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CITY ATTORNEY

REPORT NO. R 22 - 0117  
APR 08 2022

**REPORT RE:**

**DRAFT ORDINANCE AMENDING PORT OF LOS ANGELES  
TARIFF NO. 4, SECTION TWENTY – CLEAN AIR ACTION PLAN –  
CLEAN TRUCK FUND RATE**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. Pursuant to Charter Section 653(a), this draft ordinance would approve Board of Harbor Commissioners (Board) Order No. 21-7316, thereby amending the Port of Los Angeles Tariff No. 4, Section Twenty – Clean Air Action Plan, to add two new Items: Item 2030 - Clean Truck Fund (CTF) Rate; and Item 2035 - Clean Truck Fund. In addition, three items were amended to update references: Item 2000 – Definitions; Item 2010 – Drayage Truck Access; and Item 2041 – Drayage Truck Compliance. The proposed amendment would add the CTF Rate of \$10 per twenty-foot equivalent unit (TEU) (\$20 if length more than 20 feet) charged to cargo owners or their authorized Agents for loaded containers entering and exiting Port of Los Angeles terminals by drayage truck, with exemptions for zero emission trucks and low NOx trucks.

Charter Findings

On November 4, 2021, pursuant to Los Angeles City Charter Sections 652(a), 652(c) and 653(a), the Board adopted Order No. 21-7316, approved the enclosed draft ordinance and recommended that the City Council adopt it. Under Charter

Section 653(a), Order No. 21-7316 must be approved by the City Council, by ordinance, in order to become effective.

### Background and Discussion

The Clean Truck Program (CTP), one of the key components of the Clean Air Action Plan (CAAP), focuses on improving air quality in the Ports of Los Angeles and Long Beach (Ports) by incentivizing the industry to replace older heavy-duty drayage trucks with lower emission heavy-duty drayage trucks. On November 2, 2017, the Ports adopted the 2017 CAAP Update, which includes further advancing the CTP to help the industry phase out older trucks and transition to the CAAP goal of zero-emission (ZE) drayage trucks by 2035, which became a proposed state law requirement in the CARB Advanced Clean Fleet rulemaking process.<sup>1</sup> An important element in the 2017 CAAP Update's CTP is the establishment of a Clean Truck Fund Rate (CTF Rate), which will charge a Rate to cargo owners or their agents on loaded containers hauled by drayage trucks at Port terminals, with exemptions for ZE and Low NOx trucks.

### CTF Rate

On March 9, 2020, at a joint meeting of the Ports, the Boards of Harbor Commissioners of Los Angeles and Long Beach adopted Resolution No. 20-9613 and 20-9614 (Joint Resolution). For planning purposes, the Joint Resolution set the amount of the CTF Rate at \$10 per TEU to be collected pursuant to a future tariff amendment to be developed for the Boards' consideration. The proposed Tariff Item 2030 adopts this same Rate amount of \$10 per TEU (\$20 if length more than 20 feet), as detailed below in the Ordinance Summary.

### CTF Rate Revenues Spending Plan

On November 4, 2021, the Board also adopted the Board Report as Resolution No. 21-7316, which set forth the following general spending plan for the CTF Rate revenues to incentivize ZE and Low NOx trucks used at the Ports:

"All CTF Rate revenues shall be used exclusively to fund incentive programs for the replacement of port drayage trucks with ZE trucks serving the Ports of Los Angeles and Long Beach and may include zero emissions infrastructure as needed. This Spending Plan shall be reviewed on an annual basis. The details of such incentive programs and their administration will be developed and presented for Board consideration in the future. Funding allocations may change by Board resolution, depending on issues such as stakeholder input and future state and federal regulations."

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<sup>1</sup> <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>

### Summary of Ordinance Provisions

The Ordinance adopts the Harbor Department's amendments to Port Tariff No. 4 Section 20 – Clean Air Action Plan, which adds two new items, Item 2030 – Clean Truck Fund Rate, and Item 2035 – Clean Truck Fund. In addition, three items were amended to update references in Item 2000 – Definitions; Item 2010 – Drayage Truck Access; and Item 2041 – Drayage Truck Compliance. These Tariff Items are summarized below:

#### Item 2030 - Clean Truck Fund Rate (New)

- Effective Date: April 1, 2022
- Sunset Date: December 31, 2034
- Rate amount: \$10 per TEU (twenty-foot equivalent) (\$20 if length more than 20 feet)
- Assessed on Loaded cargo containers
- Moved by non-exempt truck in and out of Port of Los Angeles terminals
- Paid by the cargo owners or their authorized agents, which shall not include Drayage Truck Operators (drivers)
- Rate exemptions for Cargo:
  - Lifetime exemptions for ZE trucks that meet the definition of “Zero Emission Vehicle” in the CARB Advanced Clean Truck Regulation<sup>2</sup>
  - Exemption for Low NO<sub>x</sub> Trucks:
    - Meets or exceeds the definition of “Low NO<sub>x</sub> trucks” in the CARB Heavy-Duty Omnibus Regulation<sup>3</sup>
    - Registered in the Port Drayage Truck Registry and put into Port service by December 31, 2022
    - Exemption duration through December 31, 2027
  - Enters or leaves the Ports by use of port on-dock rail facilities without use of a Drayage Truck
  - Moves between two Terminals within the Ports;
  - Is shipped under contract to the United States Transportation Command, United States Military or Department of Defense
  - Prototype or advanced technology demonstration trucks under a Port contract, permit or license

#### Item 2035 – Clean Truck Fund (New)

- Terminal Operators shall collect and remit the Clean Truck Rate to the Port of Los Angeles, which may be administered by a third-party administrator. The

<sup>2</sup> <https://ww2.arb.ca.gov/rulemaking/2019/advancedcleantrucks>

<sup>3</sup> <https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>

monies shall be used as set forth in a Resolution by the Board of Harbor Commissioners exclusively for programs for the replacement of Drayage Trucks with Zero-Emission and/or Low-NOx Drayage Trucks serving the Ports of Los Angeles and Long Beach, including fueling infrastructure.

- The Board Report explains that a competitively selected Rate collection agent, PortCheck LLC (PortCheck), will build and operate the CTF Rate collection mechanism to collect the Rate pursuant to the Tariff.
- The Board Report also sets out the general spending plan for the Clean Truck Fund, on ZE drayage trucks and infrastructure. This plan shall be reviewed annually. The details of such ZE incentive programs and their administration will be developed and presented for Board consideration in the future. Funding allocations may change by Board resolution, depending on future state and federal regulations, and may include zero emissions infrastructure as needed.

#### Item 2000 – Definitions (Revised)

- *(New)* “Agent” means an entity acting on cargo owner’s behalf under contract for arrangement of all or part of the movement of cargo between a Terminal and points of origin and destination. An “Agent” can be a shipping line, a rail carrier, a Licensed Motor Carrier or other agents and intermediaries, but in no event shall include or result in any Drayage Truck Operator being responsible for payment of the Clean Truck Rate.
- *(Revised)* “CARB Truck and Bus Rule” definition added the current link to CARB’s webpage. <https://ww2.arb.ca.gov/our-work/programs/drayage-trucks-seaports-railyards/drayage-truck-regulatory-documents>
- *(Revised)* “Drayage Trucks” definition changed the word “transgressing” to “transiting.”
- *(New)* “Low NO<sub>x</sub> Truck” was defined as “a Drayage Truck that that meets or exceeds the manufacturing standard of Low NO<sub>x</sub> trucks under the Heavy-Duty Omnibus Regulation adopted by CARB.  
<https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>
- *(New)* “Zero Emission Truck” was defined as “a Drayage Truck that meets the definition of “Zero Emission Vehicle” in the CARB Advanced Clean Truck Regulation: “an on-road vehicle with a drivetrain that produces zero exhaust emission of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.”  
<https://ww3.arb.ca.gov/regact/2019/act2019/fro2.pdf>

(Revised) Item 2010 – Drayage Truck Access and Item 2041 – Drayage Truck Compliance

- The list of State emissions laws for Drayage Trucks was modified in these two items to add reference to a regulation presently in the CARB rulemaking process: “and/or the CARB Advanced Clean Fleet Regulation following adoption (<https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets> ).”

CEQA Findings

The proposed action is the amendment of Port Tariff No. 4, Section Twenty, by adding Item No. 2030 – Clean Truck Fund Rate and Item 2035 – Clean Truck Fund, which is an activity modifying a rate, fee, or charge for the use of existing municipal facilities and services involving negligible or no expansion of use. Therefore, the Harbor Department has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Article III, Class 1(31) of the Los Angeles City CEQA Guidelines.

Increase in Existing Fees

We note that, because this ordinance would effectuate increases in existing fees, notice of its proposed adoption should be given in accordance with the provisions of California Government Code Sections 66018 and 6062a. Those sections of State law require that prior to adoption of a new or increased fee a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

Council Rule 38 Referral

The Harbor Department is the proposing department, and the Tariff amendments were discussed and considered with Harbor Department management and staff present in a full public hearing of the Board of Harbor Commissioners on November 4, 2021.

If you have any questions regarding this matter, please contact Assistant City Attorney Joy Crose at (310) 732-3750. A member of this Office will be available when you consider this matter to answer any questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON  
Chief Assistant City Attorney

DM:JMC:pj  
Transmittal