ORDINANCE NO. HD-2009

AN ORDINANCE OF THE BOARD OF HARBOR
COMMISSIONERS OF THE CITY OF LONG BEACH
AMENDING ORDINANCE NO. HD-1357, DESIGNATED
TARIFF NO. 4, BY AMENDING SECTION 10 AND
SECTION 11

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. On November 12, 2007, the Board adopted Ordinance No. HD-1997
which added Section 10 to Tariff No. 4, relating to the San Pedro Bay Ports Clean Air
Action Plan drayage truck measures. On January 7, 2008, the Board adopted Ordinance
No. HD-2005 adding to and amending these drayage truck measures. On January 22,
2008, the Board adopted Ordinance No. HD-2007 which added Section 11 to Tariff No. 4,
relating to an infrastructure cargo fee. The Board now wishes to further amend
Ordinance No. HD-1357 by amending Sections 10 and 11.

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.

**FINDINGS**

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

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

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

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

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

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

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

8. The South Coast Air Basin has the highest concentrations of


atmospheric ozone and certain criteria pollutants in the entire United States. In the
CAAP, the Ports of Los Angeles and Long Beach have committed to reduce pollutant
emissions to the levels that will assure that port-related sources make their fair share of
regional emission reductions to enable the South Coast Air Basin to attain state and
federal ambient air quality standards. CAAP, p. 24.

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

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

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

12. Since the truck and infrastructure tariffs were adopted in November
2007 and January 2008, the ports have continued planning for implementation of the
tariffs and have continued discussions with interested parties. As a result of this process,
several minor amendments to Sections 10 and 11 are necessary to clarify and streamline
these measures.
13. The intent of this Board in adopting the truck and infrastructure fees, was that the ultimate consumers of the cargo should absorb the true cost of transporting that cargo without imposing health costs and other externalities on communities surrounding trade corridors. During the development of the truck fee, industry groups requested that a definition of the cargo owner be added which expressly excluded ocean common carriers and certain freight intermediaries. The ports broadened the definition to provide equal treatment to other similarly situated freight intermediaries. The current definition of "beneficial cargo owner" in Section 10 of Tariff No. 4, while preserving neutrality between the various classes of freight intermediaries, adds considerable complexity and practical implementation issues. As a result, when the Board adopted the infrastructure fee, the Board did not follow the truck fee model and instead the infrastructure fee was imposed on "merchandise." The language used for the infrastructure fee is similar to that used in other port fees, such as dockage and wharfage, which have been successfully collected from cargo owners for many years. In order to harmonize the language of the truck and infrastructure fees, the definition of "beneficial cargo owner" is hereby deleted and the fee provisions amended to clarify that where the fees cannot be collected from the cargo owners, due to bankruptcy for example, the Port will not seek to recover the fees from the vessels that brought the cargo and related parties.

14. Tariff No. 4 currently requires that the truck fee be collected beginning on June 1, 2008. However, not all terminals have equipment and processes in place to assess the fee and are not required to have them in place before August 1, 2008. To give terminal operators time to install and test any necessary equipment, the commencement date for collection of the truck fee is extended to October 1, 2008.

15. A fundamental objective of the Clean Air Action Plan is to facilitate growth in trade while substantially reducing the impact of trade, not only on a per unit basis but in the aggregate. Consistent with that premise, Section 11 of Tariff No. 4 is hereby amended to provide that the infrastructure fee can only be collected if the truck
fee can be collected.

16. The Director of Environmental Planning has determined that these amendment are exempt from CEQA under California Public Resource Code Section 21084, Title 14 of the California Code of Regulations, Section 15273 (rates, tolls, fares, and charges), Section 15301(d)(restoration or rehabilitation of mechanical equipment) and Section 15061(b)(3)(no possibility of significant adverse effect on the environment).

NOW, THEREFORE, the Board of Harbor Commissioners ordains:

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

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

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

ATTEST:

Doris Topsy-Elord
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 February 25, 2008
by the following vote:

Ayes: Commissioners: Sramek, Hankla, Topsy-Elvord, Walter

Cordero

Noes: Commissioners:

Absent: Commissioners:

Not Voting: Commissioners: Doris Topsy-Elvord

Secretary
Tariff No. 4, Section 10  Clean Air Action Plan

Item 1000 - Drayage Trucks - Definitions

For purposes of Section 10 the following definitions shall apply:

“ARB” means the California Air Resources Board.

“Authorized Emergency Vehicle” is as defined in Vehicle Code section 165.

“CARB Diesel Fuel” is Diesel Fuel certified by ARB as meeting the fuel specification standards set forth at title 13, California Code of Regulations (CCR) section 2280 et seq.

“Compliance Label” is a tag issued by ARB under the Drayage Truck Registry for Drayage Trucks operated at the ports and intermodal rail yards that meet ARB requirements and compliance schedules.

“Dedicated Use Vehicles” are On-Road Vehicles that do not have separate tractors and trailers, including auto transports, fuel delivery vehicles, concrete mixers; mobile cranes and construction equipment.

“Diesel Fuel” means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons – organic compounds consisting exclusively of the elements carbon and hydrogen – that is sold or represented by the supplier as suitable for use in an internal combustion, compression-ignition engine.

“Diesel-Fueled” means a compression-ignition engine fueled by Diesel Fuel, CARB Diesel Fuel, or jet fuel, in whole or part, including liquid natural gas engines using diesel-fuel for pilot ignition.

“Diesel Particulate Matter” or “PM” means the particles emitted in the exhaust of Diesel-Fueled compression-ignition engines.

“Drayage Truck” means any in-use On-Road Vehicle with a Gross Vehicle Weight Rating of 33,000 pounds or greater operating on property owned by the Port of Long Beach for the purpose of loading, unloading or transporting cargo, including containerized, bulk, break-bulk and neo-bulk goods. Drayage Truck does not include Dedicated Use Vehicles, Authorized Emergency Vehicles, Military Tactical Support Vehicles or Yard Trucks.

“Drayage Truck Registry” or “DTR” is a database that contains information on trucks that conduct business on Port Property at the Ports of Los Angeles and Long Beach, including:
Owner's name, address, phone numbers, email address, and fax number;
Drayage Truck and engine make, model, and model year;
Vehicle identification number (VIN), license number and state of issuance;

Truck and Infrastructure Tariff Cleanup Amendments 2/19/08
VDECS equipment

"Gross Vehicle Weight Rating" is defined in Vehicle Code Section 350.

"International Registration Plan" is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

"Lessee" has the same meaning as in Vehicle Code section 371.

"Military Tactical Support Vehicles" is as defined in title 13, CCR, section 1905.

"On-road" means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the California Department of Motor Vehicles (DMV) under Vehicle Code sections 4000 et seq., or DMV's equivalent in another state, province, or country; or the International Registration Plan.

"Optical Character Recognition" or "OCR" is a system designed to read and digitize existing On-road vehicle identifiers, such as state license plates, which will enable the Terminal Operator to access the Drayage Truck's records in the DTR.

"Oxides of nitrogen" or "NOx" means compounds of nitrogen and oxygen, including nitric oxide and nitrogen dioxide.

"Ports" means all waterfront property owned by the Ports of Los Angeles and Long Beach and the Terminal Island Container Transfer Facility.

"Port Property" means all property owned by the Port of Long Beach within the Harbor District of Long Beach.

"Terminal" is any facility on Port Property used for the transfer of cargo from one mode to another, including container terminals, break-bulk terminals, dry bulk terminals and railyards.

"Terminal Operator" is the entity with contractual authority from the Port of Long Beach to operate a Terminal.

"Radio Frequency Identification Device" or "RFID" is an electronic device with a unique identification number, installed on a Drayage Truck which will enable the Terminal Operator to access the Drayage Truck's records in the DTR.

"Vehicle" is as defined in Vehicle Code Section 670.

"Verified Diesel Emission Control Strategy" or "VDECS" is an emission control strategy that has been verified pursuant to the "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from
Diesel Engines” in Title 13, California Code of Regulations, commencing with section 2700, and incorporated by this reference.

“Yard Truck” means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, or prime mover.

**Item 1005 - August 1, 2008 Gate Access Deadline**

By August 1, 2008, at 8:00 a.m., all Terminal Operators shall have installed RFID or OCR readers at all truck processing gates or have obtained written consent from the Port of Long Beach to use an alternative means of accessing Drayage Truck records in the DTR before allowing Drayage Truck access to the Terminal. A Compliance Label issued by ARB is an acceptable alternative means of controlling truck access to any Terminal.

**Item 1010 - October 1, 2008 Drayage Truck Deadline**

Beginning October 1, 2008, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to (1) any Drayage Truck of model year 1988 or older, or (2) any Drayage Truck that cannot be verified as compliant with this Item 1010 deadline by reference to the Drayage Truck’s records in the DTR, as set forth in Item 1005.

**Item 1015 - January 1, 2010 Drayage Truck Deadline**

Beginning January 1, 2010, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to (1) any Drayage Truck that is not equipped with: (a) a 1994 – 2003 model year engine certified to California or federal emission standards, and a level 3 VDECS which achieves a minimum 85% reduction in PM emissions and a minimum 25% reduction in NOx emissions; or (b) a 2004 or newer model year engine certified to California or federal emission standards, or (2) any Drayage Truck that cannot be verified as compliant with this Item 1015 deadline by reference to the Drayage Truck’s records in the DTR, as set forth in Item 1005.

**Item 1020 - January 1, 2012 Drayage Truck Deadline**

Beginning January 1, 2012, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to (1) any Drayage Truck that is not equipped with an engine that meets or exceeds 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards, or (2) any Drayage Truck that cannot be verified as compliant with this Item 1020 deadline by reference to the Drayage Truck’s records in the DTR, as set forth in Item 1005.

**Item 1025 – June 30, 2008 Drayage Truck Registry**

1. Drayage Trucks seeking entry upon Port Property on or after October 1, 2008, shall have been registered on the DTR database by June 30, 2008, or ninety-one
days prior to the date of entry, whichever is later. Registration on the DTR database shall be on forms and with supporting documentation as may be required by the Port to provide required information in verifiable form.

2. In the even of a change in the information provided for registration on the DTR database with respect to a Drayage Truck, the registration shall be amended within ten calendar days of the change on forms and with supporting documentation as may be required by the Port.

**Item 1030 -- Clean Truck Fee**

Beginning October 1, 2008 at 8:00 a.m., a Clean Truck Fee of $35.00 per twenty foot equivalent unit shall be assessed on containerized merchandise entering or leaving the Ports by Drayage Truck. The Clean Truck Fee shall not be assessed on any containerized merchandise entering or leaving the Ports by rail or on any containerized merchandise moved between two terminals within the Ports. The Clean Truck Fee shall be paid by the cargo owner, notwithstanding anything to the contrary in Items 701 or 708 of Tariff No. 4.

**Item 1035 -- Clean Truck Fund**

The first Terminal Operator to handle containerized merchandise subject to the Clean Truck Fee shall collect and remit the Clean Truck Fee to the Port of Long Beach, and the monies shall be used by the Board of Harbor Commissioners exclusively for replacement and retrofit of Drayage Trucks serving the Ports of Los Angeles and Long Beach.

**Section 11 - Infrastructure Fee**

**Item 1100 - Definitions**

For purposes of Section 11 the following definitions shall apply:

"**Ports**" shall mean all waterfront property owned by the Ports of Los Angeles and Long Beach.

"**Ports Rail System**" shall mean: a Pier B Street Intermodal rail yard expansion, Terminal Island Wye Track Realignment, Pier B Street Realignment, Track Realignment at Ocean Boulevard/Harbor Scenic Drive, Pier F Support Yard, West Basin Rail Access Improvements, Grade Separation for Reeves Crossing, Closure of Reeves at-grade Crossing, Navy Mole Road Storage Rail Yard, Pier 400 Second Lead Track, Reconfiguration at CP Mole, Triple Track Badger Bridge, and Triple Track South of Thenard Jct.

"**Highway Projects**" shall mean the Gerald Desmond Bridge Replacement, the SR-47 Expressway (including replacement of the Heim Bridge), the Navy Way/Seaside Avenue Interchange, the South Wilmington grade separation, and the I-110 Connectors Program (which includes: I-110/SR-47/Harbor Boulevard interchange improvements,

Truck and Infrastructure Tariff Cleanup Amendments 2/19/08
I-110/"C" Street interchange improvements, John S. Gibson intersection and I-110 ramp access improvements, and SR-47 on-ramp and off-ramp improvements at Front Street).

"Infrastructure Projects” shall include the Ports Rail System and Highway Projects.

"Approved Infrastructure Projects” shall mean all Infrastructure Projects which have been: (1) approved by the applicable lead agency as defined in Section 21067 of the California Public Resources Code; and (2) determined by the Boards of Harbor Commissioners of Los Angeles and Long Beach to be eligible for use of tidelands funds.

"Port Infrastructure Fund” shall mean a restricted fund to be used exclusively for payment of the Ports’ allocable share, using the Computation Methodology, of costs of Approved Infrastructure Projects that are incurred following the approval of the Approved Infrastructure Projects by the applicable lead agencies. The Port Infrastructure Fund shall be comprised of the monies collected from the Infrastructure Fee on Containers under Item 1105.

"Terminal” shall mean any facility in the Port of Long Beach used for the transfer of cargo from one mode to another, including all container terminals, break-bulk terminals, dry bulk terminals and rail yards.

"Terminal Operator” shall mean the entity with contractual authority from the Port of Long Beach to operate a Terminal.

"Computation Methodology” shall mean the methodology described in the document entitled Methodology for Determining Infrastructure Cargo Fee dated January 4, 2008, a copy of which is attached to Ordinance No. 2007, the implementing ordinance for this section.

**Item 1105 -- Infrastructure Fee on Containers**

Beginning January 1, 2009 at 8:00 a.m., an Infrastructure Fee on Containers of Fifteen dollars ($15.00) per twenty foot equivalent unit shall be assessed on containerized merchandise entering or leaving any Terminal in the Port of Long Beach. The Infrastructure Fee on Containers shall be paid by the cargo owner, notwithstanding anything to the contrary in Items 701 or 708 of Tariff No. 4. As Infrastructure Projects are approved by the applicable lead agencies, and from time to time thereafter, the Executive Directors of the Ports of Long Beach and Los Angeles ("Executive Directors") shall have the Infrastructure Fee on Containers recomputed using the Computation Methodology and this tariff shall be amended to reflect the amount so computed. The Infrastructure Fee on Containers shall not be assessed on any containerized merchandise moved between two terminals within the Ports. The Infrastructure Fee on Containers shall no longer be collected: (a) after the share of Approved Infrastructure Project costs allocable to be recovered by the Port Infrastructure Fund have been paid in full; (b) after the Executive Directors determine that the Infrastructure Fund balance is sufficient to pay all such costs; or (c) if the Clean Truck Fee (Item 1030 of Tariff No. 4) cannot be collected, whichever occurs first.
Item 1110 -- Port Infrastructure Fund

The first Terminal Operator to handle containerized merchandise subject to the Infrastructure Fee on Containers shall collect and remit the Infrastructure Fee on Containers to the Port of Long Beach, to be held in the Port Infrastructure Fund and used exclusively for Approved Infrastructure Projects. If the share of Approved Infrastructure Projects costs allocable to be recovered from the Port Infrastructure Fund have been fully paid and funds remain in the Port Infrastructure Fund, these funds may be used for additional infrastructure projects of similar utility to the Approved Infrastructure Projects which are approved by the Board of Harbor Commissioners to be funded by the Port Infrastructure Fund.