

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2892

ORDINANCE ESTABLISHING THE "SAN DIEGO UNIFIED PORT DISTRICT FIREWORKS DISPLAY EVENT ORDINANCE" AS ARTICLE 14 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE TO GOVERN EXISTING AND PROPOSED NEW FIREWORKS DISPLAYS

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, Sections 4, 21, 35, 55, 56 and 87 of the Port Act grant the District broad general police powers, including the ability to enact ordinances to protect, preserve and enhance physical access to the bay, the natural resources of the bay, and the quality of water in the bay; and

WHEREAS, Section 55(a) of the Port Act requires the Board of Port Commissioners (BPC) 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 55(b) of the Port Act requires the BPC to regulate and control the anchoring, mooring, towing and docking of all vessels; and

WHEREAS, Section 55(c) of the Port Act authorizes the BPC to establish and maintain a harbor police and harbor fire protection within the territorial limits of the District; and

WHEREAS, Section 56 of the Port Act requires the BPC to make and enforce such 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 therein as are now vested in the District; and

WHEREAS, it is necessary for the District to regulate fireworks display events within San Diego Bay or the Imperial Beach oceanfront that require a discretionary action by the District or that are operated by the District's tenants in order to encourage and promote commerce, navigation, fisheries, and recreation in and through its jurisdiction; and

WHEREAS, the regulations included in this Ordinance are adopted pursuant to the authority granted to the District by the Port Act and the Port District Code to regulate 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, to regulate and control the anchoring, mooring, towing and docking of all vessels, and to enact ordinances to protect, preserve and enhance physical access to the bay, the natural resources of the bay, and the quality of water in the bay; and

WHEREAS, on May 25, 2017, the District has considered and certified a Final Environmental Impact Report pursuant to the California Environmental Quality Act, State CEQA Guidelines, and District procedures relative to the adoption of this Ordinance; and

WHEREAS, the District Clerk has caused notice to be duly given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and affidavit of mailing on file with the District Clerk; and

WHEREAS, the District has considered all comments received at the public meeting on May 25, 2017 prior to adoption of this Ordinance; and

WHEREAS, the District's approval of this Ordinance reflects the BPC's independent judgement and analysis.

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

Section 1. That the San Diego Unified Port District Code is amended to add Article 14 regulating fireworks display events requiring a discretionary approval from the San Diego Unified Port District as follows:

ARTICLE 14 - FIREWORKS DISPLAY ORDINANCE

Section 14.01 – TITLE

The title of this article shall be known as the "San Diego Unified Port District Fireworks Display Event Ordinance."

Section 14.02 - PURPOSE

The purpose of this article is to establish a defined set of requirements and procedures by which the District and users of the District tidelands may continue to enjoy fireworks displays in and around San Diego Bay and the Pacific Ocean near Imperial Beach. Further, it is the intent of this article to protect the health,

safety and welfare of persons, property and the environment within the District's jurisdiction and to comply with federal, state and local laws and regulations governing the handling, possession, storage, loading, staging, launching and detonating of fireworks.

Section 14.03 – DEFINITIONS

For purposes of this article, certain words and phrases not otherwise defined in District Code section 0.03 shall be defined as follows, unless the context requires a different meaning:

“Alternative fireworks” means fireworks produced with new pyrotechnic formulas that replace perchlorate with other oxidizers and propellants that burn cleaner, produce less smoke and reduce pollutant waste loading to surface waters.

“Applicant” means a person who submits an application to the District for a permit pursuant to this article.

“Application” means the District's written form to be submitted by a person requesting a permit pursuant to this article.

“Barge” means a water vessel from which fireworks are launched or detonated.

“Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, pollution prevention and educational practices, maintenance procedures, tools and other management practices used to prevent or reduce the discharge of pollutants directly to receiving waters to the maximum extent practicable. BMPs may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this article.

“District” means the San Diego Unified Port District.

“District General Counsel” means the General Counsel of the District or her/his designee.

“Executive Director” means the Executive Director (President/CEO) of the District or her/his designee.

“Fireworks” means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment, including aerial shells, low-level comet or multi-shot devices or ground-level displays. The term "fireworks" includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

“Fireworks Display Event” means the handling, possession, storage, loading, staging, launching or detonating of fireworks on the land or waters within the District’s jurisdiction for viewing by the public or any group of persons exceeding twenty-five (25) in number.

“Fireworks Operator” means a pyrotechnic operator licensed by the State of California, who by examination, experience and training has demonstrated the required skill and ability in the use and discharge of fireworks as authorized by the license granted, and who is responsible for supplying, staging, launching or detonating the fireworks used in a fireworks display event.

“Fireworks Organizer” means a person who proposes to conduct a fireworks display event and who is responsible for obtaining the funding and approvals for a fireworks display event and for contracting with a fireworks operator to produce a fireworks display event.

“Fourth of July Fireworks Display Event” means a fireworks display event that occurs annually on the Fourth of July to express patriotism and civic pride and to celebrate the signing of the Declaration of Independence of the United States of America.

“Non-Fourth of July Fireworks Display Event” means a fireworks display event that occurs on a date other than the Fourth of July.

“Operation Clean Sweep” means the annual cleanup event sponsored by the San Diego Port Tenants Association and District, among others, where volunteers remove trash and debris from San Diego Bay.

“Permit” means the District-issued authorization for an applicant to conduct a fireworks display event pursuant to this article.

“Person” means an individual, association, partnership, nonprofit organization, corporation, limited liability company, trustee, municipality, public agency or other legal entity, or the agent or employee thereof.

“Pounds” means the net explosive weight of fireworks.

“Salute” means an aerial shell as well as other pyrotechnic items whose primary effects are loud noise generated by detonation and flash of light.

“San Diego Bay Fourth of July Fireworks Display Event” means the annual fireworks display event which occurs on the Fourth of July at up to four (4) locations in northern San Diego Bay and is currently known as the “Big Bay Boom.” The San Diego Bay Fourth of July Fireworks Display Event will be referred to in this article as the Big Bay Boom.

"San Diego Water Board" means the California Regional Water Quality Control Board for the San Diego Region.

"San Diego Water Board General Permit" means California Regional Water Quality Control Board for the San Diego Region Order No. R9-2011-0022/NPDES No. CAG999002, General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Firework Pollutant Waste Discharges to Waters of the United States, including any updates and amendments thereto.

"Sponsor" means a person who contributes funds, services, or other forms of assistance to a fireworks organizer in support of a fireworks display event.

Section 14.04 – PROHIBITIONS

(a) It shall be unlawful for any Person to handle, possess, store, load, stage, launch or detonate Fireworks on land or water within District jurisdiction without first having obtained a Permit from the Executive Director as provided in this section. By signing said Permit, each Permit recipient acknowledges and agrees to comply with all of the applicable terms and conditions that may be specified in such Permit and this article.

(b) Any Person who receives a discretionary lease, permit, license or other entitlement for use or a contract, grant, subsidy, loan or other form of financial assistance from the District in connection with a Fireworks Display Event shall also obtain a Permit from the Executive Director as provided in this article. By signing said Permit, each Permit recipient acknowledges and agrees to comply with all of the applicable terms and conditions that may be specified in such Permit and this article.

Section 14.05 - PERMITS - APPLICATION

Whenever the privilege of doing any of the acts hereinbefore enumerated in this article requires obtaining a Permit from the Executive Director, the following procedure shall be followed:

(a) An application for a Permit shall be filed with the District not less than sixty (60) days before the date on which the Fireworks Display Event is proposed to occur.

(b) The application shall be in writing, in a form approved by the District, and shall include, at minimum, the following information: the Person who proposes to handle, possess, store, load, stage, launch or detonate Fireworks, including if applicable the Fireworks Organizer, Fireworks Operator and Sponsor of the Fireworks Display Event; the date, time and duration of the proposed Fireworks Display Event; the location(s) of the proposed Fireworks Display Event, including the loading, staging and launching sites; the total number of

pounds, shell sizes and types of Fireworks to be used; and the proposed event transportation and parking management plan for the Fireworks Display Event.

(c) The application shall include copies of the Applicant's Notice of Intent for coverage under the San Diego Water Board General Permit, the San Diego Water Board's Notice of Enrollment of the proposed Fireworks Display Event under said General Permit, and the Best Management Practices Plan approved by the San Diego Water Board for the proposed Fireworks Display Event.

(d) When the application is deemed complete, the Executive Director shall review the application and determine whether the proposed Fireworks Display Event complies with all of the requirements of section 14.07 (Permit – Conditions of Approval) of this article. If the proposed Fireworks Display Event complies with all of the requirements of section 14.07 (Permit – Conditions of Approval) of this article, the Executive Director shall issue a Permit.

(e) Each Permit issued shall state the date, time and location of the Fireworks Display Event for which it is issued, the name of the Person to whom it is issued and all mandatory conditions upon which the Permit is given.

(f) An application for a permit for a Fireworks Display Event at a location not identified in Section 14.07(a) of this article may be granted by the Executive Director provided that (i) environmental review for the proposed Fireworks Display Event has been completed and approved or certified by the District as required by the California Environmental Quality Act, Public Resources Code § 21000, et seq. prior to issuance of a permit and (ii) the applicant has obtained all other permits and approvals as required by law, including without limitation approvals and permits required under the California Coastal Act, Public Resources Code § 30000, et seq.

Section 14.06 - PERMITS – PUBLIC NOTICE

(a) Within five (5) business days after the issuance of a Permit pursuant to this article, the Executive Director shall give public notice of the issuance of such Permit by posting a copy of the Permit on the District's website.

Section 14.07 - PERMITS - CONDITIONS OF APPROVAL

All permits issued by the Executive Director shall be subject to the following terms and conditions:

(a) Location of Fireworks Display Events.

1. Fourth of July Fireworks Display Events shall occur only at the following locations:

- A. Big Bay Boom, at up to four (4) locations in northern San Diego Bay;
- B. Fourth of July Imperial Beach Fireworks, at one (1) location along the Imperial Beach Pier;
- C. Fireworks Over Glorietta Bay, at one (1) location in Glorietta Bay;
- D. Chula Vista Fourth of July, at one (1) location adjacent to the Chula Vista Bayfront; and
- E. National City Fourth of July, at one (1) location adjacent to the National City Bayfront.

2. Non-Fourth of July Fireworks Display Events shall occur only at the following locations:

- A. National Steel and Shipbuilding Company (NASSCO) shipyard, not to exceed two (2) displays per year along NASSCO Pier 12;
- B. U.S.S. Midway Museum, not to exceed twenty-three (23) displays per year on or adjacent to the U.S.S. Midway Museum;
- C. San Diego Symphony Summer Pops Concerts, not to exceed twenty (20) displays per year adjacent to Embarcadero Marina Park South;
- D. Our Lady of Rosary Church Annual procession, not to exceed one (1) display per year along Harbor Drive and at end of Grape Street Pier; and
- E. Chula Vista Bayfront, not to exceed two (2) displays per year adjacent to the Chula Vista Bayfront.

(b) Duration of Fireworks Display Events.

1. Fourth of July Fireworks Display Events shall not exceed twenty (20) minutes in duration.

2. Non-Fourth of July Fireworks Display Events shall not exceed ten (10) minutes in duration.

(c) Size of Fireworks Display Events.

1. Fourth of July Fireworks Display Events:

A. Big Bay Boom, not to exceed a cumulative 5,342 pounds of fireworks with shell sizes not to exceed 10 inches;

B. Fourth of July Imperial Beach Fireworks, not to exceed 456 pounds of fireworks with shell sizes not to exceed 10 inches;

C. Fireworks Over Glorietta Bay, not to exceed 397 pounds of fireworks with shell sizes not to exceed 10 inches;

D. National City Fourth of July, not to exceed 400 pounds of fireworks with shell sizes not to exceed 8 inches; and

E. Chula Vista Fourth of July, not to exceed 400 pounds of fireworks with shell sizes not to exceed 8 inches.

2. Non-Fourth of July Fireworks Display Events:

A. NASSCO shipyard, not to exceed 281 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 439 pounds of fireworks per year;

B. U.S.S. Midway Museum, not to exceed 235 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 1,759 pounds of fireworks per year;

C. San Diego Symphony Summer Pops Concerts, not to exceed 95 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 1,498 pounds of fireworks per year;

D. Our Lady of Rosary Church Annual procession, not to exceed 18 pounds of fireworks with shell sizes not to exceed 6 inches; and

E. Chula Vista Bayfront, not to exceed 114 pounds of fireworks per display with shell sizes not to exceed 8 inches, or a cumulative total of 228 pounds of fireworks per year.

(d) Fireworks Chemical Composition and Packaging.

1. Chemical Composition.

A. The Big Bay Boom Fourth of July Fireworks Display Event shall use Fireworks which contain no more than 0.32% copper (Cu) per pound of explosive firework material, unless the Applicant establishes in writing and to the satisfaction of the Executive Director that the total copper emissions from the proposed Big Bay Boom Fireworks Display Event will not exceed seventeen (17) pounds. Fireworks which do not conform to the foregoing

requirement, but were lawfully purchased prior to the effective date of this article, may be used for a period of six months after the effective date of this article.

B. All Fireworks Display Events shall use Alternative Fireworks produced with pyrotechnic formulas which replace perchlorate with other oxidizers and propellants that burn cleaner, produce less smoke and reduce pollutant waste loading to surface waters, unless the Applicant establishes in writing and to the satisfaction of the Executive Director that such Alternative Fireworks are not commercially available.

2. Packaging.

A. Prior to commencement of a Fireworks Display Event, the Fireworks Operator shall remove and properly dispose of all packaging, wrapping and labels (excluding labels mandated by State or Federal laws) from all Fireworks to be used in the event.

B. Fireworks that include a plastic outer casing or non-biodegradable inner components that make up more than five (5) percent of the mass of the shell or device are prohibited.

(e) Protection of Sensitive Species and Habitat. The following conditions shall apply to Fireworks Display Events that occur between February 15 and September 15 (i.e., avian breeding season) and are located less than one (1) mile from any federally or state-listed avian species nesting colonies:

1. Location. Fireworks Display Events shall be located not less than one (1) mile from any federally or state-listed avian species nesting colony unless the maximum size of shells used in the event is limited to eight (8) inches.

2. Salutes. Fireworks Display Events shall not use concussion type, non-color shells such as "salutes" or "reports" during the initial twenty-five percent (25%) of the duration of any display (e.g., within the first 5 minutes of a 20-minute display).

3. Security. For Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) that occur within one-half mile of unprotected (i.e., unfenced) federally or state-listed nesting colonies or habitat areas, the Fireworks Organizer shall provide a minimum of two professional security guards to direct persons away from and to discourage trespass into sensitive nesting areas or habitat during such displays. In addition, the fireworks organizer shall provide security patrols of the water area to enforce the existing restrictions on access to unauthorized areas during such fireworks display events in the South Bay.

4. Signage. For Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) that occur within one half-mile of nesting colonies or habitat areas for federally or state-listed species, the Fireworks Organizer, in cooperation with the District, shall post temporary signage along primary access points to sensitive nesting colonies and habitat areas to identify safe viewing locations, to educate visitors on locations of sensitive wildlife habitats, to prevent viewers from trespassing into sensitive areas and to encourage appropriate viewing behavior.

5. Education. Beginning not less than seven (7) days before Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) located within one-half mile of federally or state-listed nesting colonies or habitat areas, the Fireworks Organizer shall implement a public education program using daily announcements on social media, press releases, and information posted at parks, boat launch facilities, marinas, yacht clubs and other viewing locations, to educate potential viewers regarding appropriate viewing and boat docking areas, to discourage trespass into sensitive wildlife habitat, and to remind viewers of appropriate viewing behavior in and near sensitive nesting colonies and habitat areas (e.g., appropriate disposal of trash, prevention of illegal fireworks, and safe boating procedures).

(f) Best Management Practices. Fireworks Display Events shall implement the following BMPs for Fireworks Display Event preparation, discharge and clean-up:

1. Fireworks Display Events on barges shall be set up at a loading facility in accordance with the requirements and under the supervision of the municipal fire department with jurisdiction over the event. Barges shall be inspected for leaks and other potential safety issues. Idling time for delivery trucks and loading equipment shall not exceed three (3) minutes and all such trucks and equipment shall be shut down when not in use.

2. Fireworks shall be brought to the barge and loaded in their U.S. Department of Transportation (DOT)-approved shipping cartons. Fireworks shall be encased in paper to prevent spillage of loose compounds. All packaging material and debris, including fuses, wires, shipping cartons and other wrapping, shall be properly disposed of in trash receptacles as the Fireworks Display Event is set up. Unless prohibited by the municipal fire marshal with jurisdiction over the Fireworks Display Event, barges shall be equipped with a fire-retardant debris barrier that extends six feet (6') in height, with openings no larger than ¼ inch, around the perimeter of the Fireworks launch area to contain debris.

3. Wires from the electric match placed in the Fireworks fuse shall be secured to avoid strain (such as wrapped around nails that are on the racks, tied to the racks, or tied to the mortar) to prevent wires from being pulled

out and falling into the water. Wire cables connected to computer firing equipment modules shall also be properly secured to ensure they remain on the barge during the Fireworks Display Event.

4. Once the Fireworks are prepared for launch, all trash and debris shall be removed from the barge while it is at the loading facility and prior to the barge being moved into position. No loose material shall be allowed on the barges during the Fireworks Display Event.

5. Following the Fireworks Display Event and upon expiration of any safety period required by the municipal fire marshal with jurisdiction over the Fireworks Display Event, the Fireworks Operator shall pick up all loose material on the barge, including all trash and debris resulting from the discharge of the Fireworks, to prevent it from being discharged into the water while the barge is underway.

6. Upon return to the loading facility, the Fireworks Operator shall clean the barge of all Fireworks related material and shall photograph and properly dispose of all Fireworks trash and debris. Unexploded Fireworks and related components shall be collected and disposed of by the Fireworks Operator in accordance with all applicable regulations. Fireworks Operators shall photograph the barge prior to and after cleaning.

7. Following the Fireworks Display Event and upon expiration of any safety period required by the municipal fire marshal with jurisdiction over the event, the Fireworks Organizer shall provide cleanup crews and boats to conduct sweeps of the fireworks detonation zone to gather any floating debris from spent Fireworks using hand held fishnets, pool skimmers, or other similar equipment.

8. The morning after the Fireworks Display Event, the Fireworks Organizer shall conduct another sweep of the fireworks detonation zone and quays, piers and docks adjacent to the fireworks detonation zone to remove Fireworks trash and debris. The Fireworks Organizer shall collect, bag, weigh and photograph all trash and debris collected prior to its disposal.

9. The morning after the Fireworks Display Event, the Fireworks Organizer shall perform a cleanup of the shoreline using crews of not fewer than five persons per barge on the shoreline adjacent to each barge location. Each crew member shall be equipped with trash bags and a trash grabber. The Fireworks Organizer shall collect, bag, weigh, and photograph all trash and debris collected prior to its disposal.

10. Within ten (10) business days after a Fireworks Display Event, the Fireworks Organizer shall provide the Executive Director with the photographs and written evidence of the weight of the Fireworks trash and debris

collected pursuant to subdivisions (5) through (9) above. If the dry weight of the Fireworks trash and debris collected is less than fifty percent (50%) of the net weight of fireworks launched during the Fireworks Display Event, the Fireworks Organizer shall offset the remaining amount by providing a crew of not fewer than two (2) persons for each barge or other launch site used in the Fireworks Display Event to participate in the next scheduled "Operation Clean Sweep" or other District-sponsored clean-up event prior to the end of the calendar year to recover trash and debris from San Diego Bay and/or the Imperial Beach Oceanfront.

11. For all Fourth of July Fireworks Display Events and for Non-Fourth of July Fireworks Display Events which are advertised to the public, the Fireworks Organizer shall double the number of trash receptacles at major viewing areas prior to each fireworks display event; trashcans shall be emptied and parks and viewing areas shall be cleaned following the event.

(g) Eelgrass Avoidance and Mitigation. For Fireworks Display Events with launching sites located in shallow water with the potential for eelgrass to occur, fireworks barges shall be held in place by tugboats and shall not require temporary moorings. To the extent practicable, barges shall be located in unvegetated deep water channels outside of eelgrass beds. Pre-event and post-event eelgrass surveys shall be completed to identify the distribution of eelgrass to assist tug operators and to assess any impacts to eelgrass that may occur. Through a pre-event training, tug operators shall be made aware of shallow eelgrass and instructed not to use high thrust in the vicinity of eelgrass beds. If an unanticipated impact to eelgrass occurs, this impact shall be mitigated by replacing the eelgrass at a ratio determined by the California Eelgrass Mitigation Policy.

(h) Event Transportation and Parking Management Plans. For all Fourth of July Fireworks Display Events and for Non-Fourth of July Fireworks Display Events which are advertised to the public, the Fireworks Organizer shall prepare and submit an event transportation and parking management plan (ETPMP) to the Executive Director for approval as part of the Application, which shall be designed to ensure safe and convenient access to public viewing areas while limiting conflicts between transportation modes and reducing impacts on surrounding transportation facilities to the maximum extent feasible. The ETPMP shall take into account anticipated attendance, existing transportation and parking facilities, and other concurrent public events in the surrounding areas, and shall include but is not limited to the following:

1. Transportation management strategies, including but not limited to, a public awareness program, traffic management and enforcement, incident management, and public transit and alternative modes of transportation management, which shall be implemented for the Fireworks Display Event; and

2. Parking management strategies, including but not limited to a public awareness program, coordination with parking vendors, off-site parking arrangements, designated areas for taxi and rideshare pick up/drop off, promotional programs with rideshare vendors, joint event ticketing programs with public transit agencies, and expanded shuttle operations.

(i) Compliance with San Diego Water Board General Permit.

1. Prior to the Executive Director's issuance of a permit pursuant to this article, the Applicant shall demonstrate that it has applied for coverage and has been enrolled under the San Diego Water Board General Permit.

2. The Applicant shall comply with all applicable terms, conditions and Best Management Practices required by the San Diego Water Board General Permit, which shall be incorporated into and considered in the terms, conditions and Best Management Practices of any permit issued by the Executive Director pursuant to this article.

3. The Applicant shall submit to the District copies of all applications, plans, reports and other documentation required by the San Diego Water Board General Permit, including without limitation the Notice of Intent, Fireworks Best Management Practices Plan, Public Fireworks Display Log and the Public Display of Fireworks Post Event Report, within the time required for the submission of such reports to the San Diego Water Board.

(j) Compliance with Other Required Permits: Prior to the Executive Director's issuance of a Permit pursuant to this article, the Applicant shall demonstrate that it has obtained and shall comply with all other permits and approvals required by federal, state and local laws and regulations including, without limitation, such permits and approvals as are required by the United States Coast Guard, California Coastal Act, the District Code, including Article 10 (Stormwater Management and Discharge Control), and the fire marshal of any city which has jurisdiction over all or any part of the activity allowed under said Permit.

(k) Compliance with Laws: The Applicant shall comply with any and all applicable rules and regulations promulgated by the District, including without limitation the District Code, the Chula Vista Bayfront Master Plan Settlement Agreement and Natural Resources Management Plan, and with the laws, rules and regulations of the United States of America and the State of California, and of any department or agency thereof, and with the applicable ordinances, rules and regulations of any city which has jurisdiction over all or any part of the activity allowed under said Permit. The Applicant's failure to comply with any applicable law, ordinance, rule or regulation shall be cause for immediate revocation of said permit and for the denial of applications for future Permits.

(l) Indemnity: The Applicant shall indemnify and hold harmless the District, its board, officers and employees, from any and all claim of loss, liability or damage arising out of the Fireworks Display Event, including but not limited to the issuance of the District Permit, or in connection with the handling, possession, storage, loading, staging, launching or detonating of Fireworks by the Applicant, its officers, employees, contractors, agents or other representatives, howsoever caused, whether such loss, liability or damage results, either directly or indirectly, from the acts, omissions or negligence of the Applicant, its officers, employees, contractors, agents or other representatives, in connection with the handling, possession, storage, loading, staging, launching or detonation of Fireworks pursuant to said Permit.

(m) Insurance: The Applicant shall file with the Executive Director, in a form approved by the District General Counsel, a policy of public liability and property damage insurance, in such amounts and form as the Executive Director may specify, indemnifying the District, its boards, officers and employees, as their interest may appear under the terms and conditions of said Permit. The Permit shall not become effective until after such policy of insurance has been received by the District.

(n) Performance Bond: For public Fireworks Display Events with over 500 spectators the Applicant shall post a faithful performance bond, in a form approved by the District General Counsel, or in lieu thereof the equivalent in cash, in an amount sufficient in the opinion of the Executive Director to cover costs associated with the Fireworks Display Event allowed under the permit, including without limitation the costs of providing security for the protection of sensitive species and habitat, and cleaning up and removing debris, rubbish and trash. The permit shall not become effective until after such faithful performance bond, or cash in lieu thereof, has been posted with and received by the District.

(o) Mitigation Measures: All permit applications shall be reviewed by the District for consistency with the Mitigation Monitoring and Reporting Program (MMRP) from the Final Environmental Impact Report for the San Diego Bay and Imperial Beach Oceanfront Fireworks Display Events Project, as certified by the Board of Port Commissioners, and all applicable mitigation measures from the MMRP shall be identified as required conditions of the approved permit issued by the District.

Section 14.8 – GENERAL PROVISIONS

(a) Preemption. The provisions of this article do not apply where any federal or state law regulates the handling, possession, storage, loading, staging, launching or detonating of Fireworks if the federal or state law preempts local regulation or the federal or state law is more restrictive.

(b) Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.

(c) Cost Recovery. The Applicant shall pay a fee to the District for the cost of services and administrative acts of the District incurred in processing a permit application.


Section 14.9 – ENFORCEMENT

Any person who violates this article or who fails to comply with the terms and conditions of a permit issued pursuant to this article shall be subject to punishment in accordance with District Code section 0.11, General Penalty, and section 0.13, Permit Violations.

Section 2. The administrative record for the District's approval of this Ordinance is maintained at the District's Administrative Building located at 3165 Pacific Highway, San Diego, CA 92101. The custodian of records is the District Clerk.

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 25th day of May, 2017, by the following vote:

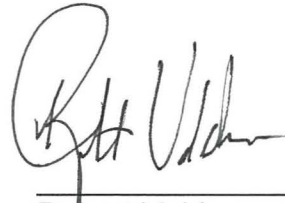
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: None.

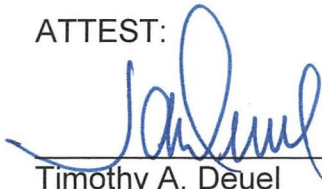
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)