

ORDINANCE NO. HD-

AN ORDINANCE OF THE BOARD OF HARBOR  
COMMISSIONERS OF THE CITY OF LONG BEACH  
AMENDING ORDINANCE NO. HD-1357, DESIGNATED  
TARIFF NO. 4, BY ADDING SECTION 11, AN  
INFRASTRUCTURE CARGO FEE

1. On December 27, 1983, the Board of Harbor Commissioners of the City of Long Beach adopted Ordinance No. HD-1357, designated Tariff No. 4, which sets forth rates at which, and terms under which, the Port of Long Beach, California is willing to provide marine terminal and related services. Tariff No. 4 has been amended from time to time since 1983. The current version of Tariff No. 4 is made available to the public on the Port of Long Beach website at polb.com.

2. The Board now wishes to further amend Ordinance No. HD-1357 by adding Section 11, an Infrastructure Cargo Fee (ICF).

3. The San Pedro Bay Ports Clean Air Action Plan (CAAP) was adopted by the Boards of Harbor Commissioners of Long Beach and Los Angeles on November 20, 2006. The Ports of Los Angeles and Long Beach are located side-by-side in San Pedro Bay. In the CAAP, the two ports recognized that their ability to accommodate projected growth in international trade will depend on their ability to address adverse environmental impacts, and in particular, air quality impacts, that result from such trade. The CAAP was designed, in collaboration with the Federal Environmental Protection Agency (U.S. EPA), the California Air Resources Board (CARB) and the South Coast Air Quality Management District (SCAQMD), "to develop mitigation measures and incentive programs necessary to reduce air emissions and health risks while allowing port development to continue." CAAP, p. 2. This fee will support infrastructure projects that will reduce air emissions and health risks and facilitate

1 harbor commerce and navigation.

2 **FINDINGS**

3 1. As part of the overall implementation of the CAAP, the Long Beach  
4 Harbor Department (“Port of Long Beach” or “Port”), in conjunction with the Port of Los  
5 Angeles, has considered numerous proposals to address air pollution from a variety of  
6 sources operating within the Harbor District of the City of Long Beach. This process has  
7 included public meetings, contacts with private and governmental parties at the local,  
8 state and federal level, and review of written submissions and suggestions. This  
9 Ordinance reflects close consideration of all of these views.

10 2. The Port holds legal title to and manages the lands on which it is  
11 located as a trustee for the benefit of the People of California. The Port manages the  
12 land and tidal water resources associated with the trust under the Long Beach Tidelands  
13 Trust (California Constitution Article X; California Public Resources Code Sec. 6306;  
14 Long Beach City Charter, Article XII, and Chapter 676, Statutes of 1911, as amended)  
15 and the California Coastal Act (California Public Resources Code Div. 20, Sec. 30700 et.  
16 seq.), which identify the lands, waters and facilities as a primary economic and coastal  
17 resource of the State of California and an essential element of the national maritime  
18 industry for promotion of commerce, navigation, fisheries and harbor operations. As  
19 trustee, the Port also has a duty to mitigate the environmental impacts of activities on  
20 Port property and to preserve the ecology, including the water, land and surrounding air.

21 3. The Port is one of the largest providers of marine terminal facilities in  
22 the United States. The Port is proprietor of facilities that handle over 20% of the nation’s  
23 containerized goods: cargo valued at more than \$100 billion per annum. Together with  
24 the Port of Los Angeles, the San Pedro Bay ports handle over 40% of the nation’s  
25 containerized goods worth more than \$200 billion per annum. Failure to take prompt,  
26 reasonable, and effective measures to reduce harmful air emissions generated by  
27 Port-related activities will prevent the efficient expansion and development of port  
28 facilities necessary to meet the increasing demands of the nation’s international maritime

1 commerce.

2           4.       Tens of thousands of individuals work in Port-related jobs, as  
3 employees of the Port and employees of businesses involved in moving, handling and  
4 shipping maritime cargo, spending many hours every day on the roads and rail lines in  
5 the port vicinity. As an employer and as a landlord, the Port has an interest in adopting  
6 reasonable measures to assure an efficient, safe and healthy workplace.

7           5.       The Port is in competition with other West Coast, North American  
8 and global ports for international maritime commerce business. Just as business  
9 customers and users of the Port's facilities who are leaders in corporate social  
10 responsibility and sustainable practices seek modern, environmentally-friendly and  
11 sustainable port services, the Port has an interest in adopting reasonable measures to  
12 upgrade the infrastructure and to reduce harmful air emissions from Port-related goods  
13 movement operations.

14           6.       As neighbor to millions of Californians, the Port has an interest in  
15 adopting reasonable measures to assure that Port operations do not injure the health and  
16 property of nearby residents. In addition, because the Port requires the support of  
17 residents in nearby communities for needed improvements in Port infrastructure, failure  
18 to significantly reduce the health and traffic impacts of Port operations on these  
19 communities will impede the Port's ability to handle increased volumes of goods in future.

20           7.       Studies by SCAQMD and CARB have concluded that the more than  
21 two million people who live near the Ports of Los Angeles and Long Beach face greater  
22 health risks than those who live elsewhere in the region. Implementation of infrastructure  
23 projects, in conjunction with the other components of the CAAP, would contribute to the  
24 reduction in premature deaths and health costs in the region.

25           8.       The South Coast Air Basin has the highest concentrations of  
26 atmospheric ozone and certain criteria pollutants in the entire United States. In the  
27 CAAP, the Ports of Los Angeles and Long Beach have committed to reduce pollutant  
28 emissions to the levels that will assure that port-related sources make their fair share of

1 regional emission reductions to enable the South Coast Air Basin to attain state and  
2 federal ambient air quality standards. CAAP, p. 24.

3 9. If the South Coast Air Basin fails to comply with ambient air quality  
4 standards by federal Clean Air Act deadlines, the Port and other regional entities may be  
5 unable to obtain federal funding for future growth. If the Basin remains out of compliance  
6 beyond these deadlines, billions of dollars of federal funding for regional infrastructure  
7 improvements could be lost under federal conformity policies.

8 10. Independently, the failure of the Port to adequately address air  
9 pollution impacts and infrastructure capacity would threaten future Port growth both  
10 because of legal constraints under the California Environmental Quality Act (CEQA) and  
11 the National Environmental Policy Act and the opposition of surrounding residents and  
12 communities to further expansion without an actual improvement in environmental  
13 conditions surrounding the ports. For example, CEQA requires implementation of all  
14 feasible mitigation measures before any project with significant environmental impacts is  
15 approved.

16 11. Although the Port has unique trust responsibilities, the Port is not  
17 unique among large property owners or employers in recognizing the benefits of reducing  
18 pollution from its facilities, in enhancing the local infrastructure and the environment,  
19 promoting employment and living as good neighbors with its surrounding communities.  
20 Reasonable environmental measures are simply good business practices.

21 12. Improved highway and rail infrastructure in the vicinity of the ports of  
22 San Pedro Bay will have two fundamental benefits. First, improved infrastructure will  
23 reduce emissions from existing volumes of trade by reducing congestion, increasing  
24 vehicle speeds and allowing more cargo to move directly from the ports by rail. Second,  
25 in combination with the CAAP, improved infrastructure will allow trade volumes to grow  
26 while reducing the overall environmental impact of trade through the ports. Beneficiaries  
27 include port workers, importers, exporters, railroads, truckers, terminal operators, ocean  
28 carriers, the ports, and the general public.

1           13.     One of the key CAAP measures is the increased use of on-dock rail.  
2 Every additional train entering or leaving the ports eliminates hundreds of truck trips.  
3 Measured by ton-mile, movement of cargo by rail produces much less pollution than  
4 movement of that cargo by truck. In addition, the ports worked jointly to build the  
5 Alameda Corridor, which allows cargo to move efficiently by rail between the ports and  
6 major regional railyards. To make optimum use of the Alameda Corridor, the rail  
7 infrastructure in the vicinity of the ports must be improved. At-grade crossings of road  
8 and rail can result in unnecessary congestion, delays and pollution. By building  
9 overpasses and underpasses, these impacts can be eliminated.

10           14.     The ports have explored all available federal, state and local sources  
11 of funding for infrastructure projects. Although such funds are available and the ports  
12 have been successful in obtaining funding from all these sources for these infrastructure  
13 projects, these funds are insufficient. Federal and state sources typically require local  
14 matching funds and “public-private partnerships.” This necessitates the ICF to  
15 supplement other sources of funds and to serve as the local match for these funds.

16           15.     The ports have also conducted a detailed assessment of tolls as a  
17 means of funding the infrastructure projects. Tolls would result in substantial diversion of  
18 traffic from State Highways to local roadways, including residential streets. This would  
19 result in substantial additional impacts, including health impacts, noise and congestion.  
20 For these reasons tolls are not considered a viable option for funding these projects.

21           16.     The ICF will be used for only a specifically identified group of  
22 infrastructure projects. These projects are recommended in the State of California  
23 Business Transportation & Housing Agency/CalEPA Goods Movement Action Plan and  
24 most of these projects are congressionally designated “Projects of National & Regional  
25 Significance” and “High-Priority Projects.”

26           17.     Although the infrastructure projects will reduce the environmental  
27 impacts of trade, the projects themselves may have environmental impacts, including  
28 construction impacts. Each of the projects will be subjected to public environmental

1 scrutiny under the California Environmental Quality Act, and in most cases the National  
2 Environmental Policy Act, and appropriate environmental mitigation measures will be  
3 required.

4           18. Port-related traffic is expected to dominate the use of the  
5 infrastructure projects. This is due to their proximity to the ports, the significant volume of  
6 road and rail traffic resulting from port operations and the fact that heavy duty trucks have  
7 a greater impact on pavement wear and capacity than passenger cars. However, all of  
8 the port-area highway projects are on State Highways, which also serve a significant  
9 volume of non-port traffic. The ICF will ensure that cargo interests pay their fair share,  
10 but no more than their fair share, of the costs of the infrastructure projects.

11           19. The fee is imposed on loaded containers because it is the view of the  
12 Board that the ultimate consumers of the cargo should absorb the true cost of  
13 transporting that cargo without imposing health costs and other externalities on  
14 communities surrounding trade corridors.

15           20. The fee is imposed on loaded containers only because empty  
16 container moves are ancillary to loaded container moves: repositioning containers for the  
17 next load. In addition, it is extremely difficult to attribute empty container moves to cargo  
18 owners and consumers, the ultimate beneficiaries of cargo movement. The fee will thus  
19 be collected against the cargo in an amount appropriate for the primary move and all  
20 related use of the infrastructure projects.

21           21. The fee will only be imposed once on each loaded container. Some  
22 containers move between terminals within the ports because the first terminal does not  
23 have on-dock rail or because each terminal does not have enough cargo to make up a  
24 train for a particular destination without supplementation from other terminals. The ports  
25 strongly encourage terminals to maximize the use on on-dock rail in these ways. Under  
26 the ICF, the first terminal to handle such a container will assess the fee and the  
27 movement of the container to another terminal will be exempt from the fee.

28           22. The amount of the ICF was determined, and may from time to time

1 be adjusted, using a spreadsheet model described in the Methodology for Estimating  
2 Infrastructure Cargo Fee dated January 4, 2008, attached as Exhibit "A" and incorporated  
3 by this reference. The model first estimates costs by year for each of the infrastructure  
4 projects to be partially funded by the ICF. The model then uses forecasts of container  
5 cargo volumes in those years. The model takes account of all potential sources of  
6 funding for the infrastructure projects and ensures that the ICF pays no more than its fair  
7 share of the project costs. The model is designed to ensure that the ICF is tailored to the  
8 cash flow needs of the infrastructure projects – increasing as additional projects are  
9 approved and incur construction costs, decreasing as projects are completed, and  
10 terminating once the ICF share of the projects is fully paid.

11           23. The Director of Environmental Planning has determined that the ICF  
12 is exempt from CEQA under California Public Resource Code Section 21084, Title 14 of  
13 the California Code of Regulations, Section 15273 (rates, tolls, fares, and charges) and  
14 Section 15061(b)(3)(no possibility of significant adverse effect on the environment).  
15 Under the tariff, Infrastructure Projects proposed to be funded by the ICF shall only  
16 qualify for funding as Approved Infrastructure Projects after CEQA assessment and  
17 project approval by the applicable lead agency.

18           NOW, THEREFORE, the Board of Harbor Commissioners ordains as  
19 follows:

20           Section 1. The Board of Harbor Commissioners of the City of Long Beach  
21 hereby adopts the findings set forth above and finds and determines that the following  
22 additions to Ordinance No. HD-1357 are exempt from CEQA.

23           Sec. 2. Based on the findings set forth above, Ordinance No. HD-1357,  
24 adopted by the Board of Harbor Commissioners of the City of Long Beach on  
25 December 27, 1983, is further amended as set forth in Exhibit "B" attached hereto and by  
26 this reference made a part hereof. The amended items shall be effective as of the  
27 effective date of this ordinance.

28           Sec. 3. This ordinance shall be signed by the President or Vice President

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 of the Board of Harbor Commissioners and attested to by the Secretary. The Secretary  
2 shall certify to the passage of this ordinance by the Board of Harbor Commissioners of  
3 the City of Long Beach, shall cause the same to be posted in three (3) conspicuous  
4 places in the City of Long Beach, and shall cause a certified copy of this ordinance to be  
5 filed forthwith with the City Clerk of the City of Long Beach. This ordinance shall take  
6 effect on the 31st day after its final passage.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ATTEST: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

I hereby certify that the foregoing ordinance was adopted by the Board of  
Harbor Commissioners of the City of Long Beach at its meeting of \_\_\_\_\_, 2007  
by the following vote:

Ayes: Commissioners: \_\_\_\_\_  
\_\_\_\_\_  
Noes: Commissioners: \_\_\_\_\_  
Absent Commissioners: \_\_\_\_\_  
Not Voting: Commissioners: \_\_\_\_\_

\_\_\_\_\_  
Secretary

DTH:dh:rjr 1/10/08 #07-05944  
L:\Apps\CtyLaw32\WPDocs\D007\PO076\00117319.DOC