

SEC. 4.37 - REGULATION OF SIX PAC CHARTER VESSELS

(a) Definitions

1. Appellant means a Six Pac charter vessel owner, agent or operator who has filed an appeal of a Charter Permit suspension or revocation pursuant to this Section.
2. Applicant means a Six Pac charter vessel owner, agent or operator applying for a Charter Permit pursuant to this Section.
3. Charter Permit means a permit issued by a Marina or Sportfishing Landing to a Six Pac charter vessel operation which permits the Permittee, as defined herein, to conduct business in the District pursuant to San Diego Unified Port District Code Section 8.05.
4. District means San Diego Unified Port District.
5. District Clerk means Clerk of the San Diego Unified Port District.
6. Executive Director means Executive Director of the San Diego Unified Port District.
7. Gross Charter Income is defined as the total income derived from any Six Pac sportfishing charter operation, from whatever source derived and whether for cash or credit, including deposit. Bad debt losses shall not be deducted from Gross Charter income. Gross Charter Income shall not

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include the cost of Mexican fishing permit fees and/or California fishing license fees.

8. Sportfishing Landing means a San Diego Unified Port District leasehold dedicated exclusively for discharging and taking on passengers for hire on charter vessels, including Six Pac sportfishing charter vessels.

9. Marina means a San Diego Unified Port District leasehold used primarily for a vessel docking facility for berthing recreational private pleasure boats.

10. Permittee means a Six Pac charter vessel owner, agent, or operator who has been issued a Charter Permit pursuant to this section.

11. Six Pac means a sportfishing vessel for hire that carries Six (6) or fewer passengers and which is not subject to annual inspection by the United States Coast Guard.

(b) Regulation of Six Pac Charter Vessels

Marinas and Sportfishing Landings shall be responsible for Six Pac charter vessel operations as set forth in this Section 4.37.

1. Six Pac Charter Vessel Permitting Requirements

a) Each Marina or Sportfishing Landing shall issue paired numbered Charter Permit decals to each permitted Six Pac charter vessel operator. The decals shall be affixed in a visible location to both the exterior port and starboard sides of each vessel's bridge. No vessel shall operate for charter

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purposes without the operator first obtaining and displaying said decals. The decal shall not be reassigned, transferred or hypothecated in any manner. The decal shall expire December 31st of the calendar year for which issued, or on the day that the vessel ceases Six Pac charter operations, whichever occurs first.

b) In order to obtain and retain a Charter Permit, the owner(s), agent(s) or operator of each permitted Six Pac charter vessel, and the crew members of each authorized vessel, shall conform to all rules, regulations and policies prescribed by the District; any Ordinances of the City in which the charter vessel is located; and, any laws of the State of California or the Federal Government, as any of the same now exist or may hereinafter be adopted or amended. Failure to comply with any of the above stated laws, rules, regulations or policies shall be grounds for denial of, or for suspension or revocation of the Six Pac Charter Permit.

c) In order to obtain and retain a Charter Permit, the owner(s), agent(s) or operator of each permitted Six Pac charter vessel operation shall maintain commercial general liability insurance as required by Public Utilities Code Section 4663 (covering operations, products and contractual liability) in full

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force and effect throughout the period in which the charter vessel is permitted. The District is not required to be named as an additional insured in any such insurance coverage. Failure to maintain acceptable insurance as described above shall be grounds for the denial of, or for suspension or revocation of the Six Pac Charter Permit.

2. Six Pac Charter Vessel Operating Requirements

a) Prior to departure, each Six Pac charter vessel shall provide to the Marina or Sportfishing Landing a passenger manifest form containing each crew member and passenger's name, address and telephone number, and the gross charter income for that charter. The District shall provide District-approved serially numbered passenger manifest forms to be submitted by each Six-Pac charter vessel operation to its respective Marina or Sportfishing Landing.

b) Each Six Pac charter vessel shall maintain on board, and subject to inspection at any time by Harbor Police, a monthly summary log containing the date of each charter and the gross charter income received. The District shall provide District-approved monthly summary logs for use by the charter vessel operation.

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c) An agency fee shall be paid to each Marina or Sportfishing Landing in the sum of Three Percent (3%) of the Seven Percent (7%) or 3/7th gross charter income received by each Marina or Sportfishing Landing. This amount is intended to compensate the Marina or Sportfishing Landing for the cost of regulating the Six Pac charter vessels doing business from their leaseholds. The Three Percent (3%) agency fee is exclusive of any other charge or fee which may be collected by the Marina or Sportfishing Landing for services provided to any Six Pac charter vessel operation.

4. Revenue Payment Collection

a) Each Marina or Sportfishing Landing shall pay to the District as revenue Four Percent (4%) of the gross charter income derived from each Six Pac charter vessel operation.

b) Gross charter income payments shall be made payable to the San Diego Unified Port District and shall be mailed to the Office of the Treasurer, P.O. Box 120488, San Diego, California 92112-0488. Payments may also be delivered in person or sent via overnight courier to the Office of the Treasurer, 3165 Pacific Highway, San Diego, California 92101. Payments by wire transfer are not authorized.

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c) Bad debt loss may be deducted from gross charter payments as follows:

1) Any Marina or Sportfishing Landing claiming a bad debt may request that the District offset such portion of gross charter income attributable to the bad debt. The request shall be made in writing to the District. The request shall include a declaration under penalty of perjury detailing the amount of bad debt loss; any and all efforts made to recover or collect on the bad debt; and an agreement that should any portion of the bad debt be recovered at a later date that the Marina or Sportfishing Landing shall pay the gross charter income payment on any amount subsequently obtained by the Marina or Sportfishing Landing.

2) The Office of the Treasurer shall keep the declaration on file should any portion of the bad debt loss be recovered.

c) Late payments: There is no grace period for late payments.

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1) Late: A payment is considered late if the payment is not received on or before the date it is due.

2) Provision for late payment: A late fee will be assessed for a payment that is received after the date that it is due. The late fee will be the greater of: i) Twenty Five Dollars (\$25.00); or, ii) 0.0277% (10% annualized) charged daily on the unpaid account.

3) Failure to comply with any portion of Subsections a), b), or c), above, may subject the Marina or Sportfishing Landing to any of the penalties enumerated in Section (f), below.

5. Marina and Sportfishing Landing Record-Keeping Requirements

a) Each Marina and Sportfishing Landing shall conform to all rules, regulations, and policies prescribed by the District, any Ordinances of the City in which the Marina or Sportfishing Landing is located, and any laws of the State of California or the Federal Government, as any of the same now exist or may hereinafter be adopted or amended.

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b) Each Marina and Sportfishing Landing shall post or display a copy of this Section 4.37 in a prominent place on the Marina or Sportfishing Landing property in a manner reasonably calculated to provide notice to Six Pac charter vessel owners, agents, or operators of the contents of this Section 4.37.

c) The Marina or Sportfishing Landing shall maintain for inspection by Harbor Police a file for each permitted vessel which contains copies of certificates of compliance for insurance, any and all permits and licenses required for the operation of the vessel, and any and all permits and licenses required for crew members to operate said vessel.

(c) Appeal Procedure for District Refusal to Issue Charter

1. Should the District, by or through a Marina or Sportfishing Landing acting as its agent, refuse to issue a Charter Permit to Applicant, and Applicant believes he/she/it has satisfied all the requirements necessary for issuance of the Charter Permit as set forth in Subsections (b) 1 b) and (b) 1 c), above, he/she/it may appeal such refusal, in writing, to the Executive Director within ten (10) calendar days of receipt of such refusal by Applicant.

2. The Executive Director shall have ten (10) calendar days to respond in writing to Applicant detailing the reasons for the decision. The decision of the Executive Director is final.

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(d) Suspension or Revocation of Charter Permit

1. The Executive Director shall have the right to suspend or revoke a Charter Permit for failure to comply with any provision of this Section. Prior to the suspension or revocation of any Charter Permit, the Permittee shall be given ten (10) calendar days written notice of the proposed suspension or revocation ("Notice of Intent to Suspend/Revoke Charter Permit") which shall include the reasons therefor.

2. Any suspension or revocation imposed shall become effective on the day after the ten (10) day appeal period has expired if no timely appeal is filed.

3. If Permittee files a timely appeal, any suspension or revocation of the Charter Permit shall be stayed pending final determination of the appeal.

(e) Appeal Procedure for Charter Permit Suspension or Revocation

1. The Notice of Intent to Suspend or Revoke Charter Permit shall notify Permittee that he/she/it may file a written appeal with the Executive Director which shall be delivered or mailed to the District Clerk. Permittee shall have ten (10) calendar days from the date of receipt of the Notice of Intent to file the appeal.

2. The Executive Director shall assign a Hearing Officer to hear the appeal. The matter shall be heard no later than fifteen (15) calendar days from the date of the filing of the appeal unless such time is extended by mutual agreement of the parties. The Hearing Officer shall notify the parties, in

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writing, of the time, date and place of the hearing. The notice of hearing may be sent to Appellant by registered or certified mail, or by personal delivery.

3. The hearing shall be an informal administrative proceeding with relaxed rules of evidence. The parties may be represented by legal counsel and witnesses may be produced and examined.

4. The decision of the Hearing Officer shall be final. The decision of the Hearing Officer specifying his or her findings shall be furnished to the parties within fifteen (15) calendar days after the hearing is concluded. For purposes of administrative mandamus, the decision shall be final when it is filed with the District Clerk.

5. The Hearing Officer's decision shall be subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

(f) Penalties

In addition to any of the penalties enumerated in this Section, any violation of this Section may also be punished in accordance with Article 0, Section 0.11 (Violations - Misdemeanors and Infractions), and Article 0, Section 0.13 (Assessment of Civil Penalties).

(g) Conflict

To the extent that any provision of this Section 4.37 conflicts with or is inconsistent with the provisions of Board of Port Commissioners Policy No. 380, Sportfishing, the provision(s) of this Section 4.37 shall supercede said Policy provisions.

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(h) Invalidity

If any section, subsection, sentence, clause, phrase or portion of this Section 4.37 is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

(Enacted February 20, 2001 - Ordinance 2123)