

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15301 AND 15304 FOR THE AMENDMENT TO SAN DIEGO DISTRICT CODE ARTICLE 8, SECTION 8.05 - VENDING AND EXPRESSIVE ACTIVITY, REGULATED**

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, in February 2023 staff updated San Diego Unified District Code (Port Code or SDUPD Code) 8.05 to (1) authorize issuance of a temporary commercial use permit for commercial vendors to operate in 36 allotted spaces designated for commercial activity along the Embarcadero, (2) update the District's time, manner, and place restrictions for vending and expressive activity, and (3) clarify penalties and enforcement procedures for individuals found in violation of the District's vending and expressive activity regulations; and

WHEREAS, at the February 14, 2023 meeting, the BPC approved the changes and directed staff to return in fall 2023 to report on the initial implementation of these changes to Port Code 8.05 and evaluate the effectiveness of District's updated vending and expressive activity regulations; and

WHEREAS, at the October 10, 2023 BPC meeting, staff reported that the Port Code 8.05 update was generally successful, but acknowledged there was room for improvement and presented recommendations to modify the program; and

WHEREAS, based on BPC direction and feedback from the October 10, 2023 meeting, staff's recommendations have been updated to include the following additional modifications:

- Increase the commercial vending permit cycle from six (6) months to one (1) year;

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- Decrease the amount of time commercial and expressive vendors can leave their equipment unattended from three (3) hours to two (2) hours;
- Authorize staff to suspend and/or revoke commercial vending permits for failure to meet the minimum use and occupancy standards identified in the terms and conditions of the permit. For the next permitting cycle, staff recommends requiring commercial vendors to vend at least five (5) hours per day for a minimum of 16 days every month. Staff will evaluate the effectiveness of the five (5) hour and 16-day minimum use and occupancy standard during the next permit cycle (e.g., 2024 calendar year) and will make any necessary adjustments to the subsequent permitting cycle beginning in January 2025. Staff would monitor and manage the minimum use and occupancy requirements by requiring commercial vendors to check-in/check-out using a software application on their mobile phone.

WHEREAS, staff is recommending the following refinements to the program based on the District's Field Survey, the District's Stakeholder Email Survey and BPC direction from the October 10, 2023 BPC meeting:

1. Adjust the Allotted Spaces for vending and expressive activity as follows:
 - a. Increase the number of Allotted Spaces in Designated Area 4 (on wooden deck near Midway Museum) from 12 to 17, adding two (2) additional commercial spaces and three (3) additional expressive spaces;
 - b. Decrease the total number of Allotted Spaces from 77 to 67 along the Embarcadero;
 - c. Reduce the number of Allotted Spaces in Designated Areas 7 and 8 (behind Seaport Village) from 31 to 15;
 - d. Modify Designated Area 3 (between the Portside Pier restaurant and the B Street Cruise Ship Terminal) to include eight (8) commercial spaces and four (4) expressive spaces, formerly six (6) commercial spaces and six (6) expressive spaces;
 - e. Reduce the size of spaces in Designated Area 1 (near the Grape Street Pier) from 10ft x 10ft to 6ft x 8ft and modify them to allow four (4) expressive spaces and two (2) commercial spaces, formerly three (3) commercial spaces and three (3) expressive spaces; and
2. For the first commercial vending permitting cycle that began on May 1, 2023, extend the Temporary Commercial Use Permits from a November 30, 2023 end date to a December 31, 2023 end date; and
3. For all subsequent commercial vending permitting cycles, extend the Temporary Commercial Use Permits from six (6) months to approximately one (1) year; and
4. Reduce the time commercial and expressive vendors can leave their equipment unattended from three (3) hours to two (2) hours; and

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5. Require commercial vendors to prominently display their District-issued permit at all times while vending; and
6. Authorize staff to suspend and/or revoke commercial vending permits for failure to meet the minimum use and occupancy standards identified in the terms and conditions of the permit; and
7. Non-substantive edits to align the ordinance with current administrative practices or requirements; and

WHEREAS, if the BPC adopts staff's recommendation, staff will conduct an Opportunity Drawing on November 16, 2023 to assign 35 commercial vendors an Allotted Space, as well as to select an additional 40 applicants to serve as "alternates"; and

WHEREAS, staff will work to issue all permits effective January 5, 2024, when the next commercial vending permit cycle is scheduled to begin; and

WHEREAS, the proposed BPC actions, including without limitation, amending San Diego Unified Port District Code Article 8, Section 8.05 – Vending and Expressive Activity, Regulated, are Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land), and Sections 3.a. and 3.d.(6) of the District's Guidelines for Compliance with CEQA because the project would consist of amendments to the Port Code to improve the commercial vending and expressive activity program along the waterfront involving no expansion of use beyond that previously existing; and

WHEREAS, the District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2); and

WHEREAS, the proposed BPC actions complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses; and

WHEREAS, the proposed BPC action is consistent with the Port Act and, accordingly, the Public Trust Doctrine; and

WHEREAS, the proposed BPC action is considered excluded development

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pursuant to Sections 8.a. (Existing Facilities) and 8.d.(5) (Minor Alterations to Land) of the District's Coastal Development Permit Regulations because the project would involve amending the Port Code to improve the commercial vending and expressive activity program and the general public's experience along the waterfront that would involve a negligible expansion of use beyond that previously existing; and

WHEREAS, if the BPC approves this action, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717; and

WHEREAS, the approval would become effective after the 10th working day after notification to CCC staff, unless an appeal is filed with the CCC within that time limit; and

WHEREAS, staff recommends the BPC (1) adopt a resolution finding the BPC action exempt under CEQA, including, but not limited to, CEQA Guidelines Sections 15301 and 15304; and (2) authorize amending San Diego Unified Port District Code Article 8, Section 8.05 – Vending and Expressive Activity, Regulated to modify the number, location and sizes of allotted spaces in certain designated areas, and to update the commercial vending permitting cycle and to authorize the Executive Director to suspend or revoke commercial vending permits for failure to comply with the District's Ordinance or the terms of the Permit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. Based on the entire record available to the BPC and the findings set forth in this Resolution, the BPC finds that an Ordinance amending the San Diego Unified Port District Code Article 8, Section 8.05- Vending and Expressive Activity, Regulated to modify the number, location and sizes of allotted spaces in certain designated areas and to update the commercial vending permitting cycles, and to authorize the executive director to suspend or revoke commercial vending permits for failure to comply with the District's Ordinance or the terms of the Permit are exempt pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) and Sections 3.a. and 3.d.(6) of the District's Guidelines for Compliance with CEQA because the project would consist of amendments to the Port Code to improve the commercial vending and expressive activity program along the waterfront involving no expansion of use beyond that previously existing.

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3. The BPC finds that none of the six exceptions to the use of a categorical exemption apply (CEQA Guidelines Section 15300.2).

4. The BPC finds that the action complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses.

5. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC action is consistent with the Public Trust Doctrine.

6. The BPC finds that the BPC actions are considered excluded development pursuant to Sections 8.a. (Existing Facilities) and 8.d.(5) (Minor Alterations to Land) of the District's Coastal Development Permit Regulations because the project would involve amending the Port Code to improve the commercial vending and expressive activity program and the general public's experience along the waterfront that would involve a negligible expansion of use beyond that previously existing.

7. Subject to BPC approval of this Action, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717, whereby the approval would become effective after the 10th working day after notification to CCC staff, unless an appeal is filed with the CCC within that time limit.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of November 2023, by the following vote: