THE PORT OF LOS ANGELES

Executive Director's Report to the Board of Harbor Commissioners

DATE: **AUGUST 19, 2021**

FROM: **CARGO MARKETING**

SUBJECT: **RESOLUTION NO. _____ - ADOPT THIRD TEMPORARY ORDER TO AMEND PORT OF LOS ANGELES TARIFF NO. 4, SECTION TWENTY-THREE, "INCENTIVES - GENERAL RULES AND REGULATIONS", ITEM NO. 2325, "OCEAN COMMON CARRIER INCENTIVE PROGRAM" UPDATING THE QUALIFYING YEAR PROVISION**

SUMMARY:

Staff requests approval of a third Temporary Order to amend (Amendment) Port of Los Angeles (Port) Tariff No. 4 (Tariff) Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program." The proposed amendment removes the "but not zero" container volume reference in the Qualifying Year period of the Ocean Common Carrier (OCC) Incentive program (Program), retroactive to September 1, 2018, and removes the qualifying year as an eligibility requirement effective April 1, 2021. Removing the qualifying year requirement would adjust the program in response to the unforeseen COVID-related decrease in container volume during Fiscal Year (FY) 2020. The "but not zero" container volume reference in the Qualifying Year did not consider OCCs that had not brought any container volume to the Port in the two years preceding their arrival, nor did it recognize OCCs that had very limited market participation and then dramatically increased container volumes through the Port, effectively "New Market Entrants".

Eligible OCCs can earn a financial incentive that could amount to $10.00 per incremental Twenty-foot Equivalent Units (TEU) and a maximum payout of $2,000,000 per OCC per Incentive Period as stated in Tariff No. 4 Item No. 2325.

Payouts to OCCs earned under the terms of the proposed OCC Incentive Program are the financial responsibility of the Harbor Department.

Changes in the Tariff require City Council approval. At the May 6, 2021, Board of Harbor Commissioners (Board) meeting, the Board approved a Temporary and Permanent Order amending Port Tariff No. 4 Item No. 2325. A second Temporary Order was approved at

the June 17th Board meeting to allow additional time for the Permanent Order to pass through the City Council approval process. The City Council has yet to calendar and approve the Permanent Order and Ordinance. Therefore, a third Temporary Order is needed. The third Temporary Order, if approved, will expire in 90 days after the day it is published or upon execution of the Permanent Order by the City Council, whichever occurs first.

RECOMMENDATIONS:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Adopt Temporary Order No._____ to amend Port of Los Angeles Tariff No. 4, Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program";

3. Authorize the Board Secretary to certify the adoption of the Temporary Order by the Board of Harbor Commissioners and cause the same to be published once in a newspaper printed and published in the City of Los Angeles, to take effect prior to adoption by Ordinance for a period not-to-exceed 90 days pursuant to City Charter Section 653(b); and

4. Adopt Resolution No. _____.

DISCUSSION:

Background and Context – On May 6, 2021, the Board approved Temporary Order No. 21-7302 and Permanent Order No. 21-7303 amending Tariff Item No. 2325. The amendments removed the "but not zero" container volume reference in the Qualifying Year period of the Ocean Common Carrier (OCC) Incentive program (Program), retroactive to September 1, 2018, and removed the qualifying year as an eligibility requirement effective April 1, 2021. Removing the Qualifying Year requirement adjusts the program in response to the unforeseen COVID-related decrease in container volume during Fiscal Year (FY) 2020 and incentivizes OCCs to drive future container volumes through the Port. The "but not zero" container volume reference in the Qualifying Year did not consider OCCs that had not brought any container volume to the Port in the two years preceding their arrival, nor did it recognize OCCs that had very limited market participation and then dramatically increased container volumes through the Port, effectively "New Market Entrants".

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, through no fault of their own, declined relative to FY 2019. OCCs recovered a significant portion of the business lost in the first half of calendar year 2020. From July through December 2020, ten OCC's grew their business at the Port in excess of Transpacific growth. None of these ten OCC's were eligible for an incentive payout in FY 2021 because their FY 2020 Baseline Year performance did not exceed their respective FY 2019 Qualifying Year performance.

On April 1, 2021, the Board approved the amendment to the OCC Incentive Program removing the Qualifying Year performance provision adjusting the program in response to the unforeseen COVID-related decrease in container volume during FY 2020.

Following the approval of the amendment to the OCC Incentive Program, which removed the Qualifying Year requirement effective April 1, 2021, it was discovered that "New Market Entrants" that started moving container volumes through the Port after the effective date of the OCC Incentive Program were not able to receive the same benefits existing OCCs were receiving at the Port. The reference to "but not zero" container volume in Tariff Section Twenty-Three, Item No. 2325 "Ocean Common Carrier Incentive Program and Eligibility Requirements", meant that an OCC has to have moved a minimum of **"one"** container through the Port during the qualifying year. "New Market Entrants" were effectively ineligible to receive an incentive, which is contrary to the intent of the program, attracting additional cargo volumes to the Port above the Transpacific growth percentage.

"New Market Entrants" should be able to receive the same benefits existing OCCs received when the program was first introduced; the Qualifying Year requirement did not apply for all OCC's during the initial Incentive Period of the Program. This is achieved with the removal of the "but not zero" container volume reference in the Qualifying Year period effective retroactively to September 1, 2018.

All other terms and conditions of the current OCC Incentive Program would remain in effect.

Need for Approval

Pursuant to the Los Angeles City Charter, the Board has authority to make changes to Tariff No. 4 for a period of 90 days by Temporary Order. The second Temporary Order will expire on September 29, 2021, before the Permanent Order can be fully executed. Council is unable to calendar and approve the Permanent Order and Ordinance before the expiration date, therefore, a third Temporary Order (Transmittal 1) is proposed to allow additional time for the Permanent Order to pass through the City Council approval process. The third Temporary Order, if approved, will expire 90 days after the day it is

published or upon execution of the Permanent Order by the City Council, whichever occurs first.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a third Temporary Order amending Port of Los Angeles Tariff No. 4 OCC Incentive Program (Transmittal 2), 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.

FINANCIAL IMPACT:

Consistent with the first Temporary Order approved by the Board on April 1, 2021 as well as the second Temporary Order approved by the Board on June 17, 2021, approval of the proposed Third Temporary Order will amend Tariff No. 4, Section 23, Item No. 2325. The proposed amendment will (i) eliminate the Qualifying Year performance provision effective April 1, 2021 and (ii) remove the "but not zero" reference to enable new market entrants to fully participate in the OCC Incentive Program.

Based upon the initial data observed through June 30, 2021, staff estimates that the aggregate impact of these amendments will increase payouts due under the OCC Incentive Program by approximately $3.5 million. Of this $3.5 million in payouts, $182,225 would be due to a New Market Entrant in FY 2021 with the remaining $3.3 million paid in FY 2022, summarized as follows:

Payouts	Removal of QY	New Market Entrant	Total
FY 2021	$ -	$ 182,225	$ 182,225
FY 2022	$ 1,315,350	$ 2,000,000	$ 3,315,350
Total	**$ 1,315,350**	**$ 2,182,225**	**$ 3,497,575**

Fiscal Year 2022 funding of $3,497,575 is available within Account 59961 (Container Incentives), Center 0422, Program 000. Based upon data observed through June 30, 2021, staff estimates that approximately 453,000 TEUs were incentivized as a result of the proposed amendment resulting in incremental revenues of approximately $17,000,000. Net of the $3,497,575 in payouts, this amount of incremental revenues implies estimated incremental income of $13,502,425 earned by the Harbor Department as a result of the proposed incentive program amendments.

SUBJECT: THIRD TEMPORARY ORDER TO AMEND TARIFF NO. 4, SECTION TWENTY-THREE, ITEM NO. 2325

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed Order as to form and legality.

TRANSMITTALS:

1. Temporary Order
2. Tariff No. 4 Section Twenty-Three, Item No. 2325

FIS Approval: MB
CA Approval: SO

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