



# CITY COUNCIL STAFF REPORT



**April 9, 2024**

## **ITEM TITLE**

State Legislation: Hear Report on Assembly Bill 2783 San Diego Unified Port District and Provide Direction to Staff on City Position

**Report Number:** 24-0116

**Location:** San Diego Unified Port District Tidelands Located in the City of Chula Vista

**Department:** City Manager

**G.C. § 84308:** No

**Environmental Notice:** This activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act (“CEQA”) State Guidelines. Therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

## **Recommended Action**

Council hear the report and provide direction to staff on City position on Assembly Bill 2783: San Diego Unified Port District. Possible positions include support, support if amended, oppose, oppose unless amended, or no position.

## **SUMMARY**

On February 15, 2024, Assemblymember David Alvarez introduced Assembly Bill 2783 titled “San Diego Unified Port District” adding several provisions to the San Diego Unified Port District Act. The San Diego Unified Port District Act created the Port of San Diego in 1962. The Port of San Diego is charged with managing the San Diego Bay and 34 miles of its natural waterfront for the people of California.

Assembly Bill 2783 seeks to add provisions to the San Diego Unified Port District Act related to Port Commissioner term limits, ethics, creation of special fund programs and other items.

Staff recommends hearing the report and providing direction on the City position on Assembly Bill 2783.

## **ENVIRONMENTAL REVIEW**

The Director of Development Services has reviewed the proposed activity for compliance with CEQA and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines,

because it will not result in a physical change in the environment. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

## BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

## DISCUSSION

### About the Port of San Diego

The San Diego Unified Port District (Port District) is a regional public agency established in 1962 by an act of the California State Legislature, known as the San Diego Unified Port District Act (Port Act), to consolidate management responsibilities for the San Diego Bay.

This consolidation provides centralized planning for the tidelands along the San Diego Bay:



- The Port District is an economic engine, creating jobs and dollars for the regional economy through the promotion of maritime trade, tourism, and other commercial activities to enhance the tidelands.
- The Port District is an environmental steward, preserving and enhancing the natural resources of the San Diego Bay and surrounding tidelands.
- The Port District is a provider of community services, providing public access, public safety, recreation, and community activities along the waterfront for visitors and residents of the region.

A seven-member Board of Port Commissioners governs the Port District. Board members are appointed to four-year terms by the city councils of Chula Vista, Coronado, Imperial Beach, National City, and San Diego. The San Diego City Council appoints three commissioners and each of the other member city councils appoints one commissioner. Port Commissioners establish policies that the Port District staff, under the direction of the President/Chief Executive Officer, uses to conduct

daily operations.

The Port District's maritime, real estate, and parking generate billions of dollars for the region's economy and allow the Port District to operate without the benefit of tax dollars. The Port District has the authority to levy a tax but has not done so since 1970.

The Port District is also a trustee of state lands subject to the Public Trust Doctrine, which mandates how California's sovereign lands should be managed. Also known as public trust lands, they include areas that used to be or are still under the bay and other waters. These lands cannot be bought and sold because they are held in the public trust and belong to the people of the State of California. As the trustee of these lands, the Port District is responsible for carrying out the principles of the Public Trust Doctrine. This includes protecting the environment, promoting the public's enjoyment of these lands, and enhancing economic development for the public's benefit.

### **Assembly Bill 2783 Provisions**

According to the author:

*Assembly Bill 2783 implements key reforms aimed at improving transparency, accountability, and oversight within the Port of San Diego. By establishing clear guidelines for ethical standards, this legislation will help prevent conflicts of interest and ensure that Port decisions are made in the best interest of the public. Furthermore, the bill will help ensure that the Port is governed by individuals who are committed to serving the public interest and upholding the highest standards of integrity.*

As introduced, Assembly Bill (AB) 2783 (Attachment 1) seeks to add the following provisions to the Port Act:

- Adopt three, four-year term limits for all Commissioners.
- Require annual rotation of Chair, Vice-Chair and Secretary.
- Require 72-hour notification and disclosure of evidence to appointing authority (City Councils) if the Commissioners act to censure or remove a fellow Commissioner from their duties.
- Require one of three City of San Diego-appointed Commissioners to live in a Portside Neighborhood as defined.
- Require the Port District to establish an independent Board of Ethics to enforce Code of Ethics and review ethical matters.
- Replace monthly car allowance with per diem compensation.
- Require the Port District to create the Community Impact Fund (CIF) and annually deposit 1% of nontax gross revenue for projects that address maritime industrial impacts proposed by cities within the Port District.
- Require the Port District to establish Future Public Access Fund and deposit 1% of eligible rents for future open space projects in disadvantaged communities.
- Prevent Commissioners from lobbying, contracting or being employed by the Port for two years after ending their term.
- Require the Port District to publicly disclose lobbying financial activity.

### **Legislation Provisions City May Consider Supporting**

After careful analysis, the provisions the City may consider supporting are the following:

- Requiring annual rotation of Chair, Vice-Chair and Secretary.
- Requiring one of three City of San Diego-appointed Commissioners to live in a Portside Neighborhood as defined.
- Requiring the Port District to establish an independent Board of Ethics to enforce Code of Ethics and review ethical matters.

- Replacing monthly car allowance with per diem compensation.
- Requiring Port District to publicly disclose lobbying financial activity.

As written, the rest of the provisions of AB 2783 are of concern to the City and are described within each of the sections.

## **Legislation Provisions of Concern**

### ***Provision: Adopt three, four-year term limits for all Commissioners***

When creating the Port District, the Legislature and member city voters left discretion to the Port District member cities to determine the length of service of their respective Port Commissioner. The choice to impose term limits rests solely with the local authority of the Port District member cities. Cities must be able to determine whether limits on the length of Commissioner appointments are appropriate to best represent their cities' interests.

The work of a Port Commissioner is highly specialized, technical and expertise is developed over time. Port District development projects are complex, often taking a decade or more. Historically, the smaller port cities have benefitted from the effectiveness of long-term Commissioners. Projects in San Diego's south bay cities have benefitted greatly from the continuity and institutional memory of longer-term commissioners. A representative without a thorough understanding of the Port District could put the City at a disadvantage and hinder the effectiveness of the City's representative.

As currently written, term limits favor the City of San Diego who currently appoints three members, in staggered terms. At any point in time, San Diego may have, within its membership, 12+ years of project knowledge which the other four members cities would not have with this amendment.

Potential proposed amendment: Remove term limits all together as the authority should rest solely with local appointing member cities. This would be consistent with the City's Legislative Platform which supports local control.

### ***Provision: Require 72-hour notification and disclosure of evidence to appointing authority (City Councils) if the Commissioners act to censure or remove a fellow Commissioner from their duties***

The City may support the notification requirement however, the disclosure requirements should not impact the Port District's obligations and confidentiality requirements under the law.

Potential proposed amendment: Remove disclosure requirements or add "as permitted by law."

### ***Provision: Prevent Commissioners from lobbying, contracting or being employed by the Port for two years after ending their term***

According to the California Fair Political Practices Commission (FPPC), the Political Reform Act places several restrictions on the post-governmental activity of officials who have left state service. For example, there is a one-year ban prohibiting certain officials, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods.

Additionally, Government Code 87640.3 places a similar one-year restriction for local officials.

The City may support the Port District being subject to the same provisions required by state and local officials.

Potential proposed amendment: To be consistent with FPPC rules and Government Code 87640.3, amend the restricted period of time to one year instead of two years.

***Provision: Require the Port District to create the Community Impact Fund (CIF) and annually deposit 1% of nontax gross revenue for projects that address maritime industrial impacts proposed by cities within the Port District***

For several decades, the City of Chula Vista has strategically planned and developed programs to address disparities within under resourced areas of the city such as western Chula Vista. In recent years, we have seen development and investment occurring in the older parts of the city, addressing this as well.

According to the California Environmental Protection Agency, all the Port tidelands within the City of Chula Vista, are considered a disadvantaged community. However, the Chula Vista Bayfront is an example of encouraging development. The City of Chula Vista and the Port District have been working collaboratively for decades to plan and implement the Chula Vista Bayfront Master Plan (CVBMP). In particular, since 2014, the City and Port District have been working to deliver the catalyst project for the CVBMP, an approximately 275,000 net usable square feet of meeting space (Convention Center), 1,600 parking spaces (Parking Improvements), and an up to 1,600 room resort hotel (Resort Hotel), all to be located on Parcel H3 of the CVBMP. The catalyst project also required the construction of extensive public infrastructure to the areas within and surrounding Parcel H3 (Phase 1A Improvements). The overall project cost was in excess of \$1.2 billion, and it was clear that in order for this project to be financially feasible, the City and the District would need to make a “Public Contribution” for the construction of the Convention Center (approximately \$284 million) and Phase 1A Improvements (approximately \$85 million) for a total public investment of \$369 million.

Due to the extraordinary volatility in the debt market at the time, the financial advisors for the City and Port District determined a private bond sale for a period of five years, was the only way in which to proceed with the Gaylord Pacific Resort and Convention Center (Gaylord Pacific) Project. As such the City and Port District will be seeking new financing by or before June 1, 2027. As a feature of this financial transaction, the Port District committed 100% of its rents from certain properties within the CVBF and a portion of all future Port revenues to pay the debt service for this bond transaction. The Port District and City also entered into a Revenue Sharing Agreement that would allocate the excess cash flow to both parties after debt service for the bonds are paid. This means that the higher the interest rates, the higher the cost to service the debt, resulting in less excess cash to be allocated to the City and the Port District. For example, the estimated impact of a half percent increase in interest rate at the time of refinancing a \$400 million bond could result in an additional cost of \$45 million to the City and Port District over the 30-year bond term. Per a cost sharing agreement with the Port District, this results in the potential loss of revenues going to the City and Port District. The total City impact would be an estimated reduction of \$22.5 million over the 30-year bond term.

As illustrated above, the public-private partnership among the City, Port District and RIDA, and the financial transaction that gave way to the construction of the Gaylord Pacific Project was extremely complex. While construction is on schedule, in a couple of years, the City and Port District will need to refinance its debt. This transaction is reliant on the financial strength of the City and Port District.

As written, the provision of AB 2783 described above would divert 1 percent of all nontax port district gross revenues into a Community Impact Fund, which includes rents and revenues generated on all tidelands regardless of whether these funds are already pledged to debt as in the case for the Gaylord Pacific. This means that part of the funds, already committed to the Gaylord Pacific Project transaction, would now be unavailable for debt coverage, resulting in the possibility that borrowing costs would be raised at the time the City and the Port District seek refinancing the bond transaction.

This provision also creates a legislative precedent for the Legislature to divert revenues from the Port District in the future, increasing the financial uncertainty of the Port District and making lenders reluctant to finance (or refinance) future projects. Consequently, lenders' confidence in the Port's creditworthiness may be reduced. In turn this may impact the ability to move forward with future development projects on the Chula Vista Bayfront. For example, if legislation impairs an issuer's primary source of revenue, such as this bill, the credit quality of a bond issuer could decrease. This would increase borrowing costs and make financing and refinancing vulnerable to concerns over the Port's ability to generate income, manage additional costs, or meet new financial obligations.

Investors are advised to pay particular attention to risks associated with legislative or regulatory actions that could adversely affect the creditworthiness of their bonds. More specifically, legislation that may reduce or otherwise limit the ability of an agency issuing municipal bonds to collect or retain revenues, or that may impose additional costs or financial obligations on an issuer of municipal bonds. For additional information, please refer to Attachment 2 – U.S. Securities and Exchange Commission (SEC) Investor Bulletin: Municipal Bonds-Asset Allocation, Diversification, and Risk.

Potential proposed amendment: Remove this requirement.

***Require the Port District to establish Future Public Access Fund and deposit 1% of eligible rents for future open space projects in disadvantaged communities***

Similarly, as stated above, legislative diversion of funds may materially impact the Port District's ability to refinance bonds that have already been issued, or to refinance at a competitive rate.

Additionally, this provision would erode the Port District's ability to generate community investments that support economic growth in disadvantaged communities. As previously mentioned, the Chula Vista Bayfront is currently considered a disadvantaged community and the CVBMP envisions transforming this area into a world-class destination in the South Bay – a unique place for people to live, work and play. It is designed to create new public parks and recreational adventures, improve the natural habitat, offer new dining and shopping options, provide a world-class hotel and convention center, and more – all for residents and coastal visitors to enjoy.

The CVBMP includes employment creation and city revenue generating opportunities, which would be hindered by the unintentional consequences of this legislation as currently drafted.

Additionally, as written, the funds collected for a Future Public Access Fund can only be used to convert industrial uses into open space. This prevents the funds from being used to develop revenue-generating commercial uses such as hotels, restaurants, and retail. It hampers the Port District’s ability to finance through mechanisms such as bonding to provide such economic growth producing uses.

Potential proposed amendment: Remove this requirement and instead require the Port District to develop a program of investment in disadvantaged communities.

**Summary of Potential Amendments**

<b>AB 2783 Provision</b>	<b>Potential Amendments</b>
Adopt three, four-year term limits for all Commissioners	Remove term limits all together as the authority rests solely with local appointing member cities. This would be consistent with the City’s Legislative Platform which supports local control.
Require 72-hour notification and disclosure of evidence to appointing authority (City Councils) if the Commissioners act to censure or remove a fellow Commissioner from their duties.	Remove disclosure requirements or add “as permitted by law.”
Require the Port District to create the Community Impact Fund (CIF) and annually deposit 1% of nontax gross revenue for projects that address maritime industrial impacts proposed by cities within the Port District.	Remove this requirement.
Require the Port District to establish Future Public Access Fund and deposit 1% of eligible rents for future open space projects in disadvantaged communities.	Remove this requirement and instead require the Port District to develop a program of investment in disadvantaged communities.
Prevent Commissioners from lobbying, contracting or being employed by the Port for two years after ending their term.	To be consistent with FPPC rules and Government Code 87640.3, amend the restricted period of time to one year instead of two years.

Ultimately, the City should be cautious of any legislation that creates risk for the Gaylord Pacific or future Bayfront redevelopment projects. This is in accordance with the 2023-2024 Legislative Platform adopted by City Council which prioritizes the ongoing development of the Chula Vista Bayfront.

Staff seeks direction from City Council on the City’s position on AB 2783.

**DECISION-MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of

Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

Staff is not independently aware and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

### **CURRENT-YEAR FISCAL IMPACT**

There is no current-year fiscal impact as a result of this action.

### **ONGOING FISCAL IMPACT**

The financial provisions included in this legislation create uncertainty around future financing of Chula Vista Bayfront projects. With the anticipated long-term financing of the Gaylord Pacific, which will occur over the next few years, the restrictions on Port District revenues could result in the additional financing costs or inability to refinance. The cost would be reflected on the higher interest rate that the City and Port District would likely have the pay in the issuance of the long-term financing.

For example, the estimated impact of a half percent increase in interest rate at the time of refinancing a \$400 million bond could result in an additional cost of \$45 million to the City and Port District over the 30-year bond term. Per a cost sharing agreement with the Port District, this results in the potential loss of revenues going to the City and Port District. The total City impact would be an estimated reduction of \$22.5 million over the 30-year bond term.

### **ATTACHMENTS**

1. Assembly Bill 2783 Language (As of February 15, 2024)
2. U.S. Securities and Exchange Commission (SEC) Investor Bulletin: Municipal Bonds-Asset Allocation, Diversification, and Risk.

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