



# SPECIAL PORT COMMISSION MEETING

**August 8, 2024 – AGENDA**





**Thursday, August 8, 2024**  
**SPECIAL PORT COMMISSION OF THE PORT OF HOUSTON AUTHORITY**

**9:30 A.M.**  
**111 East Loop North**  
**Houston, TX 77505**  
**Fourth Floor Boardroom**  
**And Via WebEx**

**A. CALL TO ORDER**

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**B. OPENING REMARKS BY CHAIRMAN AND COMMISSIONERS**

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1. Governance, legislative, policy, operational matters, and community matters
2. Resolution of the Port Commission in Honor of Jürgen Schröder

**C. APPROVAL OF MINUTES**

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Special Port Commission Public Meeting - May 21, 2024

**D. STAFF REPORT**

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Overview and presentation regarding Houston Ship Channel user fee ordinance for funding "Project 11," the Houston Ship Channel Expansion - Channel Improvement Project –  
Jordan Frisby, Director Technical & Business Analytics

**E. APPEARANCES**

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Public comment regarding Houston Ship Channel user fee ordinance

**F. DELIBERATION, PUBLIC COMMENT, AND POSSIBLE ACTIONS BY CHAIRMAN AND COMMISSIONERS**

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Port of Houston Authority of Harris County, Texas User Fee Ordinance: An Ordinance Setting Out the Need for and Levying of a User Fee on Vessels and Providing Penalties

**G. RECESS OPEN MEETING AND CONVENE EXECUTIVE SESSION**

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1. Consultation with Attorneys (Section 551.071, Texas Open Meetings Act), including consultations regarding (i) Section 301 of the Trade Act of 1974 and (ii) 33 U.S.C.A. §§5(b) and 2236
2. Real Estate (Section 551.072, Texas Open Meetings Act)
3. Economic Development Negotiations or Incentives (Section 551.087, Texas Open Meetings Act)

4. Employment and Evaluation of Public Officers and Employees (Section 551.074, Texas Open Meetings Act)

5. Security-Related Matters (Sections 418.175-418.183 of the Texas Government Code, and Section 551.076, Texas Open Meetings Act)

Adjourn Executive Session

**H. RECONVENE OPEN MEETING**

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Announce any items from Executive Session requiring Port Commission action

**I. CLOSING REMARKS BY CHAIRMAN AND COMMISSIONERS**

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Governance, legislative, policy, operational, and community matters

**J. ADJOURN MEETING**

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## **F. EXECUTIVE**

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**Subject** Deliberation, public comment, and possible actions regarding Port of Houston Authority of Harris County, Texas User Fee Ordinance: An Ordinance Setting Out the Need for and Levying of a User Fee on Vessels and Providing Penalties.

Meeting Aug 8, 2024 - PORT COMMISSION OF THE PORT OF HOUSTON AUTHORITY

Access Public

Type Action

### **Recommended Action**

The Port Commission, at its August 8, 2024 meeting, deliberate, hear public comment, and take possible actions regarding Port of Houston Authority of Harris County, Texas User Fee Ordinance: An Ordinance Setting Out the Need for and Levying of a User Fee on Vessels and Providing Penalties, and further authorize the Executive Director to do any and all things in his opinion reasonable or necessary to give effect to the foregoing.

### **Category:**

General

### **Department:**

Executive

### **Staff Contact:**

Roger Guenther

### **Background:**

The Houston Ship Channel Expansion - Channel Improvement Project ("Project 11") is increasing the safety and efficiency of the Houston Ship Channel by widening the Galveston Bay reach of the Channel by 170 feet and adding beneficial use areas like bird islands – and work will soon move on to deepen and widen major upstream segments as well.

- Over ten years ago the Port Authority began working with the U.S. Army Corps of Engineers on Project 11.
- Since 2019, Channel industry members and the Port Authority have recognized the need to improve the channel right now.
- That construction work has been underway for over three years, and the Galveston Bay reach is expected to be complete in mid-2025.

Because the federal government would not pay for widening the entire channel through Galveston Bay, over four years ago industry members pledged to help pay the increased local cost, and the current user fee proposal is based on the plan originally suggested by these industry members.

For almost four years the Port Authority has conducted stakeholder outreach, presented a number of proposals and then updated them based on stakeholder input, and conducted Port Commission meetings (as recently as May 21) in order to further develop the user fee structure.

This agenda item is intended to present to the public a draft of the ordinance to put in place the proposed user fee structure, once the Galveston Bay reach of Project 11 is complete, solicit public comment on that draft, and provide the opportunity for the Port Commission to publicly deliberate regarding the draft ordinance as well.

Staff anticipates returning to the Port Commission with the final proposal draft prior to its publication in the Federal Register and commencement of the formal comment period.

To summarize the terms of the user fee that would be implemented by the proposed ordinance:

- Costs to be recovered = approximately \$1.56 billion
  - Port Authority's Project 11 costs (estimated at approximately \$860 million) plus
  - Revenue debt interest (\$652 million) plus
  - Administration cost (estimated at 3% or \$45 million)
- Estimated annual revenue: \$36.8 million in year one
- Estimated 30-year collection period
  - Assessments would end when project costs and debt interest are recovered
- Blue water vessels entering the Channel at Texas City "Y"/Buoy 18 would be charged a user fee, including vessels calling Port Authority facilities
  - Tugs, barges, dredges, and governmental vessels exempted
- User fee calculation
  - LOA (vessel length) x beam (width) x "vessel unit" dollar amount x escalator
    - Vessel unit multiplier slopes higher, so larger vessels pay proportionally-higher user fees
    - Escalates 3% per year
    - Subject to three-year adjustment by Port Commission
  - Average fee: \$4,725 per vessel transit in year one (excluding administration costs)
- Vessel movements
  - Unlimited intra-port movements without incurring additional user fees
  - Vessels can exit the Channel without incurring an additional user fee
  - A modified fee structure would provide for vessels that leave and re-enter the Channel without leaving the region

The draft is attached as an exhibit to this agenda item.

**Staff Evaluation/Justification:**

Staff requests that the Port Commission deliberate, hear public comment, and consider possible actions regarding Port of Houston Authority of Harris County, Texas User Fee Ordinance: An Ordinance Setting Out the Need for and Levying of a User Fee on Vessels and Providing Penalties.

## **Proposed Ordinance**

### **Port of Houston Authority of Harris County, Texas User Fee Ordinance: An Ordinance Setting Out the Need for and Levying of a User Fee on Vessels and Providing Penalties**

- A. Whereas, the Port of Houston Authority of Harris County, Texas (“Port Authority”) is the non-federal sponsor of the Houston Ship Channel Expansion Channel Improvement Project, Harris, Chambers, and Galveston County Texas, authorized by Public Law 116-260, Section 401(1) of the Water Resources Development Act (WRDA) of 2020, as depicted in Appendix 1 (“Project”);
- B. Whereas, the Project provides safety, efficiency, and other transportation benefits;
- C. Whereas, the Port Authority is responsible for funding its required cost share of the national economic development plan costs of the Project and the locally preferred plan incremental costs of the Project, as set out in the Project Partnership Agreement for the Project (“Project Partnership Agreement”) between the United States Army Corps of Engineers (“USACE”) and the Port Authority, and in 33 U.S.C. 2211 and 33 U.S.C. 2232;
- D. Whereas, 33 U.S.C. 2236 authorizes a non-federal interest to levy port or harbor dues on vessels and the owner of the cargo in the form of tonnage duties or fees in conjunction with a port or harbor navigation project whose usable increment of the project is complete to finance the cost of construction, operation, and maintenance of the Project;
- E. Whereas, the Port Authority is the non-federal interest that may levy port or harbor dues for the Project as provided in 33 U.S.C. 2236;
- F. Whereas, the Port Authority has incurred public debt and other expenses to finance a portion of these costs for the Project, the repayment of the which can be provided for with port or harbor dues;
- G. Whereas, the following usable increments of the Project, as these are referenced in the Project Partnership Agreement and April 23, 2020 Report of the Chief of Engineers, have been completed: Segment 1A – Bolivar Roads to Redfish Reef, Segment 1B – Redfish Reef to Bayport Ship Channel, Segment 1C – Bayport Ship Channel to Barbours Cut Channel, and Segment 2 – Bayport Ship Channel;
- H. These usable increments benefit vessels using the Project with design drafts exceeding 20 feet;
- I. Whereas the Port Authority has considered the direct and indirect costs of construction, finance, and administration of the Project, the value of the Project for all vessels using the Project, the public policy and interests served and other pertinent factors such as elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim; and
- K. Whereas, the User Fee as set out below reflects the benefits provided by the Project to vessels with design drafts exceeding twenty (20) feet.



**Be It Ordained by the Port Commissioners of the Port of Houston Authority of Harris County, Texas.**

1. *Authority and Jurisdiction*

a. The Port Authority is authorized by Article III, Section 52 and Article XVI, Section 59 of the Constitution of the State of Texas, Chapters 60, 61, and 62 of the Texas Water Code, and Chapter 5007 of the Texas Special District Local Laws Code to act as the non-federal sponsor for the Project and enact this user fee ordinance (“Ordinance”).

b. The geographical boundaries of the Port Authority include the area that is co-extensive with Harris County, Texas, and the Port Authority exercises jurisdiction over that area and the adjacent waterways, including the Houston Ship Channel in Harris, Chambers, and Galveston Counties, Texas (“Ship Channel”), and all Vessels using the Ship Channel, where “Vessels” shall mean every type of water craft or other artificial contrivance, whether self-propelled or non-self-propelled, used, or capable of being used, as a means of transportation on water, and shall include in its meaning the owner, disponent owner, and/or charterer thereof;

c. The Port Authority has the power and authority to fix, prescribe, assess, and collect from vessels using the Ship Channel fees and charges for the use of the Ship Channel as permitted by 33 U.S.C. 2236.

d. Except as exempted herein, all Vessels using the Ship Channel with design drafts exceeding twenty (20) feet (“Subject Vessels”) shall conform to this Ordinance, which establishes a user fee for the construction and financing of the Project (“User Fee”) and administration and related matters as provided herein and under 33 U.S.C. 2236.

e. The User Fee is assessed for services to Subject Vessels including, but not limited to, meeting the financial responsibility of acting as the non-federal sponsor for the Project, and the costs to assess, collect, adjust, and otherwise administer the User Fee.

f. Refusal or failure to comply with this Ordinance may result in any action deemed appropriate or advisable by the Port Authority in consultation with any relevant authorities.

g. The Port Authority may employ all legal means within its power to impose penalties and collect fees including the use and recovery of liens as permitted by 33 U.S.C. 2236.

2. *Acceptance of the User Fee*

The use of the Ship Channel by a Subject Vessel constitutes an acceptance by the Subject Vessel of all charges, rules, and regulations published in this Ordinance, as adopted or amended from time to time.



3. *Terms of the User Fee*

a. Subject Vessels shall be assessed a fee in the amount of the User Fee upon entrance into the Project at its southern-most boundary (an “Entry”), as shown in the USACE channel survey map which can be accessed at the URL below as of the date hereof and which on that date corresponds to the Ship Channel location of Buoy 18

[https://www.swg.usace.army.mil/Portals/26/docs/Navigation/Channel\\_Survey\\_Maps/HS/HS\\_01\\_BRF.pdf](https://www.swg.usace.army.mil/Portals/26/docs/Navigation/Channel_Survey_Maps/HS/HS_01_BRF.pdf)

i. Subject Vessels shall include vessels calling at both public and private terminals.

ii. Subject Vessels shall include integrated or articulated tug barges.

iii. Subject Vessels shall not include (x) vessels owned and operated by the United States Government, a foreign country, a state, or a political subdivision of a country or State, unless engaged in commercial services; (y) harbor tugboats, vessels engaged in dredging activities, or vessels engaged solely in intraport movements, or (z) vessels with design drafts of twenty (20) feet or less.

b. The assessment of the User Fee hereunder shall commence on the date that is thirty (30) calendar days after final approval of this Ordinance by the Port Commission of the Port Authority. The User Fee authorized by this Ordinance shall expire the earlier of thirty (30) years thereafter, or upon final payment of the Project construction and operations and maintenance costs and Project financing costs of the Port Authority.

c. Each User Fee shall equal the product, in whole dollars rounded up to the nearest dollar, of the applicable Vessel Units multiplied by the applicable Unit Rate (where such capitalized terms are defined below), subject to annual escalation and other adjustment as provided in this Ordinance.

i. “Vessel Units” means the product of the Subject Vessel’s Length Overall in feet multiplied by the Subject Vessel’s Beam in feet, divided by 100.

ii. “Length Overall” means the distance between the forward-most and after-most hull of the Subject Vessel.

iii. “Beam” means the maximum width of the hull of the Subject Vessel.

iv. “Unit Rates” shall initially mean the values shown on the following pages.

Vessel Units Range	Unit Rates
0-50	5.305
51-100	5.414
101-150	5.525
151-200	5.638
201-250	5.754
251-300	5.872
301-350	5.992
351-400	6.115
401-450	6.241
451-500	6.369
501-550	6.499
551-600	6.633
601-650	6.769
651-700	6.907
701-750	7.049
751-800	7.194
801-850	7.341
851-900	7.492
901-950	7.646
951-1000	7.802
1001-1050	7.963
1051-1100	8.126
1101-1150	8.293
1151-1200	8.463
1201-1250	8.636
1251-1300	8.813
1301-1350	8.994
1351-1400	9.179
1401-1450	9.367
1451-1500	9.559
1501-1550	9.755
1551-1600	9.955
1601-1650	10.160
1651-1700	10.368
1701-1750	10.581

Vessel Units Range	Unit Rates
1751-1800	10.798*
1801-1850	11.019*
1851-1900	11.245*
1901-1950	11.476*
1951-2000	11.711*
2001-2050	11.952*
2051-2100	12.197*
2101-2150	12.447*
2151-2200	12.702*
2201-2250	12.963*
2251-2300	13.229*
2301-2350	13.500*
2351-2400	13.777*
2401-2450	14.060*
2451-2500	14.348*

\* Hypothetical Vessel Units: based on actual Ship Channel vessel arrivals 2018-2023, the minimum units for a vessel is 27, and the maximum is 1720.

d. Beginning on the first day of the second year following the effective date of this Ordinance, and each subsequent annual anniversary thereof (“One-Year Adjustment Date”), the Unit Rates shall be adjusted to equal to the product of (a) the Unit Rates for the year immediately preceding the applicable One-Year Adjustment Date multiplied by (b) one hundred three percent (103%). Such adjustments are referred to herein as “One-Year Adjustments.” Upon the effective date of a One-Year Adjustment, the adjustment shall be submitted to the Secretary of the Treasury and the Federal Maritime Commission.

e. The Unit Rates may be reviewed by the Port Authority at three (3) year intervals and adjusted up, down, or remain unchanged as required by (i) by Subject Vessel traffic counts or composition, (ii) the construction cost and operation and maintenance and financing costs of the Project, or (iii) the costs of administering the User Fee. Such adjustments are referred to herein as “Third-Year Adjustments.”

i. Any proposed Third Year Adjustment to the Unit Rates as provided for in this Section 3(e) shall be subject to the consideration and approval of the Port Commission in public session.

ii. The first such Third-Year Adjustment, if any, shall take effect no sooner than the third anniversary of the effective date of this Ordinance. Each subsequent Third-Year Adjustment shall take effect no sooner than each subsequent third anniversary of the effective date of this Ordinance.

iv. Upon the approval by the Port Commission of a Third-Year Adjustment as described herein, the new Unit Rates and the effective date of the adjustment shall be submitted to the Secretary of the Treasury and the Federal Maritime Commission.

f. Notwithstanding Section 3(a) above, certain Subject Vessels may qualify for a reduction of User Fee as provided in this Section. Following a Triggering Entry into the Project, a Subject Vessel shall, for each Qualifying Reentry, be assessed a fee in the amount of the User Fee multiplied by forty percent (40%).

i. A “Triggering Entry” means a Subject Vessel’s initial Entry and any subsequent Entry by the Subject Vessel that does not constitute a Qualifying Reentry.

ii. A “Qualifying Reentry” means an Entry by a Subject Vessel that satisfies all of the following criteria:

(a) the Entry occurs within thirty (30) days of the Subject Vessel’s most recent Triggering Entry;

(b) the Entry is the Subject Vessel’s first, second, or third Entry following the Subject Vessel’s most recent Triggering Entry;

(c) the Subject Vessel has not exited the Project’s southern-most boundary and called at a facility in the thirty (30) day time period following the Subject Vessel’s most recent Triggering Entry, except as required by mandatory United States Coast Guard inspections, including Certificates of Compliance (COC) inspections; and

(d) the Subject Vessel has not had cargo loaded on or unloaded from the Subject Vessel (including but not limited to lightering, but not including bunkering, or loading or discharging other non-payload materials) in the time period following the Subject Vessel’s most recent Triggering Entry.

g. The Port Authority shall have the right, upon Port Commission action, to temporarily waive imposition of the User Fee on a fair and equitable basis in the event of a public calamity, emergency, or disruption affecting the Ship Channel.

#### *4. Collection and Provision of Information and Documents*

a. The Port Authority may designate officers and authorized representatives, which may include one or more third parties, to collect and receive such information and documents as it may by law, regulation, or this Ordinance, require for User Fee imposition, computation, collection, administration, and related matters.

b. The Port Authority may enter into agreements with terminal parties, agents, or other third parties, individually or collectively, to modify the requirements of this Section 4 as deemed appropriate by the Port Authority, in which event, the terms of such agreement shall control the obligations of such parties under this Section 4.

5. *Responsibility for Payment of User Fee*

a. The Subject Vessel, including its owner, disponent owner, operator and/or charterer of the Subject Vessel, is responsible for payment of the User Fee to an officer or representative authorized and designated by the Port Authority.

b. Subject to procedures memorialized in rules and regulations duly authorized by the Port Commission, or terminal or other agreements, if applicable, invoices for payment of the User Fee shall be delivered to (i) Subject Vessels from which User Fees are due, (ii) terminal parties or other parties from which User Fees are due, if applicable, or (iii) their respective agents.

6. *Payment Procedures*

a. On the fifteenth (15<sup>th</sup>) of the month following remittal of an invoice to the Subject Vessel owner or terminal party or agent, if applicable, the party receiving such invoice shall pay the User Fee to the Port Authority or its designated officer or representative.

b. All Subject Vessels and terminal parties, agents, or other third parties, if applicable, shall permit Port Authority representatives reasonable access to their books, records, documents, and correspondence with respect to the User Fees computed, assessed, owed, or paid hereunder (“Records”).

c. Subject Vessels, and terminal parties, agents, or other third parties, if applicable, shall keep such Records for a period of three (3) years following the date of remittal of the applicable User Fee.

d. The Port Authority shall have the right, upon reasonable notice and during normal business hours, at any time and from time to time, to conduct inspections and audits of the Records of Subject Vessels and terminal parties and agents, if applicable. Subject Vessels and terminal parties and agents, and their employees and agents, shall fully cooperate in connection with any such audit.

e. The Port Authority may enter into agreements with terminal parties, agents, or other third parties, individually or collectively, to modify the requirements of this Section 6 as deemed appropriate by the Port Authority, in which event, the terms of such agreement shall control the obligations of such parties under this Section 6.

f. The Port Authority shall have the right, upon Port Commission action, to adopt rules and regulations with respect to the imposition, computation, collection, administration, and other matters related to the User Fee.

7. *Late Payment Charges*

All amounts remaining outstanding or invoices remaining unpaid hereunder for thirty (30) days past the date of the same are subject to interest charges of twelve percent (12%) per annum, calculated daily, for each day over thirty (30) days until paid, or while such amounts or invoices

are unpaid, through sixty (60) days past the date of the outstanding amount or invoice. Such amounts or invoices shall thereafter be subject to interest charges of eighteen percent (18%) per annum, calculated daily, until paid.

8. *Venue*

a. Should it become necessary for the Port Authority to file suit to collect any delinquent User Fees or to enforce any provision of this Ordinance, the party obligated herein to pay such User Fees and the party against whom enforcement of the User Fee is sought consents to such suit being filed in the appropriate Federal District Court in Harris County, Texas.

b. The Port Authority shall be entitled to seek all relief permitted by 33 U.S.C. 2236.

9. *Consent to Jurisdiction*

The Port Authority hereby consents to the exclusive exercise of Federal jurisdiction under 33 U.S.C. 2236 (a)(6)(C).

10. *Severability*

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

11. *Publication of Notice*

Pursuant to §60.075(c) of the Texas Water Code, a descriptive caption stating the purpose of this Ordinance and penalty for its violation will be published for a ten (10) day period following its passage in every issue of the *Houston Chronicle*, a newspaper of general circulation within the jurisdiction of the Port Authority.

**This Ordinance was adopted at a Regular Meeting of the Port Commission of the Port of Houston Authority of Harris County, Texas on \_\_\_\_\_, 202\_\_\_\_.**

Appendix 1  
Map of the Project