unregulated Vending and Performing would interfere with what is primarily a park of low-intensity, contemplative uses.

#### 8. Point Loma Marina Park

- a) Health, Safety and Welfare. Point Loma Marina Park is a small park on the District Tidelands that is used periodically for private events. The park has public sidewalks on either side and through its southern one-third that are used primarily to access the surrounding

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businesses and the walkway along north San Diego Bay. These sidewalks are under 10 feet in width and unable to safely accommodate Unregulated Vending and Performing without impeding pedestrians.

- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park can accommodate recreational activities that fit into a grass area of about 3,000 square feet in size, making it suitable for limited activity.
- c) Interference with Scenic and Natural Character. Given the small size of the park, the setup of any unregulated Vending and Performing activity would dominate the footprint and visual ambiance of the space.

#### 9. Harbor Island Park

- a) Health, Safety and Welfare. Harbor Island Park consists primarily of a narrow strip of grass and a 6-foot-wide walkway that extend the length of the island, with one portion of grass on the western end of the island that widens to about 125 feet over a span of 300 feet. The narrow walkway accommodates a great many recreational walkers and runners including persons with strollers, and the two-way pedestrian traffic on the walkway often occupies a wider-than-6 feet footprint. Visitors also bring chairs or sit on the benches along the length of the walkway to enjoy the view of San Diego Bay and the downtown skyline. This makes Unregulated Vending and Performing in the narrow portion of the park unsafe to the public.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The wider area of the park is used for picnics and play for groups of various sizes and is the most popular site for weddings on the San Diego Bayfront. Given that the medium-to-large events as well as all weddings require the use of the entire wide grass area, Unregulated Vending and Performing interferes with the use of the park by visitors and participants in events.
- c) Interference with Scenic and Natural Character. Given the small size of the park, the setup of any unregulated Vending and Performing activity would interfere with the visual ambiance of the space.

#### 10. Spanish Landing Park

- a) Health, Safety and Welfare. Spanish Landing Park is a linear space about three-quarters of a mile in length with several lawn areas of

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widths varying between 50 and 120 feet that are used for picnics and small group enjoyment of the park. The park is also amenable to the producers of certain major events who utilize the individual lawn areas to place stages and attractions. A serpentine walkway of about eight feet in width extends through the length of the park, connecting the Cancer Survivor Park artwork and lawn on the east end of the park to the playground and small beach on the west end and proceeding beneath Harbor Drive to the north side of the street. Unregulated Vending and Performing in the park would impede the walkway.

- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. Events and play on the playground, beach and lawns of the park would be inhibited by Unregulated Vending and Performing that inhabits space on the lawn areas.
- c) Interference with Scenic and Natural Character. The Cancer Survivors Park area on the east end of Spanish Landing Park is intended for contemplative uses and Unregulated Vending and Performing would be out of keeping with the character of this portion of the park. Unregulated Vending and Performing would upset the generally quiet bayside ambiance of the overall park area.

#### 11. Lane Field Park

- a) Health, Safety and Welfare. Lane Field Park is immediately adjacent to three hotel leaseholds on the downtown San Diego waterfront and is less than one half-acre in size. The surrounding hotels use the space – which consists of about 60 percent grass and 40% hardscape – for catered events and a weekly street food market with a picnic atmosphere. The small size of the park would make Unregulated Vending and Performing potentially safety hazards to the use of the space.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. Events and play in this somewhat small park can be inhibited by Unregulated Vending and Performing.
- c) Interference with Scenic and Natural Character. Lane Field Park contains items that pay tribute to the baseball history of the park's location, including a diamond-shaped hardscape area and a home plate. Unregulated Vending and Performing can disturb the baseball theme and character of the park with visual and sound distractions.

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## 12. Broadway Pier

- a) Health, Safety and Welfare. Broadway Pier is used for cruise ship calls, a variety of special events, and public seating to view San Diego Bay. It is of relatively small width and includes lanes for emergency vehicles that may not be impeded. Unregulated Vending and Performing will present a risk to critical access to the pier and the Port Pavilion (terminal and event facility) located on the pier by emergency responders, Maritime Operations staff and custodial personnel.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The events that use the pier exterior, as well as public enjoyment of the seating on the forecourt (Harbor Drive end of the pier) and view court (San Diego Bay end of the pier), can be impeded or disturbed by Unregulated Vending and Performing.
- c) Interference with Scenic and Natural Character. Unregulated Vending and Performing can obstruct and distract the enjoyment of the panoramic views of San Diego Bay and the downtown San Diego North Embarcadero region offered on Broadway Pier.

