ORDINANCE NO. HD- 2011

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

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 which amended these drayage truck measures and added a Clean Truck
Fee to fund in part the cost of replacing older drayage trucks. 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. On February 25, 2008, the Board adopted Ordinance No.
HD-2009 amending Sections 10 and 11. The Board now wishes to further amend
Ordinance No. HD-1357 by amending Section 10.

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. Port drayage trucks take a heavy toll on port safety. Although heavy duty vehicles account for about 21.3% of vehicles present in the Harbor District at any given time, in the period January 1, 2005 through March 10, 2007, they accounted for 32.5% of all traffic violations and 25.7% of all accidents in the Harbor District. Heavy duty
vehicles accounted for 22.7% of moving violations and 87.1% of citations issues for improper maintenance. The list of safety and maintenance citations issued in a period of 26 months includes: driving while intoxicated, marijuana possession, fleeing the scene of an accident, reckless driving, reckless driving in a parking lot, driving on a sidewalk, driving on the wrong side of the road, unsafe passing on the right shoulder, tires in unsafe condition, false license plates, no license plates, unsecured load, no brake lights, head lamps missing, tail lights missing, signals not working, mirrors missing, unsafe lane change, following too closely, unsafe turn, exceeding the speed limit, exceeding the speed limit on a bridge, improper window tinting, and failure to obey a uniformed police officer. Twice in this period, drivers hit bridges in the Harbor District with unpermitted over-height loads, causing millions of dollars of damages and traffic disruptions for extended periods. On June 5, 2007, for example, a load destined for the port struck the Anaheim Street overpass on the 710 freeway, broke the restraining straps and came to rest in the middle lane of the freeway. The truck was uninsured, the owner's permit for the truck had been revoked before the accident, the owner had a suspended license as a result of multiple drunk driving and other convictions, the owner left the scene of the accident, and the man who claimed to be the driver also had a history of drunk driving and other convictions.

13. Port drayage trucks also pose challenges to port security. There have been reported cases of drivers presenting false credentials, including counterfeit licenses, to gain access to port terminals. There have also been reported instances of drivers carrying unauthorized passengers into port terminals.

14. The Board now wishes to establish a concession program for licensed motor carriers wishing to perform drayage trucking services on port-owned property. Licensed motor carriers will be invited to enter into a concession agreement with the ports. In exchange for the right of access to port property, the licensed motor carriers will be contractually obligated to demonstrate compliance with existing laws, such as federal Homeland Security and Department of Transportation regulations, state...
licensing and truck safety and operations regulations, local truck route and parking
restrictions and Section 10 of Tariff No. 4. The Board intends to use the concession
program to ensure that drayage trucking services on port property are conducted safely
by competent professional drivers driving trucks that are well-maintained and that do not
emit excessive toxic emissions.

15. To ensure that enough drivers are available, the Board requires
concessionaires to give hiring preference to qualified drivers with a history of providing
drayage services to the ports and to make use of City workforce development offices.
The Board is also exploring aggregation of health insurance across the drayage industry
to lower health insurance costs, to attract sufficient drivers to the industry to handle
current and projected demand and to enhance driver safety and performance in their
important and demanding role.

16. The Port will maintain a database containing relevant details on the
trucks permitted access to Port property. To facilitate access to Port terminals, the trucks
will be readily identified by radio frequency identification devices or optical character
recognition of state license tags.

17. The Board now also wishes to create two exceptions to the Clean
Truck Fee to create an incentive for industry to replace drayage trucks with the cleanest
possible trucks at the earliest possible date. First, the fee will be waived entirely for
merchandise hauled by trucks purchased without money from the Port Clean Truck
Program and powered by liquefied natural gas (LNG), compressed natural gas (CNG),
electricity or hybrid technology that exceeds the 2007 model year California or federal
heavy-duty on-road standard. This is intended to stimulate private sector purchase of
clean technologies that are already available (LNG and CNG), but also to stimulate
development of clean technologies that are not yet commercially available. Second, the
fee will be halved for merchandise hauled by the cleanest available diesel trucks
purchased without money from the Clean Truck Program.

18. Nothing in this ordinance shall be deemed to constitute a permanent
obligation on the part of the Port to exempt any truck from any generally applicable fee, and the Port reserves the right to amend concession requirements at any time. No property interest in favor of any concessionaire is intended to be created by adoption of this ordinance or the granting of a concession.

19. 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.

[Signature]
President

ATTEST:
[Signature]
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 March 17, 2008
by the following vote:

Ayes: Commissioners: Sramek, Hankla, Cordero

Noes: Commissioners: 

Absent Commissioners: Topsy-Elvord, Walter

Not Voting: Commissioners: [Signature]
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.

“Alternative Drayage Truck” means a Drayage Truck with a heavy-duty engine that is designed to operate on liquefied or compressed natural gas, electricity or hybrid technology that satisfies 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards.

“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;
Dispatching Licensed Motor Carrier(s) and Concession number(s);
Drayage Truck and engine make, model, model year and fuel source;
Vehicle identification number (VIN), license number and state of issuance;
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.

“Licensed Motor Carrier” means the permit holder on a Drayage Truck pursuant to California Vehicle Code Section 34601 and following or equivalent program;

“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.

“Program Funds” means monies disbursed by the Ports of Long Beach and Los Angeles through the Clean Truck Fund or the Harbor Revenue Fund, including funds received for that purpose from South Coast Air Quality Management District and State Proposition 1B Bond funds.
"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.

"2007 Drayage Truck" is a Drayage Truck that is equipped with an engine that satisfies 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards.

**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 a 2007 Drayage Truck, 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 thirty-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 event 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 of Long Beach.

**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 with the following exceptions:

1. The Clean Truck Fee will not be assessed on any containerized merchandise entering or leaving the Ports by rail.

2. The Clean Truck Fee will not be assessed on any containerized merchandise moved between two terminals within the Ports.

3. The Clean Truck Fee will not be assessed on any containerized merchandise entering or leaving the Ports by Alternative Drayage Truck purchased without Program Funds. If such a Drayage Truck is registered in the DTR on or after October 1, 2008, this exception will only apply if the Alternative Drayage Truck replaced an existing Drayage Truck, the existing Drayage Truck was scrapped, satisfactory evidence of the scrappage was provided and qualification for this exception was recorded in the DTR database prior to the cargo movement.
(4) A Clean Truck Fee of $17.50 per twenty foot equivalent unit will be assessed on any containerized merchandise entering or leaving the Ports by 2007 Drayage Truck purchased without Program Funds unless such truck qualifies under Item 1030 (3). If such a Drayage Truck is registered in the DTR on or after October 1, 2008, this fee exception will only apply if the Drayage Truck replaced an existing Drayage Truck, the existing Drayage Truck was scrapped, satisfactory evidence of the scrappage was provided and qualification for this exception was recorded in the DTR database prior to the cargo movement.

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.

Item 1040 – Concession Fees

The application fee for a Concession shall be $250, and the annual fee shall be $100 per Drayage Truck (collectively “Concession Fees”). Concession Fees shall be paid by the Licensed Motor Carrier applying for or holding the Concession.