

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2857

ORDINANCE AMENDING ARTICLE 8 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE TO ADD SECTION 8.31 CONFIRMING SAN DIEGO UNIFIED PORT DISTRICT'S AUTHORITY OVER LOCAL LAWS

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 allows the Board to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, during the California Legislature's 1962 First Extraordinary Session, Senate Bill No. 41 was introduced by Senator Hugo Fisher to establish the District and prescribed the organization, management, financing, and other powers and duties of the District, including the method of formation, conveyance of tide and submerged lands to the District in trust, and upon specified conditions, development of tide and submerged lands and harbor facilities, taxation, and issuance of bonds; and

WHEREAS, the Legislature approved the establishment of the District and on May 8, 1962, the Port Act was signed into law by Governor Edmond G. Brown and went into effect on January 1, 1963; and

WHEREAS, section 6 of the Port Act required the Board of Supervisors of San Diego County to call an election on the formation of the District; and

WHEREAS, section 11 of the Port Act required that the election be held in two parts; one consisting of those votes cast in the City of San Diego, and the other part consisting of the combined votes cast in Coronado, National City, Chula Vista and Imperial Beach; and

WHEREAS, the electors in the City of San Diego and the combined electors in Coronado, National City, Chula Vista and Imperial Beach approved the formation of the District and as a result, pursuant to sections 12 and 13 of the Port Act, the District was established; and

WHEREAS, sections 5 and 5.5 of the Port Act established the boundaries of the District and granted to the District specific authority to manage the tidelands and submerged lands granted to the District; and

WHEREAS, section 5 of the Port Act reserves to the District, specific authority to own, operate and manage public trust lands, which includes regulatory, taxing, and police power within the boundaries of the District; and

WHEREAS, section 14 of the Port Act requires that upon the establishment of the District, every member city convey all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which were owned by the city, including any such lands which have been granted in trust to the city by the state in the San Diego Bay, and any pueblo lands that lie within the tidelands and submerged lands in the San Diego Bay, together with any facilities thereon which were owned by the City of San Diego; and

WHEREAS, section 14 of the Port Act provides that after the establishment of the District, title to such granted lands shall reside with the District, and the District holds such lands in trust for the uses and purposes and upon the conditions which are declared in the Port Act; and

WHEREAS, section 19 of the Port Act provides that the District's Master Plan as adopted by the District's Board of Port Commissioners (Board) as to all lands and waters under the jurisdiction of the District shall control where any such provision conflicts with any local zoning ordinance; and

WHEREAS, section 25 of the Port Act provides that the District may take by grant, purchase, gift, devise, lease or otherwise acquire, hold and enjoy and lease and dispose of real and personal property of every kind, within the District, necessary to the full or convenient exercise of its powers; and

WHEREAS, section 30 of the Port Act allows the District, within the boundaries of the District, to acquire, purchase, take over, construct, maintain, operate, develop, and regulate any and all facilities, aids, equipment, or property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries, or recreation in the District; and

WHEREAS, section 35 of the Port Act allows the Board to do all acts necessary and convenient for the exercise of its powers; and

WHEREAS, section 55 of the Port Act requires the Board 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 territorial limits of the District; and

WHEREAS, section 56 of the Port Act requires the Board to make and enforce local police and sanitary regulations relative to the construction, maintenance, operation and use of all public services and public utilities in the

District, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation; and

WHEREAS, section 57 of the Port Act allows the Board to acquire, construct, erect, maintain or operate within the District, all improvements, utilities, appliances or facilities which are necessary or convenient for the promotion and accommodation of commerce, navigation, fisheries and recreation, or their use in connection therewith upon the lands and waters under the control and management of the Board, and it may acquire, maintain and operate facilities of all kinds within the District; and

WHEREAS, section 68 of the Port Act requires that upon the establishment of the District, the District became the successor of the county or such city whose tide and submerged lands have been included therein with respect to the management, conduct and operation of the harbor and with respect to the use, possession and title to such portions of those lands and they shall continue to be used by the District pursuant to the Port Act; and

WHEREAS, section 70 of the Port Act requires that, upon the establishment of the District, the District became the successor of the county and member cities as to all powers theretofore vested in the county or member city or exercisable by its officers, which were by the provisions of the Port Act granted to the District or are exercisable by its officers; and

WHEREAS, section 70 of the Port Act also requires that the title to, and possession and control of any works, structures, appliances, improvements and equipment of the kinds designated in the Port Act, owned or held by or in trust for the county or each of the member cities or by any officer or board thereof, in trust or otherwise, for any purpose the District is authorized to acquire and use pursuant to the Port Act, are to be transferred to and vested in the District and thereafter owned, operated and controlled by the District; and

WHEREAS, section 79 of the Port Act states that the provisions of the Port Act apply to any municipal corporation which is governed under a freeholders' charter even if such provisions are inconsistent with the charter or its amendments, it being declared by the State Legislature that such provisions are a matter of statewide concern and are to prevail over any inconsistent provisions in any charter; and

WHEREAS, section 87 of the Port Act requires that the tide and submerged lands conveyed to the District by any city included in the District shall be held by the District in trust and may be used for purposes in which there is a general statewide purpose as set forth in the Port Act; and

WHEREAS, in section 6009 of the California Public Resources Code the State Legislature found and declared the following:

(a) Upon admission to the United States, and as incident of its sovereignty, California received title to the tidelands, submerged lands, and beds of navigable lakes and rivers within its borders, to be held subject to the public trust for statewide public purposes, including commerce, navigation, fisheries, and other recognized uses, and for preservation in their natural state; and

(b) The state's power and right to control, regulate, and utilize its tidelands and submerged lands when acting within the terms of the public trust is absolute; and

(c) Tidelands and submerged lands granted by the State Legislature to local entities remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission; and

(d) Grantees are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust, without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises; and

(e) The purposes and uses of tidelands and submerged lands is a statewide concern; and

WHEREAS, when section 6009 was adopted, State Senator Christine Kehoe submitted a letter to the Senate's Daily Journal to "clarify the legislative intent" of SB 1350 (which enacted section 6009); and

WHEREAS, Senator Kehoe stated that section 6009 "was declaratory of existing law," and added the following to the State record:

"The purpose of adding Section 6009 to the Public Resources Code is to codify and restate existing common law in the area of public trust and tidelands. The intent of this codification is to clarify that the management and administration of these lands by the State and its grantees, which exercise management authority over state lands, is an issue of statewide concern and, specifically, that this authority cannot be circumvented by, nor can any management structure for such lands be altered through, the local ballot-initiative process."

WHEREAS, section 6009.1 of the Public Resources Code requires that state lands held in trust remain state lands, subject to state regulation, providing that:

- (a) Granted public trust lands remain subject to the supervision of the state and the state retains its duty to protect the public interest in granted public trust lands; and
- (b) the state acts both as the trustor and the representative of the beneficiaries, who are all of the people of this state, with regard to public trust lands, and a grantee of public trust lands, including tidelands and submerged lands, acts as a trustee, with the granted tidelands and submerged lands as the corpus of the trust; and

WHEREAS, as a result of state law governing District activities, including the Port Act and the tidelands trust, no ordinance of the Port or of any of the member cities may conflict with that law; and

WHEREAS, the District may expressly incorporate by reference other local law into its regulations but does not do so by implication; any such incorporation must be express and, absent such express incorporation, the District's rules, regulations and procedures are to be read to exclude application of local law; and

WHEREAS, when the District adopts a regulation of a subject, said regulation is presumed to displace all local law on the subject even if the District regulation is less extensive or less demanding than other local law; and

WHEREAS, the District is compelled on behalf of the People of the State of California to protect the lands entrusted to it from unreasonable and improper regulation.

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

That Article 8 of the San Diego Unified Port District Code is amended to add Section 8.31 confirming the San Diego Unified Port District's authority over local laws as follows:

Section 1. That any local ordinance purporting to regulate District activities within or by the District in fields in which the District has acted are hereby expressly preempted, void and of no force or effect within the District, and shall not have any force and effect of law with respect to the District.

Section 2. That the District further specifically reserves its statutory right to preempt any local law purporting to govern or regulate District activities or expenditures.

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 21st day of April, 2016, by the following vote:

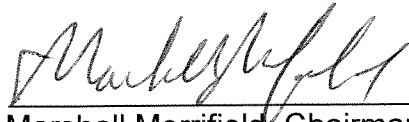
AYES: Bonelli, Malcolm, Merrifield, Moore, Nelson and Castellanos.

NAYS: None.

EXCUSED: Valderrama.

ABSENT: None.

ABSTAIN: None.

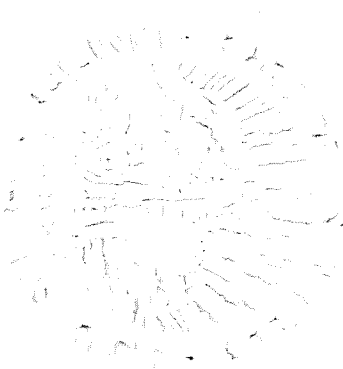


Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:



For / Timothy A. Deuel
District Clerk



(Seal)