

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION AMENDING BOARD OF PORT
COMMISSIONERS POLICY NO. 356 - LESSEES'
WAGE RATES – TO COMFORM WITH EXISTING
STATE LAW AND RENAME THE POLICY –
PAYMENT OF PREVAILING WAGES**

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 1, (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, California State law requires the payment of Prevailing Wages for Public Works projects; and

WHEREAS, Prevailing Wages are the general prevailing rate for per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft classification or type of worker; and

WHEREAS, Prevailing wages are established by the State Department of Industrial Relations (DIR) for each trade and occupation employed in the performance of Public Works and other areas of employment as determined by the DIR; and

WHEREAS, the Prevailing Wage rates are usually based on rates specified in collective bargaining agreements; and

WHEREAS, Public Works is construction, design or repair work done under contract and paid for in whole or in part by public funds; and

WHEREAS, Public agency construction projects including those performed by the District and other public agencies are considered Public Works projects, as they are paid for in whole or in part by public funds, and therefore require the payment of Prevailing Wages, pursuant to the California Labor Code (Prevailing Wage Law); and

WHEREAS, the District's Board of Port Commissioners (BPC) Policy No. 356 – Lessees' Wage Rates for Tenants, was adopted in 1972 and is presently not in conformance with the Prevailing Wage Law; and

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WHEREAS, the current Policy does not conform with the Prevailing Wage Law, as it limits the payment of Prevailing Wages to persons who are “employed by lessee on the tidelands” which fails to account for independent contractors and other laborers who perform Public Works on tideland leaseholds but are not employed by District tenants; and

WHEREAS, Prevailing Wages must be paid for Public Works on tenant leaseholds, if construction is required under a lease or contract and the project includes but is not limited to, a contribution of money by the District, credits, reduced rent, waived obligations, or any other form of assistance as defined by the Prevailing Wage Law; and

WHEREAS, the current Policy is also overbroad as it could be read to require the payment of Prevailing Wages to District tenant employees involved in “service industry” jobs such as servers or waiters for hotels, restaurants and marinas, as well as potentially many other tenant employees; and

WHEREAS, the Prevailing Wage Law does not require payment of Prevailing Wages to workers performing services; and

WHEREAS, the Office of the General Counsel (OGC) recommends that BPC Policy No. 356 be amended to require payment of Prevailing Wages on tidelands Public Works projects, not require the payment of Prevailing Wages for service jobs and conform to all requirements of State law; and

WHEREAS, the OGC also recommends renaming the policy to “Payment of Prevailing Wages” to accurately describe the subject and purpose of the Policy; and

WHEREAS, the proposed changes to BPC Policy No. 356 address the issues presented and conform with existing State law; and

WHEREAS, the proposed changes to BPC Policy No. 356 are also consistent with the District’s present contract language for District projects and present lease language for tenant development projects.

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

That BPC (Board of Port Commissioners) Policy No. 356 – Lessees’ Wage Rates – to Conform with Existing State Law and rename BPC Policy No. 356 – Payment of Prevailing Wages, as amended, a copy of which is on file in the Office of the District Clerk, is hereby adopted.

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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 16th day of January 2019, by the following vote: