

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2844**

**ORDINANCE ADOPTING ARTICLE 12 OF THE SAN  
DIEGO UNIFIED PORT DISTRICT CODE –  
REQUIRED REPORTING OF UTILITY USE ON  
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**, pursuant to the San Diego Unified Port District Act of 1962 and the California Coastal Act, the District is charged with the planning and development of California State tidelands around San Diego Bay; and

**WHEREAS**, the District is responsible for overseeing public and private investments on the tidelands in a manner consistent with the Public Trust for the people of the State of California; and

**WHEREAS**, the Board of Port Commissioners (Board) adopted the District’s Climate Action Plan (CAP) that establishes Greenhouse Gas (GHG) emissions reduction goals, policies, and measures to reduce GHG emissions from all operations on District tidelands; and

**WHEREAS**, this Required Reporting of Utility Use on Tidelands Ordinance is designed to help the District align with the State of California GHG emissions reductions objectives. This Ordinance is intended to implement the goals of the District’s CAP to track and monitor GHGs through Utility Usage reporting for all Utility Account Holders doing business on the tidelands; and

**WHEREAS**, many Utility Account Holders on Tidelands have already made great strides in reducing GHG emissions, and many have also voluntarily provided information to help the District track progress towards the District’s CAP goals. However, accurate tracking of the District’s overall progress requires the participation of all Utility Account Holders on Tidelands and this Ordinance is intended to address that issue by obligating all Utility Account Holders on Tidelands to report Utility Usage in the same manner; and

**WHEREAS**, the District is aware of the enactment of Assembly Bill 802 and the potential that the State of California may eventually adopt rules for required reporting of Utility Usage in the future which may cover some Utility Account Holders on Tidelands. Therefore, this Ordinance allows the Executive Director to modify or suspend the requirements hereunder if either the State or Federal government adopts a similar or more comprehensive Utility performance rating or reporting program. The District will continue to monitor and participate in the Assembly Bill 802 rulemaking process.

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

That Article 12 of the San Diego Unified Port District Port Code is hereby adopted to read as follows:

## **ARTICLE 12**

### **REQUIRED REPORTING OF UTILITY USE ON TIDELANDS**

#### **SEC. 12.01 – TITLE, PURPOSE AND INTENT**

This Chapter may be referred to as the Required Reporting of Utility Use on Tidelands Ordinance.

To encourage efficient use of Utilities, and allow the District to track progress towards its CAP goals, this Section requires Utility Account Holders within the District to report Utility Usage data using the Data Collection System from which the District shall receive only aggregated data and not individual Utility Account Holder data.

#### **SEC. 12.02 - DEFINITIONS**

For purposes of this Section, the following terms shall have the following meanings:

1. “Aggregated Data” means any data which combines reported Utility Use data from at least three Utility Accounts and from which individual Utility Account usage data cannot be discovered.
2. “Compliance Data” means data sufficient to determine a Utility Account Holder’s compliance with this Section (e.g., whether a Utility Account Holder reported required data fields and Utility usage data, but not the amount of Utility usage reported).
3. “Data Aggregator” means a person or entity, separate from the District and not an employee of the District, which is retained to receive Utility Account Holder data and other data fields from the Data Collection System and provide

the District with Aggregated Data and Compliance Data, and provide data to an Independent Auditor in accordance with Section 12.04. The Data Aggregator shall be retained as follows:

- (1) by the San Diego Port Tenants Association in accordance with a Memorandum of Understanding with the District, or
- (2) directly by the District, but only if no retention under subsection (1) is made by March 1, 2016 or if a retention under subsection (1) is subsequently terminated, and then only until such time as a retention under subsection (1) is made.

4. "Data Collection System" means Environmental Protection Agency ENERGY STAR® Portfolio Manager® or a comparable online tool used for managing facility data that is selected by the District.

5. "Executive Director" means the Executive Director of the District or his or her designee.

6. "Independent Auditor" means a person or entity, separate from the District and not an employee of the District, selected by District to conduct an independent audit in accordance with Section 12.04.

7. "Utilities" or "Utility" means electricity, natural gas, steam, heating oil, water, other product, or renewable on-site electricity generation used for the purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in a building, property or facility.

8. "Utility Account Holder" means an entity or person, as defined by California Public Resources Code Section 25116 or any successor legislation, who has an account with any provider of Utilities that is separately metered.

### **SEC. 12.03 - REQUIRED REPORTING OF UTILITY USAGE DATA**

- (a) Beginning on March 1 each year (August 1, 2016 for the first year), all Utility Account Holders within the District shall utilize the Data Collection System to: (1) complete a profile and input all data fields required by the District as determined by the Executive Director, to include, but is not limited to, property information and property use details; and, for those Utility Account Holders that are Direct Access customers, documentation of emissions factors for energy procured outside of SDG&E; and (2) report all monthly Utility usage for all meters for the preceding calendar year by granting permission to all of its Utility providers to report Utility usage data directly to the Data Collection System where such process is available, and, for any Utility provider for which direct reporting is not available, Utility Account

Holder shall enter such Utility usage directly into the Data Collection System.

- (b) On or before April 1 of each year (September 1, 2016 for the first year), all Utility Account Holders within the District shall respond to external data requests through the Data Collection System to the Data Aggregator allowing the Data Aggregator to receive all requested data from the Data Collection System.
- (c) Data Aggregator shall report any Aggregated Data to the District as requested by the District but shall not, in any event, disclose individual Utility Account Holder data to the District. The District shall make such Aggregated Data publically available within sixty (60) days.
- (d) Data Aggregator shall report any Compliance Data to the District as requested by the District.
- (e) Data Aggregator shall not disclose any individual Utility Account Holder data to anyone except, pursuant to an independent audit in accordance with Section 12.04, Data Aggregator shall disclose all data for the Utility Account Holder being audited to the Independent Auditor for the time period of the independent audit.

#### **SEC. 12.04 – INDEPENDENT THIRD PARTY AUDITS**

- (a) To confirm the accuracy of Utility Usage data reporting and to verify compliance with this Section, the Port Auditor shall have the authority to have an independent audit conducted of any Utility Account Holder's compliance with this Section.
- (b) If the Port Auditor chooses to have an independent audit conducted, the Port Auditor shall notify the Utility Account Holder of the audit and the time period covered by the audit, and shall identify the Independent Auditor.
- (c) Within 30 days of request, Utility Account Holder shall provide all documents requested by Independent Auditor to verify all reported Utility Usage data for the time period covered by the audit. Such documents shall not be disclosed by the Independent Auditor to the District.
- (d) Independent Auditor shall report to the District whether Utility Account Holder has accurately reported data. Independent Auditor shall provide audit findings to the District as requested. However, the audit findings shall not disclose individual Utility

Account Holder data to the District. For example only, an audit finding may be that water usage was underreported by 1000 gallons, but shall not disclose that reported usage was 15,000 gallons when actual usage was 16,000 gallons.

- (e) If Independent Auditor determines that Utility Account Holder failed to accurately report any Utility Usage data with a discrepancy amount that is 5 percent of the accurate usage or greater, Utility Account Holder shall pay the District for the full cost of the third party audit within 30 days of the Utility Account Holder receiving invoice from the District. However, a Utility Account Holder shall not be responsible for audit costs to the extent that the inaccurate reporting was made by a Utility provider directly to the Data Collection System through no fault of Utility Account Holder.

#### **SEC. 12.05 - IMPLEMENTATION**

- (a) The Executive Director may adopt rules and procedures for the implementation of this Section.
- (b) The Executive Director may modify or suspend the requirements of this Section if:
  - (1) The State of California or Federal government adopts a similar or more comprehensive Utility performance rating or reporting program, and such program requires comprehensive rating and/or reporting; or,
  - (2) The Executive Director makes the finding that a technological deficiency related to the Data Collection System or Data Aggregator precludes compliance with this Section. Such modification or suspension may be lifted in full or part upon the finding that any such deficiency has been corrected.

#### **SEC. 12.06 - NOTICE AND CURE PERIOD AND ADMINISTRATIVE PENALTIES**

If the District determines that a Utility Account Holder has failed to comply with this Section, it shall provide written notice to the Utility Account Holder identifying the compliance issues. Utility Account Holder shall have 30 days from the date of the notice to cure all compliance issues and respond to any required additional external data requests through the Data Collection System to the Data Aggregator allowing the Data Aggregator to receive all requested data from the Data Collection System. In the event that Utility Account Holder fails to cure within the time period allowed, in addition to, and without limiting any other remedies available to the District, Administrative Penalties may be imposed

pursuant to District Code Section 0.11(i). Any later-enacted administrative penalty provision in the District Code shall also be applicable to this Article, unless otherwise provided therein. In no event shall failure to comply with this Article constitute a default under an existing District tenant's lease unless the District tenant's lease expressly provides otherwise.

**SEC.12.07- MISCELLANEOUS**

Nothing in this Section shall limit or waive any rights of the District under any lease, permit or other agreement with a Utility Account Holder or anyone.

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 8<sup>th</sup> day of December, 2015, by the following vote:

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

NAYS: None.

EXCUSED: None.

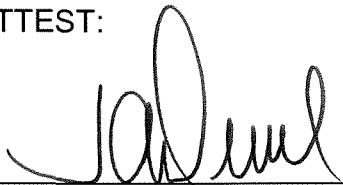
ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk

(Seal)