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REPORT RE:

**DRAFT ORDINANCE AMENDING PORT OF LOS ANGELES
TARIFF NO. 4, SECTION TWENTY-THREE,
"INCENTIVES - GENERAL RULES AND REGULATIONS"**

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. 21-7303, thereby amending the Port of Los Angeles (Port) Tariff No. 4, Section Twenty-Three in order to remove the Qualifying Year as an eligibility requirement from the Ocean Common Carrier (OCC) Incentive Program (Incentive Program), effective April 1, 2021. Additionally, the amendment would remove the requirement that OCCs must have brought more than "zero" container volume in the Qualifying Year during the Incentive Program. The COVID-19 global pandemic has caused unexpected and erratic trading patterns impacting container volumes beyond the control of OCCs. Removing the Qualifying Year requirement would adjust the Program in response to the unforeseen COVID-19 pandemic-related decrease in container volume during Fiscal Year (FY) 2020 and incentivize OCCs to drive future container volumes through the Port. Removing the requirement that OCCs must have brought more than "zero" container volume during the Qualifying Year would effectuate the intent of the Program to incentivize new OCCs to bring container services to the Port. Payouts to OCCs earned under the terms of the Incentive Program are the financial responsibility of the Harbor Department.

Charter Findings

On May 6, 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. 21-7303, approved the enclosed draft ordinance, and recommended that the City Council adopt it. Under Charter Section 653(a), Board Order No. 21-7303 must be approved by the City Council, by ordinance, in order to become effective.

Background

On August 23, 2018, the Board approved the Incentive Program, effective September 1, 2018, allowing eligible OCCs to receive a \$10.00 per Twenty-foot Equivalent Unit (TEU) financial incentive on incremental loaded and empty TEUs that exceed Transpacific container volume growth. Currently, in order for an OCC to be eligible to receive a payout under the Incentive Program, that OCC must meet certain administrative and data transmission requirements. After these administrative and data transmission requirements are met, an OCC must also meet certain performance criteria. As part of this performance criteria, an OCC's Incentive Year (current year) performance is evaluated relative to its Baseline Year (1 year prior) and Qualifying Year (2 years prior) thresholds to determine payout eligibility. Lastly, Qualifying Year container volumes must be greater than zero.

For instance, in order for an OCC's performance in the FY 2021 Incentive Year to be eligible for a payout under the Incentive Program, that OCC's FY 2021 performance must, at a minimum, exceed its FY 2020 Baseline Year performance *and* the OCC's FY 2020 Baseline Year performance must exceed its FY 2019 Qualifying Year performance. The inclusion of this performance criteria was intended to provide a financial incentive to OCCs that continuously grew their business through the Port.

Following the significant year-over-year decline in global trade observed from January through June 2020 due to the onset of the COVID-19 pandemic, FY 2020 container volumes handled by OCCs declined relative to FY 2019. Now that global trade has rebounded in the second half of calendar year 2020, OCCs have recovered a significant portion of the business lost in the first half of calendar year 2020. Furthermore, from July through December 2020, ten OCCs have grown their business at the Port in excess of Transpacific growth. However, none of these ten OCCs are currently eligible for an incentive payout in FY 2021 because their COVID-19-diminished FY 2020 Baseline Year performance did not exceed their respective FY 2019 Qualifying Year performance.

Additionally, an initial requirement of the Incentive Program was that OCCs must have brought more than "zero" container volume to the Port. After Port staff conducted a review of the effectiveness of the program over time, it determined that this requirement had the unintended consequence of not incentivizing new OCCs to bring

container services to Port terminals. At the inception of the Incentive Program, existing OCCs were granted a waiver of the Qualifying Year requirements. This amendment would allow for new OCCs to obtain the same benefit that existing OCCs received at the inception of the Incentive Program and conforms with the overall intent of the program to strengthen the Port's competitiveness in Transpacific trade.

Discussion

The Board approved the amendment to Port Tariff No. 4 in accordance with Harbor Department staff recommendations. While traditionally OCCs sailing schedules are pre-set months in advance, due to the COVID-19 pandemic, vessel schedules are more fluid. Removing the Qualifying Year requirement would adjust the Incentive Program in response to the unforeseen pandemic-related decrease in container volume during FY 2020 and incentivize OCCs to drive future container volumes through the Port. The removal of the Qualifying Year provision will only allow an OCC to earn an incentive on TEUs delivered to the Port above the Transpacific trade growth percentage from April 1, 2021, onward relative to the Baseline Year. Removing the requirement that OCCs must have brought more than "zero" container volume during the Qualifying Year would effectuate the intent of the Incentive Program to incentivize new OCCs to bring services to the Port. All other terms and conditions of the current Incentive Program would remain in effect.

Staff estimates that eliminating the Qualifying Year provision would result in OCC earned incentive payouts under the Incentive Program between \$3.5 and \$4.0 million from April 1, 2021, to June 30, 2021. In the event that removal of the Qualifying Year performance provision results in a 1 percent increase in the Port's Trailing Twelve-Month Market Share, staff estimates that revenues could increase by \$6,290,000 per year. Staff estimates that removing the requirement that OCCs must have brought more than "zero" container volume during the Qualifying Year would result in additional earned payouts of approximately \$2.2 million.

Summary of Ordinance Provisions

The draft ordinance amends Port Tariff No. 4 by amending Section Twenty-Three, Item No. 2325. The proposed amendment would remove the Qualifying Year as an eligibility requirement from the Incentive Program effective April 1, 2021, and remove the requirement that OCCs must have brought more than "zero" container volume in the Qualifying Year during the effectiveness of the Incentive Program.

CEQA Findings

The proposed action is approval of a Permanent Order to amend Port of Los Angeles Tariff No. 4 OCC Incentive Program to remove the "but not zero" container volume reference and the Qualifying Year provision, which is an administrative activity.

Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

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 May 6, 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
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DM:JD:pj
Transmittal