

OFFICE OF THE CITY ATTORNEY
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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 10 RELATING TO
CLEAN AIR ACTION PLAN DRAYAGE TRUCK
MEASURES

RECITALS

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 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 10, Items 1000 through 1025, relating to San Pedro Bay Ports Clean Air Action Plan drayage truck measures.

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

1 health risks while allowing port development to continue.” CAAP, p. 2.

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 Port-
27 related activities will prevent the efficient expansion and development of port facilities
28 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. As an employer and as a landlord, the Port has an interest in
5 adopting reasonable measures to assure that the Port is a safe and healthy workplace.

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

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

18 7. Studies by SCAQMD and CARB have concluded that the more than
19 two million people who live near the Ports of Los Angeles and Long Beach face greater
20 health risks than those who live elsewhere. According to SCAQMD, implementation of a
21 clean truck program in the ports of San Pedro Bay would prevent the premature deaths of
22 up to 1,450 people through 2025. SCAQMD also concludes that failure to control truck
23 emissions from Port activities in the South Coast Air Basin, in which the ports of Long
24 Beach and Los Angeles are located, will result in externalized costs for premature
25 deaths, health costs and missed work days of up to \$10.1 billion through 2025.

26 8. Port truck emissions account for a very substantial portion of the
27 adverse health impact from Port operations. For example, CARB's staff has estimated
28 that living near an area, such as the Ports, with constant truck operations, may increase

1 the risk of developing cancer by as much as 750 cases per million. Those who work at
2 the Port experience more intense exposures than even these nearby residents.

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

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

14 11. Independently, the failure of the Port to adequately address air
15 pollution impacts, including diesel truck emissions, would threaten future Port growth both
16 because of legal constraints under the California Environmental Quality Act (CEQA) and
17 the National Environmental Policy Act and the opposition of surrounding residents and
18 communities to further expansion without an actual improvement in environmental
19 conditions surrounding the ports. For example, CEQA requires implementation of all
20 feasible mitigation measures before any project with significant environmental impacts is
21 approved.

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

27 13. Truck operations at the Port are a critical element in the efficient
28 operation of the Port. Because of increased concerns over safety, port security, and the

1 environment, the economic demands on providers of trucking services in the Port are
2 changing rapidly. The Port is aware of these factors affecting truck services and is
3 cognizant that environmental measures affecting truck and drayage operations in the Port
4 must be chosen with awareness of impacts on the supply and cost of trucking services.
5 As environmental measures are implemented over time the Port will closely monitor
6 supply and cost issues to ensure that environmental goals are met consistent with the
7 efficient operation of the Port.

8 14. It is the Board's intention to achieve its environmental goals in part
9 through reduction of air pollutant emissions from truck operations associated with the
10 Port. In implementing these reductions in truck emissions, the Board further intends to
11 avoid unnecessary impacts on the movement of cargo through the Port. It also intends
12 that any measures that the Port implements to reduce truck emissions will be
13 administratively efficient: that is, they will be effective and not unduly costly to administer.

14 15. The Port therefore seeks to focus on trucks that are responsible for
15 higher emissions per unit of transportation. A disproportionate share of such emissions is
16 from trucks equipped with older engines because emissions standards have grown
17 increasingly strict with successive model years. For example, newly-manufactured heavy
18 duty truck engines model year 1988 were allowed by U.S. EPA to emit 6 times more
19 particulate matter than newly-manufactured 1994 engines. U.S. EPA, "Emission
20 Standards Reference Guide For Heavy-Duty and Non-Road Engines," p. 3 (Sept. 1997).

21 16. At the same time, according to CARB, the emissions performance of
22 a truck engine tends to worsen over time, so that engines that have been in service
23 longer will tend to generate higher levels of air emissions. Moreover, CARB-approved
24 emissions control equipment generally is not available for the oldest engines, those
25 manufactured to model year 1988 and older standards. If the Port were to allow
26 continued use of these trucks with older engines, therefore, it would forego the
27 opportunity to obtain the greatest possible reduction in truck emissions for the lowest
28 possible cost.

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1 17. The Director of Environmental Planning has determined, in a review
2 of the applicability of the CEQA to this proposed amendment to Tariff No. 4, that it is
3 exempt from CEQA under California Public Resource Code Section 21084, Title 14 of the
4 California Code of Regulations, Section 15301(d)(restoration or rehabilitation of
5 mechanical equipment) and Section 15061(b)(3)(no possibility of significant adverse
6 effect on the environment).

7 **NOW, THEREFORE**, the Board of Harbor Commissioners ordains as
8 follows:

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

12 **Sec. 2.** Based on the findings set forth above, Ordinance No. HD-1357,
13 adopted by the Board of Harbor Commissioners of the City of Long Beach on December
14 27, 1983, is further amended as set forth in Exhibit "A" attached hereto and by this
15 reference made a part hereof. The amended items shall be effective as of the effective
16 date of this ordinance.

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

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26 ATTEST:

President

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Secretary

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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 October 29, 2007 by the following vote:

Ayes: Commissioners: _____

Noes: Commissioners: _____
Absent Commissioners: _____
Not Voting: Commissioners: _____

Secretary

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Tariff No. 4, Section 10 Clean Air Action Plan

Item 1000 - Drayage Trucks - Definitions

For purposes of Items 1000 through 1025, 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 Owner” means: (a) the person registered as the owner of a Drayage Truck with the Department of Motor Vehicles, or its equivalent in another state, province, or country; or the International Registration Plan; or (b) the Lessee of a Drayage Truck, as indicated on the Drayage Truck’s registration pursuant to Vehicle Code section 4453.5.

“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.

“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.

“Oxides of nitrogen” or **“NOx”** means compounds of nitrogen and oxygen, including nitric oxide and nitrogen dioxide.

“Port Property” means 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, issued by or on behalf of the Port of Long Beach, installed on a Drayage Truck and which will enable the Terminal Operator to determine:

Drayage Truck Owner’s name, address, phone numbers, email address, and fax number;

Drayage Truck engine make, model, and model year;

Drayage Truck vehicle identification number (VIN);

Drayage Truck vehicle license number and state of issuance;

On and after October 1, 2008, whether the Drayage Truck complies with Item 1010.

On and after January 1, 2010, whether the Drayage Truck complies with Item 1015.

On and after January 1, 2012, whether the Drayage Truck complies with Item 1020.

“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 know as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, or prime mover.

Item 1005 - August 1, 2008 RFID Reader Deadline

By August 1, 2008, at 8:00 a.m., all Terminal Operators shall have installed RFID readers at all truck processing gates or have obtained written consent from the Port of Long Beach to use an alternative means of controlling 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 is not equipped with an RFID or approved alternative 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 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 NO_x emissions; or (b) a 2004 or newer model year engine certified to California or federal emission standards. Compliance with these requirements must be evidenced by RFID or approved alternative evidence 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 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. Compliance with this requirement must be evidenced by RFID or approved alternative evidence as set forth in Item 1005.

Item 1025 – June 30, 2008 Drayage Truck Registry and RFID Requirements

1. Drayage Truck Owners doing business on Port Property must register Drayage Trucks with the DTR database by June 30, 2008.

2. Drayage Truck Owners shall provide documentary evidence of following information to be entered in the DTR database, including but not limited to:

- (a) Truck Owner name, address, phone numbers, email address, and fax number;
- (b) Drayage Truck engine make, model, and model year;
- (c) Drayage Truck vehicle identification number (VIN);
- (d) Drayage Truck vehicle license number and state of issuance;
- (e) Drayage Truck model year;
- (f) Drayage Truck engine model year;
- (g) Drayage Truck VDECS equipment

3. After the initial registration, the Drayage Truck Owner shall update the DTR with any changes to the information in the DTR database within thirty days of the change.

4. Upon receipt of an RFID or approved alternative evidence as set forth in Item 1005, the Drayage Truck Owner shall affix the RFID or alternative compliance label to the Drayage Truck.