

MEMORANDUM

June 9, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request Approval of Amendments to Port Tariff No. 5 regarding Indemnity, Wharfage Rates and Storage Rates and new Form Application and Agreement for Berth Assignment in Support of Operations at the Pier 80 Cargo Terminal

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

U.S. public ports are required by law to file a port tariff with the Federal Maritime Commission outlining rules, regulations and rates for use of Port marine terminals and wharfs. On May 10 2016, by Resolution 16-16, the Port Commission approved a 15-year Exclusive Management Agreement ("Management Agreement") with Pasha Automotive Services (PAS) for Pier 80. In the course of developing and negotiating the Management Agreement, Port and PAS reviewed Port Tariff No. 5 and the Port's general form berth agreement and determined that updates are required to: 1) improve provisions relating to indemnity, damage to facilities, insurance and to various Tariff rates for wharfage, and demurrage/storage; 2) be more consistent with other West Coast ports; 3) better address the types of cargo operations that will be taking place in support of the new PAS business at Pier 80; and 4) meet current City and County of San Francisco requirements.

Proposed Changes to Port of San Francisco Tariff No.5 *(See Exhibit A for full text)*

The Port of San Francisco publishes Tariff No. 5 which contains the rules, regulations and rates that govern maritime commerce at the Port. The tariff is periodically updated to reflect changes in regulatory programs, risk assessments and market place rate increases.

THIS PRINT COVERS CALENDAR ITEM NO. 10C

The Port consults with its fellow Ports through CAPA (California Association of Ports) whereby all changes to the tariff are reviewed by the CAPA membership for consistent application of rules and regulation and those rates are competitive in the marketplace. The following tariff item changes are proposed:

- Item Nos. 100; 111 and 137 Indemnity and Damage to City Property

Item No. 100 is a new item in the general rules and regulations section of the Tariff. Items 111 and 137 are existing items that will be revised. In combination, these provisions will clarify the obligations and liabilities of persons using Port facilities and their responsibility for damage to Port facilities. These provisions are consistent with similar provisions in the tariffs of other West Coast Ports and Port's other commercial leases and licenses. The changes will align the Tariff with the provisions of the Management Agreement to protect the Port from liability from entities working with PAS at Pier 80.

- *Changes to Wharfage and Wharf Storage rates and application.
See exhibit A for full text*

Item 242 Yachts \$4.41 handled ship to shore, \$7.11 handled wharf to water and \$4.53 handled water to ship.

Item 260 Containers 0-7meters \$166.46 over 7 meters \$250.90

Item 270 Cargo Not Otherwise Specified (N.O.S.) in containers 0-7meters \$166.46 over 7 meters \$250.90

Item 285 Vehicles. autos \$24.00 per car. (changed from; per 1000 kilos)
Trucks up to 26,000 Lbs. \$18.38 Trucks over 26,000 Lbs. \$20.63 (remain per 1000 kilos)

Item 355 Wharf Storage rate for autos, either inside or outside storage, is \$.85 per auto per day for autos discharged or loading to a vessel. For autos not discharged or loading to a vessel, outdoor storage is \$2.30 per auto per day and inside storage is \$5.85 per auto per day.

These updated rates were taken into account in determining the fee structure pro forma presented in the Memo dated May 6, 2016.

New Form Application and Agreement for Berth Assignment for Pier 80 (See *Exhibit B for full text*)

In addition to the tariff item changes, the Port has determined that its current Application and Agreement for Berth Assignment, which is used for all vessels call at all Port facilities with the exception of Cruise ship calling at the Pier 35 and 27, require amendment and be made specific to the Pier 80 terminal facility.

Port will continue to authorize vessels to call on Pier 80 and load and discharge cargo for processing by PAS through an Application and Agreement for Berth Assignment. The berth agreement will cover the ship's and stevedoring activities until the point at which PAS begins to handle the cargo. The Port's existing general form berth agreement for ocean carriers at Pier 80 has not been updated since 2005. The proposed updated Pier 80 Form Berth Agreement incorporates liability and risk transfer provisions similar to the Management Agreement in type and scope. Specifically, the updated form will include insurance, indemnity and exculpation language and provisions regarding hazardous materials and damage to Port that are consistent with current City practices for similar agreements and with the terms of the Management Agreement. These updated provisions are also consistent with the practices of other West Coast ports through their tariffs or commercial agreements. Port staff has met with PAS to review the updated form berth agreement.

- *Insurance coverage:*

The Port's existing form berth agreement does not require the vessel owner to provide evidence of insurance, specify the types and amounts of coverage. The new form berth agreement requires that each vessel provide evidence of the types of insurance common in the industry such as Jones Act Longshore and Harbor Workers compensation act, Hull and Machinery coverage and Vessel Pollution Liability insurance. PAS has agreed to assist and support the Port in obtaining all requisite insurance certifications.

- *Hazardous Materials:*

The existing form berth agreement contained a provision relating prohibition of discharges into San Francisco bay which will be carried over to the new berth agreement. However the new form berth agreement adds provisions that more thoroughly address reporting, handling, incident notification, response and remediation action as they relate to hazardous materials.

Environmental

The amendments to the Port tariff and berth agreement contained herein represent revisions to the Port rules and rates are not a project subject to review under the California Environmental Quality Act.

Staff Recommendation

Port staff recommends that the Port Commission approve the proposed changes to Port Tariff No. 5 and the new form of the Application and Agreement for Berth Assignment as stated above.

Prepared by: John Davey, Chief Wharfinger
For: Peter Dailey, Deputy Director, Maritime

Attachments:

Exhibit A: Tariff Changes

Exhibit B: Application and Agreement for Berth Assignment at Pier 80

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 16-25

- WHEREAS, Section B3.581 of the Charter of the City and County of San Francisco empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, the Port holds in trust and subject to its lawful disposition certain maritime Facilities located at the Cargo Terminal at Pier 80 (hereinafter “Pier 80 Cargo Facility”) situated in the City and County of San Francisco; and
- WHEREAS, federal law mandates that U.S. Public Ports file rules and regulations and rates and charges in a public tariff; and
- WHEREAS, Tariff No. 5 details the port fees/charges as well as rules and regulations for the Port of San Francisco; and
- WHEREAS, the Port and Pasha Automotive Services (PAS) have negotiated the terms of an exclusive management agreement approved by the Port Commission on May 10, 2016 through Resolution No. 16-16 ; and
- WHEREAS, the amendments to the Port tariff and berth agreement contained herein represent updates to the Port rules and new rates as they relate to a new commodity type and this action doesn’t require further review under the California Environmental Quality Act; and
- WHEREAS, Port staff, in consultation with PAS, has reviewed Port Tariff No. 5 and the Port’s form berth agreement and recommends updates to the charges for wharfage, and storage and the provisions relating to risk allocation hazardous materials, insurance and other matters to support the new operations at Pier 80; make these documents consistent with similar practices of other West Coast ports and to meet current City and County of San Francisco requirements; and, therefore be it
- RESOLVED, that the Port Commission authorizes the Executive Director or her designee to make changes to Port Tariff No. 5 to implement the revisions described in the Memorandum dated June 9, 2016; and to make subsequent revisions to rates relating to terminal operations at Pier 80, in consultation with the City Attorney, that she determines are necessary or desirable to make the Port commercially competitive to comparable West Coast ports, are in the best interest of and provide overall beneficial economic return to the Port, and do not

increase the obligations or liabilities of the Port or City or; and, be it further

RESOLVED, that the Port Commission hereby approves the Pier 80 Form Berth Agreement as described in the Staff Memorandum dated June 9, 2016; and, be it further

RESOLVED, that the Port Commission authorizes that Executive Director or her designee to make additions, amendments, or other modifications to the Pier 80 form berth agreement from time to time, in consultation with the City Attorney, that she determines are required to incorporate new City requirements, and in the best interest of the Port, and do not increase the obligations or liabilities of the City or Port; and, be it further

RESOLVED, the Port Commission authorizes the Executive Director or her designee to enter into berth agreements for Pier 80 substantially in the form of the form Pier 80 berth agreement with cargo ships, to enforce and administer each agreement and to make any additions, amendments or other modifications to each agreement that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the form Pier 80 berth agreement contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or her designee of a specific Pier 80 berth agreement, and any such amendments thereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 14, 2016.

Secretary