

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

CONDUCT A PUBLIC HEARING AND ADOPT AN ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15301 AND 15311, AND AMENDING SAN DIEGO UNIFIED PORT DISTRICT (SDUPD) CODE ARTICLE 8, SECTION 8.07 – REGULATION OF MOTORIZED MOBILITY DEVICES AND PEDICABS ON 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, 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, Staff recommends amending this Section of the San Diego Unified Port District (SDUPD) Code Section 8.07 – Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands, to protect the safety of pedestrians and other individuals on District tidelands; and

WHEREAS, the proposed ordinance would, among other things, prohibit Motorized Mobility Devices (MMDs) and Pedicabs on pedestrian areas, including, sidewalks, promenades, multi-use pathways, nature trails, plazas, parking garages, parks, and piers; and

WHEREAS, exceptions to this prohibition in the proposed in the amended Code Section 8.07 include:

- 1) Motorized devices defined by the Americans with Disabilities Act (ADA), which are utilized by those with mobility disabilities.

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- 2) Segway tour operators, which must have member city permits.

WHEREAS, the proposed ordinance would also prohibit the reckless operation of MMDs, the operation of MMDs while intoxicated by any substance, the operation of MMDs by any person under the age of 16, and enact other prohibitions intended to protect public safety; and

WHEREAS, the proposed ordinance would also impose insurance requirements on Pedicab Operators, Shared Mobility Device Providers, and Segway tour operators; and

WHEREAS, Staff recommends the Board conduct a public hearing and adopt an Ordinance finding the Board action exempt under the California Environmental Quality Act (CEQA), including, but not limited to, CEQA guideline sections 15301 and 15311 and amending San Diego Unified Port District Code (SDUPD) Article 8, Section 8.07 – Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands; and

WHEREAS, the proposed Board action, including without limitation, to conduct a public hearing and adopt an ordinance amending San Diego Unified Port District Code Article 8, Section 8.07 – Regulation of Motorized Mobility Devices and Pedicabs on District Tidelands, is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and 15311 (Accessory Structures), and/or Sections 3.a.(8)(11) and 3.i.(3) of the District's Guidelines for Compliance with CEQA because the project would consist of amending the San Diego Unified Port District Code Article 8 that would involve no expansion of use beyond that previously existing and would not result in a significant cumulative impact due to the continuation of the existing use; 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 Board actions comply with Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power; and

WHEREAS, the Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine and consequently, the proposed Board actions are consistent with the Public Trust Doctrine; and

WHEREAS, the proposed Board action is considered excluded development pursuant to Section 8.a(3)(7) (Existing Facilities) of the District's Coastal Development Permit Regulations because the project would consist of

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amending the San Diego Unified Port District Code Article 8 that would involve negligible or no expansion of use beyond that previously existing; and

WHEREAS, if the Board approves these actions, District staff would notify California Coastal Commission (CCC) staff in accordance with Coastal Act Section 30717; and 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 frame.

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

Section 1. That, based on the entire administrative record, the BPC finds that the BPC action is exempt under the California Environmental Quality Act, including but not limited to, CEQA Guideline Sections 15301 and 15311.

Section 2. That Section 8.07 to Article 8 of the San Diego Unified Port District Code is hereby amended to read as follows:

SECTION NO. 8.07 – REGULATION OF MOTORIZED MOBILITY DEVICES AND PEDICABS ON DISTRICT TIDELANDS

(a) Purpose

The proliferation of electric bicycles, electric scooters, electric skateboards, and other non-traditional motorized mobility devices has resulted in these devices being readily available within the District's jurisdiction. Motorized Mobility Devices can create public safety hazards when used in areas with pedestrian activity. The use of Pedicabs in pedestrian areas can also create public safety hazards. The purpose of this Section of the San Diego Unified Port District Code is to protect the safety of pedestrians and other individuals on District tidelands by prohibiting the use of Motorized Mobility Devices and Pedicabs on pedestrian areas, including Sidewalks, Promenades, Multi-use Pathways, Nature Trails, Plazas, public parking garages, Piers, and Parks, and to enact other regulations related to Motorized Mobility Devices and Pedicabs intended to protect public safety within the District's jurisdiction.

(b) Definitions

1. "Electric Bicycle" – Any bicycle that is equipped with a motor that provides assistance when the rider is pedaling or that can exclusively propel the bicycle.

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2. “Electrically Motorized Board” – As defined by California Vehicle Code Section 313.5, as may be amended from time to time.
3. “Electric Personal Assistive Mobility Device” or “EPAMD” – As defined by California Vehicle Code Section 313, as may be amended from time to time.
4. “EPAMD Rental Business” – A Person who manages, owns, or operates a business that offers for rent one or more EPAMDs for guided tours.
5. “Executive Director” – Executive Director of the San Diego Unified Port District.
6. “Geofencing” – The creation of a virtual geographic boundary, defined by Global Positioning System (“GPS”), radio-frequency identification (“RFID”), or other technology, that enables a Shared Mobility Device Provider to regulate speed, issue notifications, and take other actions, when a Shared Mobility Device in its fleet enters or leaves an area.
7. “Member City”- The five (5) member cities of the District, which are: the cities of San Diego, Chula Vista, National City, Imperial Beach, and Coronado.
8. “Motorized Bicycle” – As defined by California Vehicle Code Section 406, as may be amended from time to time.
9. “Motorized Mobility Device” or “MMD” – A mobility device, such as an EPAMD, Electrically Motorized Board, Motorized Scooter, Motorized Bicycle, Pedicab, skateboard, hoverboard, or similar device, that is motorized for the purpose of locomotion.
10. “Motorized Scooter” – As defined by California Vehicle Code Section 407.5, as may be amended from time to time.
11. “Multi-Use Pathway” - A pathway intended or suitable for more than one mode of travel (e.g., accommodating both pedestrian and bicycle traffic), such as walking, jogging, cycling, and wheelchair use.
12. “Nature Trail” – An unpaved pathway.

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13. “Other Power-Driven Mobility Device” or “OPDMD” – As defined by the Americans with Disabilities Act and related regulations, as may be amended from time to time.
14. “Park” – Open and publicly accessible space intended primarily for recreation.
15. “Pedicab” - As defined by California Vehicle Code Section 467.5, as may be amended from time to time.
16. “Pedicab Operator” – Any Person who operates a Pedicab within the District, including but not limited to (a) owners; (b) employees; and (c) individual contractors.
17. “Pedicab Parking Zone” – A parking area designated for the specific purpose of Pedicabs waiting for, dropping off, or picking up passengers.
18. “Pier” - A fixed structure that extends over the water and is used as a landing place for vessels. A pier can also be used for other nonlanding activities such as, but not limited to, recreation and commercial uses.
19. “Plaza” – An open space designed for public use defined by surrounding buildings or streets.
20. “Promenade” – A public pathway adjacent to the water.
21. “Shared Mobility Device” or “SMD” – An MMD for shared use or transportation in exchange for financial compensation via the use of a digital application or other electronic or digital platform.
22. “Shared Mobility Device Provider” or “SMD Provider” – A Person that, in exchange for financial compensation, offers, makes available, or otherwise provides an SMD to another Person via the use of a digital application or other electronic or digital platform.
23. “Sidewalk” – A dedicated pathway providing pedestrian connectivity adjacent and parallel to a roadway.
24. “Stage” – To park or otherwise place an MMD or Pedicab in a location to offer for public use or rides.

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25. “Wheelchair” – As defined by the Americans with Disabilities Act and related regulations, as may be amended from time to time.

(c) Regulations and Enforcement of Motorized Mobility Devices

1. No Person shall ride or otherwise operate a Motorized Mobility Device or Pedicab in or on any Sidewalk, Promenade, Multi-use Pathway, Nature Trail, Plaza, public parking garage, Pier, or Park within the District’s jurisdiction.
 - a) Exception: The prohibitions in section 8.07(c) 1. do not apply to the use of Wheelchairs, OPDMDs, or other Mobility Devices as defined by the Americans with Disabilities Act (ADA) by individuals with mobility disabilities.
 - b) Exception: The prohibitions in section 8.07(c) 1. do not apply to the use of an EPAMD as part of an organized guided tour by an EPAMD Rental Business that has an active Permit to operate in the District’s jurisdiction issued by a Member City.
 - c) Additional exceptions may be approved by the Executive Director or the Executive Director’s designee from time to time, within the Executive Director’s sole discretion.
2. No Person shall stage or abandon an MMD in or on a Sidewalk, Promenade, Multi-use Pathway, Nature Trail, Plaza, public parking garage, Pier, or Park, or in any area in such a way as to restrict the free movement of vehicles or pedestrians or otherwise create a safety hazard within the District’s jurisdiction.
3. No Person shall operate an MMD without an equipped brake that will enable a braked wheel skid on a dry, level, and clean pavement.
4. No Person shall operate an MMD while intoxicated by any substance or operate an MMD while ingesting any alcoholic beverage or substance.
5. No Person shall operate an MMD recklessly in willful or wanton disregard for the safety or property of others.

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6. No Person under the age of eighteen (18) years old shall operate an MMD without a helmet.
7. No Person under the age of sixteen (16) years old shall operate an MMD.
8. No Person shall operate an MMD with passengers unless the MMD is designed for use by multiple people.
9. Pedicabs shall only be operated by one individual, and the total number of passengers shall be limited by the total number of seatbelts provided in the Pedicab passenger seating area.
10. No Person shall operate an MMD while carrying any package, bag, or bundle that prevents the use of at least one hand to steer.
11. City of San Diego Operating Permit Required for Pedicabs: It shall be unlawful for any Person to operate a Pedicab within those portions of the District that share jurisdictional boundaries with the City of San Diego, without first having obtained a Pedicab Operating Permit from the City of San Diego, pursuant to San Diego Municipal Code Sections 83.0104 through 83.0107, as may be amended from time to time. All Persons with a Pedicab Operating Permit shall operate Pedicabs in strict conformance to, and in compliance with, their respective Pedicab Operating Permit, as may be updated and revised from time to time. This conformance and compliance shall include all requirements for passenger safety, speed, lighting, and noise restrictions.
12. City of San Diego Operating Contract Required for SMD Providers (SMD Operating Contract): Any SMD Provider operating within those portions of the District that share jurisdictional boundaries with the City of San Diego shall obtain and strictly comply with the SMD Operating Contract, pursuant to San Diego Municipal Code Sections 83.0301 through 83.0314, as may be amended from time to time.
13. SMD Providers must establish Geofencing of SMDs to prohibit riding, operating, parking, staging, or abandoning of SMDs, in any manner that violates this Section.
14. City of San Diego Operating Permit Required for EPAMD Tour Providers: It shall be unlawful for any Person to provide tours

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within those portions of the District that share jurisdictional boundaries with the City of San Diego, without first having obtained an EPAMD Rental Business Permit from the City of San Diego, pursuant to San Diego Municipal Code Sections 83.0401 through 83.0407, as may be amended from time to time.

15. City of Chula Vista Permit required for SMD Providers: Any SMD Provider operating within those portions of the District that share jurisdictional boundaries with the City of Chula Vista shall obtain and strictly comply with an SMD permit issued by the City of Chula Vista, pursuant to Chula Vista Municipal Code Sections 5.67.010 through 5.67.120, as may be amended from time to time.
16. Insurance Required:
 - a) It shall be unlawful for any Person to operate a Pedicab within the District unless at the time of such operation that Person has a valid policy of Commercial General Liability Insurance, as more fully described in subsection 16. d), below.
 - b) It shall be unlawful for any SMD Provider to stage or cause to be staged an SMD within the District, operate an SMD, or allow another Person to operate an SMD within the District unless at the time of such staging and operation, the SMD Provider has in effect a valid policy of Commercial General Liability Insurance, as more fully described in subsection 16. e), below.
 - c) It shall be unlawful for any EPAMD Rental Business to operate within the District unless at the time of such operation the EPAMD Rental Business has in effect a valid policy of Commercial General Liability Insurance, as more fully described in subsection 16. f), below.
 - d) For any Pedicab Operator, said policy of insurance shall cover the District and its operations in the amount of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of the Pedicab Operator.

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- e) For any SMD Provider, said policy of insurance shall cover the District and operations in the amount of not less than Five Million Dollars (\$5,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of the operator of any SMD Provider.
 - f) For any EPAMD Rental Business, said policy of insurance shall cover the District and operations in the amount of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of the EPAMD Rental Business.
 - g) Certificates of insurance in a form acceptable to the District evidencing the existence of the necessary insurance policies, and original endorsements naming the District as an additional insured, shall be provided to the District and kept on file with the District during the entire time the Pedicab Operator or SMD Provider or EPAMD Rental Business Permit or contract with the City of San Diego or with the District's other Member Cities, is in effect.
17. Compliance with All Laws: In addition to all requirements set forth in this Section 8.07, all Persons shall comply with all applicable local, state, and federal laws, rules, regulations, and other requirements pertaining to the operation of MMDs, SMDs, and Pedicabs, including but not limited to those of the San Diego Unified Port District Code, any Member City, and the California Vehicle Code.
- (d) Penalties

Violations of this Section 8.07 may be punished in accordance with Article 0, Section 0.11 of this Code.
 - (e) Administrative Regulations

The Executive Director or the Executive Director's designee may promulgate and implement administrative regulations pertaining to

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the use and administration of Motorized Mobility Devices, Shared Mobility Devices and Pedicabs, and the installation of signs and markings pertaining to the regulations in this Section.

(f) Invalidity

If any section, subsection, sentence, clause, phrase, or portion of this Section 8.07 is held 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.

(Enacted – August 21, 2001 – Ordinance No. 2145)

(Amended - May 9, 2023 – Ordinance No. XXXX)

Section 3. This ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of May 2023, by the following vote: