

AN ORDINANCE SETTING OUT THE NEED FOR AND LEVYING A SECURITY SERVICE FEE ON CARGO, PLACING RESPONSIBILITY FOR REPORTING AND COLLECTION OF THE FEE ON RECEIVING AND SHIPPING TERMINALS, EXCEPT ON THE PUBLIC PORTS OF PORT ARTHUR AND BEAUMONT, AND PROVIDING A MISDEMEANOR PENALTY FOR FAILURE TO FILE THE REQUIRED REPORTS OR PAY THE SECURITY SERVICE FEE IN THE SABINE NECHES NAVIGATION DISTRICT

WHEREAS, the Sabine Neches Navigation District, formerly the Jefferson County Waterway and Navigation District, (“Navigation District”) was created by the Texas Legislature pursuant to HB 3653 of the 77th Legislature, and was duly approved by the voters, authorized, and organized; and,

WHEREAS, the Navigation District has all the powers given by Chapters 49, 60, and 62 of the Texas Water Code; and,

WHEREAS, Section 60.043 of the Texas Water Code provides:

The commission shall have absolute control over channels, or other waterways within the corporate limits of the district and turning basins, yacht basins, and storage basins. The commission may prevent or remove any obstructions of these facilities and fix proper fees, charges, and tolls for their use; and

WHEREAS, the Navigation District is the non-Federal Sponsor, with the United States Corps of Engineers, of the Sabine Neches Waterway (“Waterway”) within the District; and

WHEREAS, the statute creating the Navigation District was amended by the 80th Legislature, House Bill 3634, which authorizes the Navigation District the discretion to adopt and enforce rules, policies, and regulations to carry out its purpose, enhance protection and security of the Waterway, and authorizes the contracting with law enforcement agencies to assist and enhance the Waterways protection;<sup>1</sup> and,

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<sup>1</sup> Sec. 6A. SECURITY AND LAW ENFORCEMENT.

(a) The commission may adopt, amend, repeal, and enforce an ordinance, rule, or police regulation necessary to:  
(1) protect, secure, and defend the ship channels and waterways in the jurisdiction of the district and facilities served by those ship channels and waterways;  
(2) promote the health, safety, and general welfare of any person using the ship channels and waterways in the jurisdiction of the district; and  
(3) comply with a federal law or regulation or implement a directive or standard of the federal government, including the United States Department of Homeland Security and the United States Coast Guard, relating to securing ship

WHEREAS, the Board of Commissioners of the Navigation District has resolved, together with the Jefferson County Commissioners' Court and Sheriff's Department, to assist in providing the enhancement of the security services necessary on the Waterway; and,

WHEREAS, there is a MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES COAST GUARD AND THE STATE OF TEXAS REGARDING THE ENFORCEMENT OF MARITIME SAFETY AND SECURITY ZONES WITHIN THE STATE, dated November 30, 2005, which sets forth the framework and procedures by which the Coast Guard, through the Captain of the Port of Port Arthur and political subdivisions of the State of Texas, will work together to enhance the safety and security of the Waterway through cooperative enforcement of maritime safety and security zones created by the Coast Guard under the authority of the Magnuson Act as codified at 50 U.S.C. § 191 and implemented at 33 CFR Part 6, and the Ports and Waterways Safety Act as codified at 33 U.S.C. § 1221, et seq.; and,

WHEREAS, pursuant to the Magnuson Act as codified at 50 U.S.C. § 191 and implemented at 33 CFR Part 6 and the Ports, and Waterways Safety Act as codified at 33 U.S.C. § 1221, et seq., the Waterway has been designated a Security Zone by the Captain of the Port of Port Arthur and his Marine Safety Office; and,

WHEREAS, the office of Homeland Security through the office of the Coast Guard Captain of the Port of Port Arthur, in Port Arthur, Jefferson County, Texas, has requested the Jefferson County Sheriff's Department and the Navigation District to cooperate with them in providing and enhancing services for the enforcement of Maritime Safety and Security Zones on the Waterway; and,

WHEREAS, the Navigation District has received from the Coast Guard a letter requesting the Sheriff's Department of Jefferson County and the Navigation District to assist in providing and enhancing such enforcement services; and,

WHEREAS, the enhanced security services will be in aid of interstate commerce and to protect and facilitate the function of the Waterway, and,

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channels and waterways and facilities served by ship channels and waterways and preventing terrorist attacks on ship channels, waterways, associated maritime facilities, and other facilities served by ship channels and waterways.

(b) In the enforcement of a district ordinance, rule, or police regulation, a sheriff, constable, or other duly constituted peace officer of this state or a peace officer employed or appointed by the commission may make arrests, serve criminal warrants, subpoenas, or writs, and perform any other service or duty that may be performed by any sheriff, constable, or other duly constituted peace officer of this state in enforcing other laws of this state. (HB 1613 80<sup>th</sup> Legislature).

WHEREAS, the Navigation District desires to engage, contract with, and appoint the Jefferson County Sheriff's Department to provide the enhanced services of policing and securing the Waterway in conjunction with the Coast Guard; and,

WHEREAS, it is necessary for the Navigation District to impose a security fee for providing such enforcement services on the cargo and cargo users of the Waterway as measured, reported, and collected by the terminal operators to obtain this service; and,

WHEREAS, the terminal operators in the Waterway will also be beneficiaries of the increased and enhanced security and protection provided by the security services; and,

WHEREAS, it is necessary for the protection of the general health and welfare of all who use the Waterway to provide the enhanced security services; and,

WHEREAS, the Navigation District is not a terminal operator, as the term is defined in the Shipping Acts of 1916 ("1916 Act") and 1984 ("1984 Act") (collectively "Shipping Acts"), nor is it an ocean common carrier, nor does it have any agreements among the Marine Terminal Operators or with one or more ocean common carriers, nor is it a member of any conferences pursuant to the Shipping Acts, and,

WHEREAS, the Navigation District does not own terminal facilities, nor does it have control of the fees and charges collected by the owners of private or public facilities that are used by the public, nor does it have power to control access to private or public terminal facilities, and it does not control access to private or public facilities;<sup>2</sup> and,

WHEREAS, the Public Ports (Port of Beaumont Navigation District and Port of Port Arthur Navigation District) on the Waterway each have their own security force and charges its own security fee, and therefore users of the Public Ports shall not be assessed a security fee by the Navigation District.

NOW BE IT ORDAINED BY THE NAVIGATION AND CANAL COMMISSIONERS OF THE SABINE NECHES NAVIGATION DISTRICT:

**Authority and Jurisdiction:**

The geographical boundaries of the Navigation District are co-extensive with Jefferson County, Texas, and the Navigation District exercises jurisdiction over the adjacent waterways,

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<sup>2</sup> *Puerto Rico Ports Authority v. Federal Maritime Com.*, 919 F.2d 799 (1<sup>st</sup> Cir 1990).

the non public terminals and all vessels using the Waterway. The Navigation District has the power and authority to regulate and fix charges for the use of the Waterway.

The Navigation District is authorized to make and enforce rules and regulations to facilitate navigation and commerce, to every User. All vessels using the Waterway shall conform to this Security Fee Ordinance (“Ordinance”). All Users of the Waterway, by their use, consent to be bound by this Ordinance including these rules and regulations as they exist or may be amended from time to time.

The Board of Commissioners of the Sabine Neches Navigation District is authorized by Article 16, Section 59, of the Constitution of the State of Texas, Chapter 60 of the Texas Water Code, and the Acts of the 77th Legislature Regular Session HB3639 and as amended by the 80th Legislature Regular Session HB 3634 to provide security services in order to maintain the security of the Waterway; and is further authorized and empowered to regulate and assess fees for services in order to maintain the security of the Waterway and use of such Waterway to the non public docks and terminals of the Waterway.

Refusal or failure to comply with these rules and regulations may result in an order to cease loading or unloading or any other order deemed necessary or advisable by the United States Coast Guard Captain of the Port of Port Arthur or the Navigation District. Misdemeanor criminal penalties will be assessed for failure to file the required reports or pay the required service fee.

### **General Application:**

The use of the Sabine Neches Waterway constitutes an acceptance by the User of all charges, rules, and regulations published in this Ordinance. The charges, rules, and regulations published in this Ordinance apply on all cargo moving to and from terminals on the Waterway, and shall apply equally to all non Public facilities and terminals on the Waterway.

### **Port Security Fee:**

A fee for security services (“Security Fee”) will be assessed against and collected on cargos of all vessels, barges, and cargo interests utilizing terminals or facilities in the Sabine Neches Waterway, loading or discharging at the non public terminals of the Waterway.

The Security Fee is assessed for services including, but not limited to, security assessments, security plans, equipment purchase, installation, and maintenance, staffing required to implement and maintain surveillance and access controls mandated by the Maritime Transportation Security Act of 2002 and U. S. Coast Guard regulation 33 CFR 105, and the Navigation District’s administrative costs of the security service.

The Security Fee will be assessed as a tonnage fee on cargo loaded or discharged through a terminal. The security fee will be assessed as follows:

### **Cargo (to be reported and paid by the Terminal loading or discharging the Cargo):**

Break-bulk:	\$0.02 per ton
Bulk:	\$0.02 per ton
Liquid Bulk:	\$0.02 per ton

**Responsibility for Payment of Charges:**

The owner, shipper, and consignee of the cargo are jointly responsible for charges for this Security Fee. The Navigation District, however, cannot recognize the numerous shippers or consignees who may be responsible for the Security Fee; therefore, such charges must be collected for, and remitted to the Navigation District by the terminal where the cargo was received, loaded to, or unloaded from. The delivery or acceptance of the Cargo renders its owner's, shippers and consignee, jointly and severally liable, as guarantors, for payment of the Security Fee along with the terminal.

**Payment Procedure:**

On the 15th of the month following transfer of the cargo either to or from the terminals on the Waterway, the terminal involved will forward to the Navigation District funds for the total amount of the Security Fees upon cargo that crossed the terminal's dock for the preceding month, along with a verified statement of the amount owed for the incurred Security Fees for the preceding month. The terminal that receives or ships the Cargo is a Guarantor of the Security Fee and the Navigation District may collect from the terminal without first proceeding against the cargo or its carrier. This verified statement will be submitted to the Navigation District on a form promulgated by the Navigation District and certified under penalties of perjury.

Terminals shall keep books and records of the amounts owed for this fee for a period of three years and make them available for audit by the Navigation District. The data and fees paid are subject to Audit by the Navigation District and the terminal will cooperate with the Navigation District's Audit.

All Users and owners of private facilities and terminals shall be required to permit Navigation District representatives reasonable access to manifests of cargo, receiving reports and all other documents necessary for the purpose of Audit for ascertaining the correctness of Security Fees.

**Finance Charge:**

All fees are due and payable upon the 15th of the month following the use of the Waterway. Any Security Fee incurred, which is unpaid thirty (30) days from that date, shall be deemed to be delinquent.

Any amount that is or becomes delinquent on or after thirty (30) days from the date due will be assessed an interest charge of twelve (12%) percent per annum of the amount of the fee due, and shall be due and owing from the date of delinquency until paid. Such interest charges shall be calculated on a per annum basis of three hundred sixty five (365) days.

**Venue and Attorney Fees:**

Additionally, should it become necessary for the Navigation District to file suit to collect any delinquent Security Fees or to enforce any provision of this Ordinance, the party obligated herein to pay such Security Fees under this section or the party against whom enforcement of the Security Fee is sought consents to such suit being filed in the appropriate Judicial District Court in Jefferson County, Texas. The Navigation District shall be entitled to recover reasonable attorney fees from the person sued under this provision.

**Criminal Penalties (Texas Water Code §60.078):**

The failure to file the form and fees required by this Ordinance shall be a misdemeanor and punishment of the misdemeanor will be by a fine of not more than \$200.00 for each offense or violation. Each failure to file the required report form or pay the Security Fee is a separate violation.

**Notice:**

Pursuant to §60.075(c) of the Texas Water Code, a descriptive caption stating the purpose of this Ordinance and penalty for its violation will be published for a ten (10) day period following the passage in every issue of the Beaumont Enterprise, a newspaper of general circulation in the Navigation District.

This Security Fee Ordinance was passed at a Regular Meeting of the Commissioners of the Sabine Neches Navigation District held on the 9th day of December, 2008.

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Sabine Neches Navigation District