

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

**ORDINANCE AMENDING SAN DIEGO UNIFIED PORT DISTRICT CODE SECTION 4.09 - REGULATION OF VESSELS – G STREET MOLE MOORING TO IMPLEMENT COMMERCIAL FISHING INDUSTRY BEST PRACTICES INCLUDING: VERIFICATION OF FISH LANDING RECEIPTS; MARINE INSURANCE LIABILITY REQUIREMENTS FOR NEW PERMITTEES AND INTRANSIT COMMERCIAL FISHERMEN; U.S. COAST GUARD SAFETY VESSEL INSPECTIONS; APPLICANT CREDIT CHECKS; REGULATION OF OVERNIGHT COMMERCIAL FISHING ACTIVITIES OR PREPARATIONS, AND ADDITIONAL UPDATES OF EXISTING CODE LANGUAGE**

**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**, the District operates and maintains vessel slips at Tuna Harbor Basin Mooring Facility, also known as G Street Mole, for commercial fishing vessels which home-port in San Diego Bay; and

**WHEREAS**, use of slips is regulated by District Code Section 4.09 and primarily limited to active commercial fishing vessels licensed or documented by the California Department of Fish & Wildlife (CDFW) and the United States Coast Guard (USCG); and

**WHEREAS**, permits for mooring are issued by the District's Maritime Department for a period of time not to exceed 12 months; and

**WHEREAS**, the District completed a benchmark study in 2017 and identified best practices in the operation of commercial fishing facilities along the U.S. West Coast; and

**WHEREAS**, a series of incidents involving fishing vessels at several West Coast facilities, including the Port of San Diego, indicates the need to implement administrative requirements regarding liability, safety, and accountability; and

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**WHEREAS**, staff recommended implementation of certain best practices to improve administrative and operational practices in the management of G Street facilities, including:

- 1) Verification of fish landing receipts by CDF&W;
- 2) Marine insurance coverage for “in-transit” vessels and all new mooring permittees;
- 3) Regular vessel safety inspections for all vessels by the USCG;
- 4) Credit checks for prospective permittees;
- 5) Regulation of overnight accommodations; and
- 6) Update and clarification of current Section 4.09 language.

**WHEREAS**, the Board conducted a public hearing on the proposed changes on December 11, 2018.

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

Section 1. District Code 4.09, is hereby amended in its entirety to read as follows, effective January 11, 2019:

## **SECTION NO. 4.09 – REGULATION OF VESSELS –TUNA HARBOR BASIN**

Sections:

- 4.09.01 Permission Required.
- 4.09.02 Mooring Permits.
- 4.09.03 Temporary Mooring Assignments.
- 4.09.04 In-transit Vessel Berth Assignments.
- 4.09.05 Shelter.
- 4.09.06 Rules for Overnight Commercial Fishing Activities or Preparations.
- 4.09.07 Sanitation Facilities.
- 4.09.08 Illegal Discharge.
- 4.09.09 Violation(s).
- 4.09.10 Commercial Fishermen Permit Holder

### **4.09.01**

**Permission Required.** No person shall moor a vessel at the Tuna Harbor Basin commercial fishing facility without permission from the District in the form of (1) a mooring permit, (2) a temporary mooring assignment, (3) an in-transit vessel berth assignment from the Executive Director or his/her authorized representative, or the vessel is taking shelter in accordance with Section 4.09.05. The Executive Director shall have the authority to determine the terms and conditions of any such permits and assignments, including without limitation restrictions as to safety, traffic, congestion, protection of persons, and property and the environment, in addition to the requirements contained herein. Each vessel requires a separate mooring

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permit, temporary mooring assignment, or in-transit vessel assignment regardless of owner.

#### **4.09.02**

**Mooring Permits.** Mooring permits shall be for a period of time not to exceed twelve (12) months, subject to termination at any time upon thirty (30) days prior written notice. In order to be eligible for a mooring permit the owner/operator of each vessel shall comply with all of the following requirements, prior to April 30<sup>th</sup> of each calendar year, and submit verification of such requirements to the Port District in such form as is acceptable to the Executive Director:

1. The owner/operator of each vessel shall submit a completed permit application form provided by the Port District.
2. The owner/operator of each vessel shall provide documentation to establish proof of ownership by submitting either the vessel's California Department of Motor Vehicles (DMV) undocumented vessel certificate number (CF) or United States Coast Guard (USCG) certificate of documentation.
3. Each vessel shall have a valid Commercial Boat Registration from the California Department of Fish and Wildlife for the forthcoming year.
4. Each vessel owner/operator shall have and likewise present a valid commercial fishing license from the California Department of Fish and Wildlife for the forthcoming year.
5. The owner/operator of each vessel shall submit written documentation to the Port District that the vessel is assessed at the commercial fishing vessel rate by some state and/or county within the United States of America.
6. The owner/operator of each vessel shall, if requested, authorize, in writing, that the Port of San Diego may obtain proof of commercial fishing activity sufficient to demonstrate annual qualifying amounts from the California Department of Fish and Wildlife using the "Information Request Form for Commercial Landing/CPFV Logbook information." Annual qualifying amounts are as follows:
  - i) Vessels of thirty (30) feet length overall and below – five thousand dollars (\$5,000.00).

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- ii) All other vessels exceeding thirty (30) feet length overall – ten thousand dollars (\$10,000.00).
  - iii) A vessel exceeding said thirty (30) feet may be made subject to subparagraph i) above and not ii) if said vessel is granted a waiver by the Executive Director or his/her authorized representative because of its configuration and capacity to engage in commercial fishing. Such waiver shall be discretionary and shall be supported by reasoning in writing, which shall be filed with the Office of the District Clerk. Denied waivers will be reconsidered with a review of all original documents and any additional evidence by the Executive Director whose final decision will be binding.
- 7. The dockage for a six (6) month period shall be paid in full, in advance, at the time a mooring permit is issued for mooring of the vessel. The dockage shall be based on the length overall of the vessel and measured in accordance with Port of San Diego Tariff No. 1-G, Item No. 0550. Dockage for any subsequent additional period not to exceed six months must also be paid in full in advance of the subsequent period.
- 8. All persons requesting a mooring permit for the first time or for a newly acquired vessel are required to provide proof of marine insurance in the following coverage and liability limits: Owner/Operators of commercial fishing vessels shall provide proof of Protection & Indemnity (P&I) insurance with limits of liability not less than \$300,000. Such insurance shall include coverage for bodily injury including death and medical expenses as well as property damage including coverage for removal and wreck including expenses and costs to dispose of and remove contaminants connected with the vessel. San Diego Unified Port District shall be named an Additional Insured.
- 9. All vessels must meet federal requirements as found in 46 CFR Part 28 – Requirements for Commercial Fishing Industry Vessels and USCG's "Voluntary Safety Initiatives and Good Marine Practices for Commercial Fishing Industry Vessels." In addition, all vessels must maintain a valid Commercial Fishing Vessel Safety decal (CFVS) issued within the past two years, including those that are currently exempt.

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10. A review of the prospective applicant's financial responsibility may be required. A prospective applicant (mooring permittee) is defined as an owner/operator who has not occupied a slip at the Tuna Harbor Basin at any time during the previous 12-month period from the time of application.

#### **4.09.03**

**Temporary Mooring Assignments.** Upon application, the Executive Director may, in his/her judgment, find that unavoidable accident, unusual occurrences, including but not limited to medical incapacity of the operator, temporary inoperability of the vessel, or other unusual circumstances may relieve the boat owner/operator from the active fishing vessel proof requirements. In such cases, a temporary mooring assignment may be issued on a month-to-month basis during the continuation of such unusual circumstances, for a total period not to exceed six (6) months. All requirements for a mooring permit set forth in Section 4.09.02 that are not explicitly waived shall continue to apply to temporary assignments.

#### **4.09.04**

**In-transit Vessel Berth Assignments.** The owner/operator of an in-transit commercial fishing vessel may apply for an in-transit vessel berth assignment and may be authorized to moor at the facility for a period of time not to exceed twenty (20) days within any continuous thirty (30) day time span. At the discretion of the Executive Director this time limitation may be extended upon showing a bona fide need.