## 13. Broadway Landing

- a) Health, Safety and Welfare. Broadway Landing accommodates substantial traffic from pedestrians traversing the downtown North Embarcadero Promenade that makes up the west border of the park. The park contains garden areas with benches for resting and viewing the Promenade activity. The park surrounds leaseholds containing al fresco dining, information windows and harbor tour ticket concessions, and a restroom building adjacent to the Promenade, making the park a gathering place for pedestrians stopping and/or queuing to visit these facilities. Unregulated Vending and Performing can result in congestion that spills over onto the Promenade and presents a public safety hazard.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The garden areas of the park contain shade trees and landscaping and are intended as a respite for persons walking the Promenade or waiting for their boarding time on harbor tours or the water taxi at the adjacent docks. Unregulated Vending and Performing can disturb the respite of the persons enjoying the gardens.

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- c) Interference with Scenic and Natural Character. Unregulated Vending and Performing can interfere with the view and character of the natural scenery in the form of the trees and gardens that are a vital and prominent part of the park.

#### 14. Ruocco Park

- a) Health, Safety and Welfare. As one of a small number of grass expanses in downtown San Diego, the turf area in the center of Ruocco Park is used daily for pick-up soccer, frisbee throwing and other informal sporting activity. Unregulated Vending and Performing can present obstructions to this activity, compromising the safety of those participating.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The hardscape areas surrounding the center turf contain benches and small landscaped gardens with young trees. Unregulated Vending and Performing can interfere with the enjoyment of these landscaped areas and, where benches face San Diego Bay, the views of Tuna Harbor and beyond.
- c) Interference with Scenic and Natural Character. While the park is the venue for a number of commercial events on specific days, its day-to-day intended purpose as specified by the funding entity is for informal play and contemplative uses. Unregulated Vending and Performing can interfere with the enjoyment of the park's serenity-inducing features that include its gardens, benches and artistic plazas.

#### 15. South Embarcadero Promenade

- a) Health, Safety and Welfare. The South Embarcadero Promenade is a very busy waterside thoroughfare for pedestrians, bicycles, scooters, pedi-cabs and similar vehicles proceeding to and from the North Embarcadero region, waterfront hotels, Convention Center, Seaport Village retail facility and Embarcadero parks. Unregulated Vending and Performing presents a potential obstruction and accompanying safety hazard on this bustling walkway.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The South Embarcadero Promenade is heavily used in the morning and early evening for (informal and organized) runs, walks and cycling activity. Unregulated Vending and Performing can interfere with this recreational use of the Promenade.

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- c) Interference with Scenic and Natural Character. Large portions of the South Embarcadero Promenade provide sweeping views of San Diego Bay, parks, yacht and boat marinas, a maritime cargo terminal and Coronado. Unregulated vending, along with obstructing pedestrian and bicycle/scooter traffic, can interfere with the visual lines to the numerous sights throughout the length of this public pedestrian thoroughfare.

#### 16. Fifth Avenue Landing Park

- a) Health, Safety and Welfare. Fifth Avenue Landing Park is small (under one-half acre) in size, making Unregulated Vending and Performing a potential source of trip hazards and obstructions for persons engaging in active recreation or otherwise traversing its grounds.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park's small size (under one-half acre) could not support Unregulated Vending and Performing concurrent with public recreational use.
- c) Interference with Scenic and Natural Character. The park provides compelling views of superyachts in the water area at the adjacent leasehold and the bay beyond. Unregulated Vending and Performing would visually interfere with these views.

#### 17. San Diego Bayfront Park

- a) Health, Safety and Welfare. San Diego Bayfront Park, over four acres in size, serves as one of the few large expanses of recreational space in the downtown core and is used heavily by persons engaging in active recreational pursuits that require considerable space, such as ball- and frisbee-throwing. Unregulated Vending and Performing could result in safety hazards to persons running in the park with their attention on the game they are playing and not on potential obstructions.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park's perimeter space is a generally quiet place where conventioners, local workers and the general public can give their senses respite from the noise and bustle of downtown. Unregulated Vending and Performing could cause the park's peaceful ambiance to be negatively impacted by noise.
- c) Interference with Scenic and Natural Character. The park contains undulations atop which the public enjoys sedentary pursuits such as sunbathing, reading and enjoying the views of Fifth Avenue Landing,

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the Tenth Avenue Marine Terminal and San Diego Bay. Unregulated Vending and Performing would visually interfere with these views.

#### 18. Cesar Chavez Park

- a) Health, Safety and Welfare. The majority of Cesar Chavez Park consists of a heavily used soccer field and sideline area for warming up/in-game practice. Unregulated Vending and Performing could compromise the safe use of the field and sideline by the youth whose practices and games are held there.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park is a popular place and one of the few points of access to San Diego Bay for the nearby Barrio Logan community who use the park's playground, picnic areas and pier for gatherings and celebrations of all sizes. Unregulated Vending and Performing could interfere with the public's enjoyment of the park for these purposes.
- c) Interference with Scenic and Natural Character. The park and pier offer panoramic views of San Diego Bay as well as a rare green space among large expanses of maritime and industrial facilities. Unregulated Vending and Performing could block view corridors to the bay as well as negatively impact the public and natural character of the park.

#### 19. Pepper Park

- a) Health, Safety and Welfare. Pepper Park is the location of one of two public boat launch ramps and one of two public fishing piers in south San Diego Bay and consequently attracts substantial vehicle and vehicle-with-boat-trailer traffic through the park's parking lot, compelling vendors to attempt to operate there. Unregulated Vending and Performing in this high-traffic area traversed by oversize and encumbered vehicles would compromise the safety of the vendors, customers/pedestrians, drivers and boat operators.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park is a popular place and one of the few points of access to San Diego Bay for the nearby underserved communities of National City, whose citizens use the park's playground and picnic areas for gatherings and celebrations of all sizes. Unregulated Vending and Performing could interfere with the public's enjoyment of the park for these purposes.

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- c) Interference with Scenic and Natural Character. The park offers views of San Diego Bay as well as a rare recreational space located between a large maritime industrial facility and an environmentally protected wetlands area. Unregulated Vending and Performing could negatively impact the open, natural character of the park.

## 20. Chula Vista Bayfront Park

- a) Health, Safety and Welfare. Chula Vista Bayfront Park is the location of one of two public boat launch ramps in south San Diego Bay and consequently attracts substantial vehicle and vehicle-with-boat-trailer traffic through the park's parking lot, making it a potential attractive area for vendors. Unregulated Vending and Performing in this high-traffic area traversed by oversize and encumbered vehicles would compromise the safety of the vendors, customers/pedestrians, drivers and boat operators.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The green space of the park is surrounded on three sides by San Diego Bay and the marinas on the Chula Vista bayfront, with mature trees for restful pursuits and a small open space for play. Unregulated Vending and Performing could inhibit or disturb this enjoyment of the natural resources and recreational space in the park.
- c) Interference with Scenic and Natural Character. The park offers views of the South San Diego Bay Wildlife Refuge including the resident and migratory birds that are visible there, as well as the viewing of the sailboats and other recreational watercraft traversing the marinas and launch ramp to and from the bay. Unregulated Vending and Performing could impede the enjoyment of the scenic character of the park.

## 21. Chula Vista Marina View Park

- a) Health, Safety and Welfare. Chula Vista Marina View Park is a primarily linear space made up of two sections. The easternmost section is narrow and linear in shape with an approximately six-foot-wide sidewalk immediately adjacent to Marina Parkway. Unregulated Vending and Performing could present safety hazards to persons using the narrow park section or sidewalk.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The westernmost section of the park is frequented with small events that use inflatable jumps and outdoor games that occupy large footprints and include children playing. Unregulated

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Vending and Performing could interfere with the enjoyment of these recreational activities.

- c) Interference with Scenic and Natural Character. The south side of the park is directly adjacent to a wetlands preserve with a substantial bird presence. Unregulated Vending and Performing could interfere with this scenic aspect of the park.

## 22. Portwood Pier Plaza

- a) Health, Safety and Welfare. Over one-half of Portwood Pier Plaza is hardscape that is heavily used and enjoyed by the riders of bicycles, scooters and skateboards. Unregulated Vending and Performing could compromise the safety of these individuals traversing the park.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The Imperial Beach Pier is a part of the park. As the only ocean pier in the southernmost portion of San Diego County, the pier frequently has many persons fishing, walking the pier for exercise and enjoying being on the Pacific Ocean. Unregulated Vending and Performing could interfere with this enjoyment of recreational opportunities.
- c) Interference with Scenic and Natural Character. The park and pier offer panoramic views of the Pacific Ocean and the park entrance plaza includes *Surfhenge*, a set of surfboard-themed art works that showcase the surfing heritage of Imperial Beach. Unregulated Vending and Performing can interfere with the enjoyment of this scenery in the park.

## 23. Dunes Park

- a) Health, Safety and Welfare. Dunes Park provides quiet locations for picnickers along with open space for play adjacent to Imperial Beach. The secluded nature of sections of the park includes obstructions to the interior park sightlines to public safety personnel. Unregulated Vending and Performing present potential hazards to public safety in that detection of any violations of law or public endangerment on the part of vendors and performers is difficult.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The shaded areas of mature trees and the open spaces of Dunes Park are each relatively small, and Unregulated Vending and Performing could interfere with the use of these areas for their intended purposes.

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- c) Interference with Scenic and Natural Character. Dunes Park offers a variety of landscape features along with views of sand dunes and the Pacific Ocean throughout the western border of the park. Unregulated Vending and Performing can negatively impact the views of all of these scenic and natural features.

#### 24. Grand Caribe Shoreline Park

- a) Health, Safety and Welfare. Grand Caribe Shoreline Park has no public restrooms and a small amount of street parking that causes some individuals to park illegally on the traffic circle at the park entrance. Unregulated Vending and Performing can result in public sanitation being further compromised in the absence of restrooms; and in additional vehicles parked in the traffic circle and impeding the passage of emergency vehicles.
- b) Use and Enjoyment of Natural Resources and Recreational Opportunities. The park is planted primarily with native vegetation and has only a small open portion for play, making the most active use of the park the launching of kayaks and standup paddle boards from the stretch of beach along the park's east side. Given the natural state of the park, Unregulated Vending and Performing could interfere with the enjoyment of the park's natural quietude and ambiance.
- c) Interference with Scenic and Natural Character. The eastern side of the park faces San Diego Bay with panoramic views, and a walking path through the park's native vegetation traverses the entire length of the park. Unregulated Vending and Performing could negatively impact the enjoyment of the views and natural character of the park.

#### 25. North Embarcadero Visionary Plan (NEVP)

- a) Health, Safety, and Welfare. The North Embarcadero Visionary Plan (NEVP) is a planned project of the District with phasing that will require areas of the North Embarcadero on North Harbor Drive between G Street to the south and Grape Street to the north, to be closed off for use by the public as well as Performers and Vendors for potentially extended periods of time. As such, areas under construction shall prohibit any outside activity for public safety reasons. As the various phases of the NEVP are completed, the District intends to allow Vending and Performing pursuant to this section in areas that are open for public use.

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Section 3. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (c) – DESIGNATED AREAS

To address the findings and purposes set forth in this Section, the District has created reasonable time, place, and manner restrictions on Performing and Vending to ensure the safety of Vendors and Performers, customers and their audience, and the general public. To ensure safe use of District parks, the District has divided available space into ten (10) areas, known as Designated Areas, which are depicted at the end of this Section.

Section 4. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (d) – PROHIBITED ACTIVITIES IN DESIGNATED AREAS

The following activities are prohibited in the Designated Areas:

1. Vending commercial merchandise. Commercial merchandise includes items that have more than a nominal or functional utility apart from their communicative or expressive purpose. Such items include but are not limited to the following: Food, including water, and Food products; house wares including dishes or eating utensils, appliances, cosmetics, beauty supplies, oils, lotions, and perfumes, incense, candles, and crystals, handcrafts, jewelry, hats visors, and sunglasses, and souvenirs, toys, and stuffed animals.
2. Vending in parks with exclusive concessionaire contract. In any District park with a concession stand operated by a vendor under exclusive contract with the District selling food or merchandise, stationary Vending is prohibited. This prohibition is subject to notice posted by the District at the park that stationary Vending is prohibited.

Section 5. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (e) - PERMITTED ACTIVITIES IN DESIGNATED AREAS

The following activities are permitted in the Designated Areas:

1. Performing and traditional expressive speech and petitioning.
2. Vending the following expressive items:

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- a) Newspapers;
- b) Leaflets;
- c) Pamphlets;
- d) Bumper stickers;
- e) Buttons.
- f) Books;
- g) Audio, video, compact discs, video discs or other recordings
- h) Paintings, photographs, or prints of paintings and photographs;
- i) Sculptures; and
- j) Any other similar item that is inherently communicative and has only nominal value or purpose apart from its communication.

Section 6. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (f) – ALLOTTED SPACES WITHIN DESIGNATED AREAS

1. Allotted Spaces. Within the Designated Areas, the District shall create spaces reserved for and used by no more than one Vendor or Performer at a time. These spaces are referred to as "Allotted Spaces."
2. Availability. The Allotted Spaces contained in the Designated Areas will be available on a first-come, first-served basis and their respective sizes and dimensions are set forth on a map attached to this ordinance and also available for inspection and copying at the Office of the District Clerk. The Allotted Spaces shall be made available for the permitted activities described in Subsection (e).

Section 7. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05 (g) – REGULATIONS FOR USE AND OPERATION

Persons using the Allotted Spaces are subject to, and shall comply with all of the following regulations:

1. No Person shall Vend any item in an Allotted Space, except as expressly authorized by subsections (c-e).
2. A Person may select only one Allotted Space in each Designated Area.
3. In no event shall the number of Persons occupying a Designated Area exceed the number of Allotted Spaces allowed in that Designated Area, regardless of size.

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4. No Person shall place or allow anything in any Allotted Space to extend beyond the boundaries of the Allotted Space nor place anything adjacent to the Allotted Space nor obstruct or impede the access areas between the Allotted Spaces.
5. There shall be a buffer zone of at least two (2) feet between each Allotted Space to provide adequate room for any Person to Perform, Vend, or otherwise engage in expressive activity.
6. No Person shall Perform in, or Vend in, or place or allow any item to extend into a designated emergency ingress or egress area.
7. No Person shall place or allow any item, except an umbrella with a stand, a sun shade, one easel or display board exceeding four (4) feet above ground in any Allotted Space, or a table with a total surface area exceeding twenty-five (25) square feet, nor shall any Person cause or allow an Allotted Space to be enclosed on more than two sides. An umbrella or sun shade shall not exceed eight (8) feet above the ground. Any Person may use one easel or display board which shall not exceed sixty-eight (68) inches in height.
8. No Person shall purchase, sell, barter, or exchange any Allotted Space with another Person or reserve or "hold" an Allotted Space for another Person.
9. No Person shall set up or set down items in, take down items from or block, or attempt to reserve an Allotted Space between sunset and sunrise.
10. Any umbrella used in connection with the activities authorized in the Allotted Space must be adequately secured on the ground with a diameter of no greater than eight (8) feet and shall not be inserted into the ground.
11. Allotted Spaces must be kept clean and litter, debris, and any marking must be removed from the Allotted Space by sunset on the day the Person uses the Allotted Space or when the Person vacates the Allotted Space, whichever is earlier.
12. No open flames, combustible fuel or gasoline-fueled generators are allowed in any Allotted Space. Electric cords may not be connected outside the assigned space or to any District or private power source.
13. Allotted Spaces in areas which may be subject to a District special

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event permit, park permit, or construction shall not be used by any Person for the duration of the permit or construction period, including time for the set-up and removal of event or construction equipment.

14. Each vendor in an Allotted Space shall be limited to one (1) sign no larger than four (4) square feet.
15. During special events authorized by the District, some or all Allotted Spaces and/or Designated Areas may be unavailable before, during and after the event to allow for set up and clean-up of the area by the event organizer. Alternate areas will be designated nearby when possible. If no areas are available nearby the designated area of the special event, one of the other Designated Areas can be used.
16. Noise regulations of the District member City in which Vending or Performing occurs shall be complied with by any Vendor or Performer.

Section 8. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

**Section 8.05 (h) – USE OF DISTRICT PROPERTY FOR VENDING, PERFORMING, OR DISPLAY PROHIBITED**

No Person shall use or obstruct access to any District-owned, maintained or leased property or equipment, including but not limited to street furniture, rip rap stones, benches, planters, trash receptacles, kiosks, pagodas or other structures or equipment installed on public property, for Vending, Performing, or display or anything whatsoever.

Section 9. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

**Section 8.05 (i) – EXEMPTIONS**

For any approved participant in a farmer's market or other special event authorized and permitted by the District, the permit, activity, and all other regulatory requirements of this Section shall not apply.

Section 10. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

**Section 8.05 (j) – PENALTIES**

1. Penalties. Any violation of this Section shall be punishable as provided below:

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- a) For the first violation, an administrative fine not exceeding one hundred dollars (\$100).
  - b) For a second violation within one year of the first violation, an administrative fine not exceeding two hundred dollars (\$200).
  - c) For a third or subsequent violation within one year of the first violation, an administrative fine not exceeding five hundred dollars (\$500).
2. Failure to Pay Fine. Failure to pay an administrative fine pursuant to this Subsection (j) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Subsection i shall not be assessed.
3. Ability-to-Pay Determination.
- a) Notice. When assessing an administrative fine pursuant to Subsection I, the District shall take into consideration the person's ability to pay the fine. The District shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination.
  - b) Request. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
  - c) Determination. If the person meets the criteria described in Government Code section 68632, subdivision (a) or (b), the District shall accept, in full satisfaction, twenty percent (20%) of the administrative fine imposed.

Section 11. That Section 8.05 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

#### Section 8.05(k) – SEVERABILITY

If any subsection, sentence or clause, phrase or portion of this Section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Section.

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Section 12. This ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

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 10th day of December, 2019, by the following vote: