



MICHAEL N. FEUER
CITY ATTORNEY

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REPORT RE:

**DRAFT ORDINANCE AMENDING PORT OF LOS ANGELES
TARIFF NO. 4, SECTION THREE, "PILOTAGE"**

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

Honorable Members:

As requested by the Board of Harbor Commissioners, 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 Order No. 21-7292, thereby amending the Port of Los Angeles (Port) Tariff No. 4, Section Three in order to increase Vessel Traffic Service (VTS) User Fees. The VTS is a unique public-private partnership between the Marine Exchange of Southern California (MX), the United States Coast Guard (USCG), and the Ports of Los Angeles and Long Beach (Ports) as established under California state law. The VTS operates to monitor vessel activity within the Ports and manage all commercial vessel traffic up to approximately 40 miles beyond the federal breakwater. As required by state law, these User Fees pay the costs of operating the VTS for the Ports to facilitate safe, secure, reliable, and efficient marine transportation while protecting the environment. The proposed fee increases are required at this time in order to fund anticipated increases in costs to operate the MX for the next three fiscal years. As VTS User Fees are paid directly to the MX, there is no financial impact to the Harbor Department associated with this action.

Charter Findings

On February 18, 2021, pursuant to Los Angeles City Charter Sections 652(a), 652(c) and 653(a), the Los Angeles Board of Harbor Commissioners (Board) adopted Order No. 21-7292, approved the enclosed draft ordinance and recommended that the City Council adopt it. Under Charter Section 653(a), Board Order No. 21-7292 must be approved by the City Council, by ordinance, in order to become effective.

Background

Tariff No. 4, Section Three delineates the amount of VTS User Fees assessed against covered vessels subject to the payment of VTS User Fees under its terms. The VTS operates under the authority of California Government Code Section 8670.21 and Harbors and Navigation Code Section 445-449.5 to monitor vessel activity within the Ports and manage all commercial vessel traffic up to approximately 40 miles beyond the federal breakwater. The MX operates a VTS that monitors vessel traffic within, and approaches to, the Ports. MX costs are paid for primarily through the Ports tariff imposed VTS User Fees.

The Budget of the MX is approved by its 17-member Board of Directors annually in June. The MX has an annual audit performed every August by an outside accounting firm. The MX closes its financial books monthly, which are submitted to and reviewed by the MX Board President, Treasurer, and the outside accounting firm. MX financial reports are also reviewed by the MX Finance Committee and full Board of Directors 4 times per year.

VTS User Fees are meant to be uniform within the Ports. The MX Board of Directors has communicated their proposal to the Pacific Maritime Shipping Association (PMSA) and to other industry representatives such as cruise ships, tankers, and local vessels. It is anticipated that the Port of Long Beach will concurrently and independently pursue a similar tariff amendment to maintain uniform fees.

Discussion

The Board approved the amendment to Tariff No. 4 in accordance with Harbor Department staff recommendations. The proposed fee increases are required at this time in order to fund anticipated increases to employee salary and benefit/health care expenses, business continuity and resumption backup, utilities, equipment maintenance agreements and repairs, insurance, communications, information technology, and cyber security. Currently the projected operating cost of the MX for the next 3 fiscal years (FY) (2022-2024) is \$10,855,000 and VTS User Fees under the existing rate structure are anticipated to be \$9,073,000. The proposed amendment increasing VTS User Fees is anticipated to result in \$10,361,000 in tariff revenue from the Ports, which combined

with other revenue sources at the MX is expected to meet its funding requirements for this period.

VTS User Fees are assessed on a monthly basis for local vessels such as tugs and tows, ferries, commercial rescue and emergency vessels, and whale watch boats. For non-local entry vessels, VTS User Fees are assessed based upon a vessel's gross-tons (GT) and length overall (LOA) upon arrival at the Ports.

Summary of Ordinance Provisions

The draft ordinance amends Port Tariff No. 4 by amending Section Three, Item No. 370. Effective April 1, 2021, the proposed amendment would increase the VTS User Fees range on local vessels on a one-time basis by anywhere from \$5 to \$40, to a proposed range of \$35 to \$395 per month. For non-local entry vessels, the proposed amendment would apply an annual 10.5% increase to LOA and GT fees, effective on April 1st of each of the next three years. In addition, the maximum LOA fee would be applied to non-local entry vessels with an LOA of 335 meters or more. After the proposed three 10.5% increases are applied, by April 1, 2023, the LOA fee range would increase to \$318 to \$675 per visit (relative to the current \$236 to \$500 per visit). In addition, the GT fee in effect as of April 1, 2023, would be \$0.0043 (relative to the current \$0.0032 per GT).

CEQA Findings

The proposed action is the amendment of Port Tariff No. 4, Section Three, Item No. 370, to increase VTS User Fees, 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 February 18, 2021.

If you have any questions regarding this matter, please contact Deputy City Attorney John Driscoll at (310) 732-3750. He or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:JD:pj
Transmittal