1. An in-transit commercial fishing vessel is defined as a commercial fishing vessel, which is not permanently home-ported in San Diego Bay. An in-transit berth assignment may be authorized subject to the following requirements:
  - a. The owner/operator of each in-transit commercial fishing vessel shall submit a completed berth reservation form provided by the Port District.
  - b. The owner/operator of each in-transit commercial fishing vessel shall pay, in advance, the dockage for in-transit commercial fishing vessels as provided in Port of San Diego Tariff No. 1-G, Item No. 0570(B).
  - c. The owner/operator of each in-transit commercial fishing vessel shall comply with requirements in Section 4.09.02 subparts 2, 3, 4, 5, and 9 as referenced above.
  - d. All persons requesting an in-transit vessel berth assignment are required to provide proof of marine insurance in the following coverage and liability limits:  
Owner/Operators of commercial fishing vessels shall provide proof of Protection & Indemnity (P&I) insurance with limits of

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liability not less than \$300,000. Such insurance shall include coverage for bodily injury including death and medical expenses as well as property damage including coverage for removal and wreck including expenses and costs to dispose of and remove contaminants connected with the vessel. San Diego Unified Port district shall be named an Additional Insured.

- e. All in-transit vessels berthed at Fish Harbor Pier must have a crew member aboard the vessel 24 hours a day.

#### **4.09.05**

**Shelter.** A vessel captain or operator using a facility of the Port of San Diego, without an application, or having taken shelter at a facility due to extreme conditions of weather or distress, will do so at his/her own risk and will immediately notify Port District of the situation. At the discretion of the Executive Director, the vessel its owner(s), agent(s), and charterer(s) may be held responsible for any and all charges, damages, and losses of any nature whatsoever that result from taking and using such facility, upon alleviation of extreme weather conditions or distress conditions, vessel shall immediately vacate Port of San Diego facilities. If vessel repair is necessary, prompt, and immediate repair of vessel shall occur and written proof of due diligence concerning the repair of vessel, such as job orders and purchase orders shall be submitted to the Port's Maritime staff.

#### **4.09.06**

**Rules for Overnight Commercial Fishing Activities or Preparations.** No owner/operator of a vessel berthed at the Tuna Harbor Basin shall allow any person to occupy the vessel as a place of residence or overnight accommodation, nor shall any person occupy such a vessel as a place of residence or overnight accommodation except as allowed below:

1. If authorized by the Executive Director or his/her designated representative, owner/operators and crew members, who are actively engaged in commercial fishing activities or preparations, may stay on their vessel overnight not to exceed 7 nights in any 10-day period. No others are allowed overnight stays on such vessels. At the discretion of the Executive Director this time limitation may be extended upon the showing of a bona fide need.
2. If authorized by the Executive Director, or his/her designated representative, owner/operators and crewmembers of in-transit commercial fishing vessels may stay onboard overnight while the vessel remains an in-transit commercial fishing vessel. No others are allowed overnight stays on such vessels.

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3. Requests for overnight stays can be initiated by contacting the Port's Maritime Office at 619-686-6345 (24/7 contact number).

#### **4.09.07**

**Sanitation Facilities.** All vessels moored at Tuna Harbor are required to have adequate sanitation facilities on board at all times. Adequate sanitation facilities are considered to be fully operational Type I, II, or III Coast Guard-approved marine sanitation device or portable toilet that prevents direct discharge of human waste into the harbor.

#### **4.09.08**

**Illegal Discharge.** No person shall discharge, or allow to be discharged any oil, sewage, grey water, or other materials into the waters or upon the lands of the Port District and shall obey, and comply with all applicable laws, rules and regulations adopted by federal, state, District or other local government bodies, including without limitation environment laws.

#### **4.09.09**

**Violation(s).** The San Diego Unified Port District may institute legal action in any court of competent jurisdiction against any person who violates any provisions as set forth in the Tariff published by the San Diego Unified Port District (Refer to Tariff No. 1-G, Item No. 0300), The Executive Director is authorized to remove any vessel from the assigned mooring area to the nearest vessel impound or other place, within the Port of San Diego, when any vessel is moored in violation of any applicable law or regulation, including without limitation this Section 4.09 and any approved berth reservation issued pursuant thereto. In the event of removal, the registered owner shall be informed promptly of the impound location and be provided an opportunity to remove vessel.

#### **4.09.10**

**Commercial Fishermen Permit Holder.** A "commercial fishermen permit holder," as referenced in Port of San Diego Tariff No. 1-G, Item No. 0525, is defined as the named owner/operator of a vessel that meets the requirements of a "Commercial Fishing Vessel" as shown in Port of San Diego Tariff No. 1-G, Item No. 0445 who has been issued a permit to moor at the Tuna Harbor Basin Commercial fishing facility. Owners of multiple vessels will require a separate permit for each vessel.

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

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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 11<sup>th</sup> day of December, 2018, by the following vote: