

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2780

ORDINANCE AMENDING SAN DIEGO UNIFIED PORT DISTRICT'S REGULATION OF PILOTAGE AND PILOTS FOR THE SAN DIEGO BAY INCLUDING IMPLEMENTATION OF NEW REPORTING, TRAINING, PROFESSIONAL DEVELOPMENT AND OVERSIGHT REQUIREMENTS IN ACCORDANCE WITH NATIONAL TRANSPORTATION SAFETY BOARD RECOMMENDATIONS

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, a Harbor Pilot is US Coast Guard licensed vessel captain that has additional expertise related to a specific harbor or other body of waters and uses that expertise to guide oceangoing vessels in restricted waters, during times of restricted visibility or other hazard, and during berthing and unberthing operations; and

WHEREAS, District Ordinance 1603 establishes the current professional, health and safety guidelines for conducting pilotage services on San Diego Bay; and

WHEREAS, in November 2011, the National Transportation Safety Board (NTSB) issued recommendations to states that established national, industry-wide standards for safety and oversight of harbor pilots; and

WHEREAS, in January 2012, the California Business, Transportation and Housing Agency (which has since been renamed the California State Transportation Agency, CalSTA) responded to NTSB stating that pilotage oversight authority rests with each respective port. That letter included a request that California's Ports respond directly to NTSB on issues related to safety recommendations for harbor pilots and pilotage; and

WHEREAS, in response to this request, District staff entered into a collaborative process with the San Diego Bay Pilotage Advisory Council in order to develop updated language pertaining to oversight, reporting, training, and safety measures contained in Ordinance 1603; and

WHEREAS, recommended changes include additional oversight and reporting, revised training measures, fatigue mitigation training, and work-rest ratio standards; and

WHEREAS, In May 2013, staff presented the proposed changes to NTSB and the NTSB was generally satisfied with the oversight and training standards, but requested additional measures to address pilot fatigue which have since been added to staff's recommendations.

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

Section 1. DEFINITIONS:

a. **AUTHORIZED PILOT**: Licensed pilots who are designated by the Board of Port Commissioners of the San Diego Unified Port District to provide piloting services to vessels entering, leaving or shifting within the Port of San Diego.

b. **PILOT**: An authorized pilot holding a valid license or endorsement as first class pilot, issued by the Coast Guard, attesting to his or her qualification to serve as pilot within the restrictions placed on the license, who places his/her knowledge of San Diego Bay at the disposal of a vessel's master in connection with vessels entering, leaving or shifting within the Port of San Diego.

c. **PILOTAGE**: The charge, calculated in accordance with the provisions for pilotage charges established by the Board of Port Commissioners and published in the Port of San Diego Tariff, assessed against a vessel, which is subject to the payment of such charge, under the rules of the Tariff for authorized piloting services rendered or proffered, to vessels entering, leaving or shifting within the Port of San Diego.

d. **ENTERING**: Vessels inward bound from the open sea to the Port of San Diego.

e. **LEAVING**: Vessels outward bound which leave the Port of San Diego for the open sea.

f. **SHIFTING**: Vessels which move from point to point within the Port of San Diego.

g. **VESSEL**: Vessel shall be deemed to include steamboats, motorboats, sailing vessels, barges, lighters, ferryboats, pleasure craft and any and all other watercraft, including a vessel acting by or through its owners, agents, master, operators, charterers, or any other persons duly authorized to act on behalf of such vessel.

h. **PERSON:** Shall include a natural person as well as a partnership, association or corporation.

i. **BOARD:** Shall mean the Board of Port Commissioners of the San Diego Unified Port District.

j. **DISTRICT:** Shall mean the San Diego Unified Port District.

k. **PORT OF SAN DIEGO:** Shall mean the properties under the jurisdiction of the San Diego Unified Port District; whose jurisdiction includes its authority to make and enforce all necessary rules and regulations governing the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the Bay of San Diego.

Section 2. PILOTAGE CHARGES: The Board shall establish pilotage charges in the Port of San Diego Tariff. Pilotage charges shall be collected by those persons designated and authorized by the Board as pilots.

Section 3. REGULATION OF PILOTS:

a. The Board shall

(1) Determine from time to time the number of pilots for the Port of San Diego as are required for public convenience and necessity.

(2) Designate the person or persons authorized to perform pilot services at the Port of San Diego. Information requested by the District shall be submitted to the Board, together with evidence of a person's United States Coast Guard qualifications to serve as a pilot in San Diego Bay, including without limitation any United States Coast Guard license or endorsement. Any such designation and authorization may be suspended or revoked by the Board for cause. Further, subsequent to the effective date of this ordinance, any such designation and authorization shall be for a term of One (1) year and shall thereafter be renewed as a matter of course unless withheld, suspended or revoked by the Board for cause. Such pilot shall provide pilot services in an independent capacity and not as an officer, employee, agent or independent contractor of the District. Such pilot shall not construe his or her designation and authorization as a grant of exclusive right to perform pilot services.

b. No person shall perform pilot services at the Port of San Diego unless duly designated as an authorized pilot by the Board and such designation and authorization has not been revoked, suspended or withheld.

Section 4. WEEKLY AND QUARTERLY TRAFFIC DISPATCH LOG REPORTING REQUIREMENTS:

c. Weekly Traffic Dispatch Log Reporting Requirement Pilots shall submit a "Traffic Dispatch Log", electronically each week via e-mail to the District. Information in the dispatch log shall include but is not limited to the following: (1) The date and time that each job commences; (2) The date and time that each job finishes; (3) Total number of hour/minutes for each job; (4) The name of the job (vessel/barge); (5) Job description (berth, sea, anchorage etc.); (6) Pilot's name.

d. Quarterly Traffic Dispatch Log Reporting Requirement Pilots shall submit to the District a quarterly report that includes hard copies of all of the weekly "Traffic Dispatch Logs" for the preceding quarter in order to verify those reports that have been submitted electronically.

e. Port of San Diego Maritime Operation's staff will review each "Weekly and Quarterly Traffic Dispatch Log" for accuracy, completeness and to review conformance with hours of service rules.

Section 5. ACCOUNTING BY PILOT OF MONIES RECEIVED

a. Annual Reporting of Actual and Forecasted Net Income: Not later than Ninety (90) days following the close of the pilots' fiscal year, the pilots shall submit to the District an income statement (revenues, expenses and net income) for the prior fiscal year. The pilots shall certify that the income statement includes all revenues resulting from services rendered in accordance with the Port of San Diego Tariff and is accurate in all other respects. The pilots shall also submit a proforma income statement for the current fiscal year showing estimated revenues, expenses and net income. Attached to said proforma income statement shall be: 1) explanations of expected significant changes in revenue and expenses as compared to the prior fiscal year; and 2) statements of funds held in reserve accounts for special purposes such as replacement of the pilot boat, payment of insurance premiums and pilot training programs. The pilots shall also submit a schedule of planned capital expenditures for the current fiscal year. Said capital expenditures shall be defined as expenditures for furniture, fixtures and equipment costing more than Five Hundred Dollars (\$500.00).

b. Right to Audit: The District or its authorized representative(s) may audit any monthly accounting of gross income or other financial data required from the pilots. The pilots will fully cooperate with any such audit(s) and shall provide the District or its authorized representative(s) with unrestricted access to all documents and books of account necessary to verify the accuracy of the monthly accounting of gross income and other financial data submitted by the pilots.

Section 6. PHYSICAL REQUIREMENTS FOR PILOTS:

a. In order to determine the physical fitness of a person to be designated and authorized as a pilot or to continue to serve as a pilot, each pilot shall be required to pass a general physical examination at least once every year. Such examination shall be obtained at the expense of the District from a duly-licensed, District-designated physician. The report of such physician, on a completed Coast Guard physical examination form or the equivalent, shall be delivered to the District no later than the last day of the month following the first anniversary of each pilot's most recent physical exam satisfactorily completed.

b. The physical examination of all pilots shall demonstrate that he or she is in all respects physically fit to perform his or her duties as a pilot and shall include without limitation chemical testing for dangerous drugs in accordance with 49 CFR, Part 40, an examination of eyesight, hearing, heart and blood pressure, encompass the requirements specified in 46 CFR, Subparts 10.205(d) and 10.709, and anything else necessary in the opinion of the examining physician.

c. Any pilot who is physically incapacitated as a pilot or has not actually performed pilot services aboard a vessel for a period of Sixty (60) days or more shall not return to service as an active pilot until after passing a physical fitness examination as required for examination of any other pilot. Such examinations shall be obtained at the expense of the pilot from a duly-licensed, District-designated physician.

Section 6a. TRAINING, PROFESSIONAL DEVELOPMENT AND OVERSIGHT PROGRAM FOR PILOTS AT THE PORT OF SAN DIEGO:

The pilots shall abide by all standards and requirements as presently existing and hereinafter amended by the Port of San Diego Pilotage Advisory Council regarding training, professional development and oversight of pilotage on San Diego Bay.

Section 7. RULES OF CONDUCT FOR PILOTS:

a. If a vessel in the charge of a pilot shall cause or sustain injury or damage to the vessel, persons or other property by going aground, or by collision or otherwise, the pilot in charge of the ship at the time of accident shall render a full report thereof, in writing, to the Board of Port Commissioners within Twenty Four (24) hours thereafter.

b. Pilots shall report to the Coast Guard any deviations in aids to navigation or any dangers to navigation that may come to their knowledge.

c. All changes, limitations and renewals of a pilot's Coast Guard license or endorsement shall be reported to the Port of San Diego within Five (5) business days of such event. Each pilot shall furnish a copy or facsimile of his or her Coast Guard license to the Port of San Diego, and produce such current license upon request. A pilot, on boarding a vessel, if required by the master thereof, shall exhibit a pilot's license or photostatic copy thereof.

d. Pilots shall, at their own expense, purchase, maintain in good repair and insure all necessary equipment and facilities required to provide their services.

e. Pilots shall provide the District with notice of planned absences of Thirty (30) days or more from pilot duties and notify the District when circumstances of personal illness or physical incapacity prevent the performance of pilot services for a period exceeding Thirty (30) days.

f. Pilots shall not perform pilot services in the absence of a current physical examination satisfactorily completed and on file with the District.

g. Pilots shall maintain complete and accurate books of account, records, financial statements and documentation in support of and related to all aspects of the operation of pilot services that they provided to vessels in the Port of San Diego. Pilots shall acknowledge the right of and provide access for the District at any and all reasonable times to examine and audit said books, records, financial statements and documentation without restriction for the purpose of determining the accuracy thereof and of the charges assessed to vessels for pilot services.

h. No pilot shall charge, collect or receive and no person, firm, corporation or association shall pay for pilotage or other related services any greater, less or different amount, directly or indirectly, than the rates or charges published within the Port of San Diego Tariff.

i. Pilot designations and authorizations may be withheld, suspended or revoked by the Board for causes which may include, but are not limited to the following:

- (1) Failure to provide required reports.
- (2) Submission of false or inaccurate reports.
- (3) Failure to provide required liability insurance.
- (4) Failure to maintain accurate and complete books and provide District with access to same.
- (5) Misconduct, incompetency, negligence, inattention to duty, intoxication or use of illegal narcotic substances.
- (6) Violation of any of the rules or regulations provided by the Board for the governing of pilots and pilotage contained herein or in the Port of San Diego Tariff.

Section 8. Ordinance No. 1603, adopted August 10, 1993, entitled "An Ordinance Regulating Pilotage and Pilots for the Port of San Diego" is hereby repealed.

Section 9. 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 16th day of September 2014, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama

NAYS: None.

EXCUSED: None.

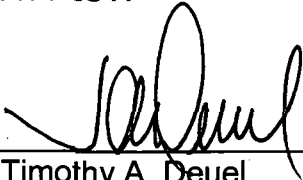
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk



(Seal)