

HARBOR DIVISION

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DATE: OCTOBER 29, 2014

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF REVISED FORMS FOR SPACE ASSIGNMENTS, BERTH ASSIGNMENTS, AND SUBSTITUTE PREMISES

SUMMARY:

The Office of the City Attorney has prepared revised standard forms for space assignments, berth assignments, and substitute premises granted to assignees for the temporary use of land and water areas within the Harbor District. The Board of Harbor Commissioners' (Board) approval of revised forms is necessary because the forms the Wharfingers currently use to document such entitlements are outdated and inconsistent with certain provisions of Tariff No. 4 and the current practices of the City of Los Angeles Harbor Department (Harbor Department). The proposed action will not result in any new financial responsibility on behalf of the Harbor Department or any other party executing the proposed forms.

RECOMMENDATION:

It is recommended that the Board of Harbor commissioners (Board):

1. Approve the standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (WITHIN ASSIGNEE'S EXISTING PREMISES);
2. Approve the standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (OUTSIDE ASSIGNEE'S EXISTING PREMISES);
3. Approve the standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (PORT USER NOT CURRENTLY ASSIGNEE);

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4. Approve the standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION FOR RENEWAL;
5. Authorize the Executive Director, or designee, to grant space assignments on the standard space assignment forms approved by the Board, or substantially similar forms, as allowed under Item No. 800 of Tariff No. 4;
6. Approve the standard berth assignment form entitled NONEXCLUSIVE BERTH ASSIGNMENT APPLICATION AND AGREEMENT;
7. Approve the standard berth assignment form entitled SUPPLEMENTAL ATTACHMENT TO NONEXCLUSIVE BERTH ASSIGNMENT APPLICATION AND AGREEMENT;
8. Authorize the Executive Director, or designee, to grant berth assignments on the standard berth assignment forms approved by the Board, or substantially similar forms, as allowed under Item No. 1010 of Tariff No. 4;
9. Approve the standard substitute premises form entitled SUBSTITUTE PREMISES APPLICATION AND AGREEMENT;
10. Authorize the Executive Director, or designee, to grant substitute premises on the standard substitute premises form approved by the Board, or a substantially similar form, as allowed under Item No. 1035 of Tariff No. 4; and
11. Adopt Resolution No. _____.

DISCUSSION:

Background – The Executive Director of the Harbor Department is authorized to grant nonexclusive space assignments and berth assignments for the use of harbor lands and waters to assignees on standard forms approved by the Board pursuant to Items No. 800 and 1010 of Tariff No. 4. The Executive Director is also authorized to assign substitute premises when terminal areas granted for an assignee's use become temporarily unavailable through causes beyond the control of the Harbor Department or assignee including, but not limited to, construction within the Port of Los Angeles (Port), accidents, and heavy vessel traffic pursuant to Item No. 1035 of Tariff No. 4.

The standard space assignment and berth assignment forms currently utilized by Harbor Department personnel need to be revised to reflect amendments to the applicable tariff and changes in Harbor Department policies and procedures. For

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example, some of the standard forms currently used for space assignments and berth assignments reference provisions of Tariff No. 3. Tariff No. 3 was superseded by Tariff No. 4 effective July 1, 1990. One form also requires the assignee to appoint The Prentice-Hall Corporation System, Inc., located at 5225 Wilshire Boulevard, Los Angeles, California 90036, as its agent for the service of process. The Prentice-Hall Corporation System, Inc. does not currently maintain an office at this location. Many other provisions including, but not limited to, insurance requirements and environmental conditions, are similarly outdated. The existing space assignment and berth assignment forms are replete with obsolete references, terms, and conditions necessitating the approval of revised forms.

Although no standard form for the assignment of substitute premises has previously been utilized by Harbor Department personnel, or required under Tariff No. 4, creating and employing a standard form would bring consistency and efficiency to the process of granting such entitlements.

The proposed standard forms for space assignments, berth assignments, and substitute premises have been reviewed and approved by the Wharfingers, Real Estate, Environmental, Risk Management, and Planning and Economic Development Divisions. Each of these Divisions worked with the Office of the City Attorney to draft the language and finalize the terms and conditions included in each form. Once approved, the Office of the City Attorney will work with Information Technology to make the standard forms available to applicants on the Port of Los Angeles website in a fillable form format.

Space Assignments – Temporary space assignments may be granted within an assignee's existing premises so that the assignee may be granted the space assignment rate rather than the otherwise applicable demurrage and wharf storage rate pursuant to Item Nos. 700 through 760 and 800 of Tariff No. 4. Assignee's typically request such space assignments when the assignee anticipates that cargo or equipment must be stored on existing premises significantly longer than the free time allowed before demurrage is assessed. Space assignments granted for these purposes are subject to the same terms and conditions of the existing agreement in effect for the premises pursuant to Item No. 800 of Tariff No. 4.

Temporary space assignments may also be granted outside an assignee's existing premises held under another agreement with the City of Los Angeles (City) pursuant to Item 800 of Tariff No. 4. The assignee's request for such a space assignment must state why the assignee's existing premises are insufficient and how long the assignee expects to need the space assignment. In such instances, the provisions of the existing agreement do not apply to the premises granted under the space assignment.

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Finally, space assignments may be granted to an assignee that does not currently hold possession of any premises in the Harbor District under an existing agreement with the City. Such space assignments may be granted for cargo related purposes or any other purposes permitted by the Charter of the City and the tide and submerged land grants which regulate the use of lands within the Harbor District.

All space assignments are granted for an initial 30 day period and may be renewed for an additional 30 days or longer or shorter period upon the assignee's application if conditions and circumstances warrant.

Four proposed standard forms for space assignments are submitted for the Boards' approval consisting of (1) an application and agreement for each of the three types of space assignments, and (2) an application for renewal that may be used for all space assignments (Transmittals 1-4).

Berth Assignments – Preferential, secondary, and temporary berth assignments may be granted to assignees to dock vessels owned, operated, or represented by the assignee at the berth, to embark and disembark passengers and their baggage, and to assemble and distribute the cargoes of such vessels over, through, or upon the assigned area pursuant to Item 1005 of Tariff No. 4. Such rights are nonexclusive and subject to the provision that when the assigned berth is not required in whole or in part for the use of the assignee, the Executive Director may make temporary assignments of the berth to any other assignee.

Two proposed standard forms for berth assignments are submitted for the Boards' approval consisting of (1) an application and agreement, and (2) a supplemental attachment which may be used when the assignee expects more than one vessel to call at the premises (Transmittals 5-6).

Substitute Premises – Substitute premises may be granted when the assignee submits a request in writing to the Executive Director stating what area the assignee presently has the right to use, why it is temporarily unavailable, the period of time it is unavailable, and the substitute area assignee believes would be suitable for its use pursuant to Item No. 1035 of Tariff No. 4. If the Executive Director consents, the substitute premises are assigned in accordance with the same terms and conditions of the agreement under which the assignee's primary premises are granted. Existing agreements which allow the assignee to share revenues with the Harbor Department apply during the assignee's use of the substitute premises. The use of substitute premises is subject to cancellation upon either 24 hours' notice or 48 hours' notice depending on the number of days the assignee uses the premises.

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A single proposed standard form for substitute premise is submitted for the Boards' approval (Transmittal 7). Historically written requests for, and the Executive Director's consent to, the assignment of substitute premises have been documented via letter or email. The Office of the City Attorney prepared the proposed standard form to help ensure that the requirements for applications for substitute premises set forth in Tariff No. 4 are met before substitute premises are assigned and to clarify the terms and conditions upon which such requests are granted.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of revised forms for space assignments, berth assignments, and substitute premises. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2(f) of the Los Angeles CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

This Board action will have no financial impact.

CITY ATTORNEY:

The standard forms for space assignments, berth assignments, and substitute premises have been reviewed by the Office of the City Attorney and approved as to form and legality.

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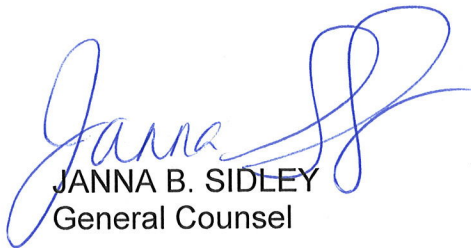
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
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TRANSMITTALS:

1. Standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (WITHIN ASSIGNEE'S EXISTING PREMISES)
2. Standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (OUTSIDE ASSIGNEE'S EXISTING PREMISE)
3. Standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION AND AGREEMENT (PORT USER NOT CURRENTLY ASSIGNEE)
4. Standard space assignment form entitled NONEXCLUSIVE SPACE ASSIGNMENT APPLICATION FOR RENEWAL
5. Standard berth assignment form entitled NONEXCLUSIVE BERTH ASSIGNMENT APPLICATION AND AGREEMENT
6. Standard berth assignment form entitled SUPPLEMENTAL ATTACHMENT TO NONEXCLUSIVE BERTH ASSIGNMENT APPLICATION AND AGREEMENT
7. Standard substitute premises form entitled SUBSTITUTE PREMISES APPLICATION AND AGREEMENT



JANNA B. SIDLEY
General Counsel

FIS Approval:  (initials)
CA Approval:  (initials)

APPROVED:


EUGENE D. SEROKA
Executive Director

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BOARD MEETING: 11/06/2014