

RESOLUTION NO. 3263

A RESOLUTION of the Port Commission of the Port of Seattle, King County, Washington, ratifying the Port of Seattle Marine Division Guidelines for Business Relocation Reimbursements for Container Terminal Expansion Projects, as revised July 10, 1996, and the past and future use of the Guidelines in connection with the Terminal 18 Expansion Project, and adopting new administrative appeal procedures for relocation reimbursement claims.

WHEREAS, the Port of Seattle ("Port") is engaged in the relocation of business impacted by the Port's Terminal 18 Expansion Project ("Project"); and

WHEREAS, to date, 53 of the 62 relocations identified for the Project have been successfully resolved; and

WHEREAS, Port staff responsible for the relocations has relied on the Port of Seattle Marine Division Guidelines for Container Terminal Expansion Projects, AS REVISED JULY 10, 1996, in its review and recommendations for approval of relocation payments for affected property owners and tenants at Terminal 18; and

WHEREAS, the appeal provisions contained herein would provide those relocated with a clear, fair and speedy procedure for appealing the Port's determination of a claim for relocation reimbursement; and

WHEREAS, the appeal procedure would ensure that those relocating will receive the highest degree of fair treatment and due process protection and will be afforded a full and adequate hearing.

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle, Washington, as follows:

Section 1. Ratification of Guidelines. The Port hereby ratifies the Port of Seattle Marine Division Guidelines for Business Relocation Reimbursements for Container Terminal Expansion Projects AS REVISED JULY 10, 1996 [hereinafter the "Guidelines"] and the past and future use of the Guidelines for the reimbursement of personal property relocation costs in connection with the Terminal 18 Expansion Project. A copy of the Guidelines is attached to this Resolution and incorporated herein by this reference. A person is entitled to only those benefits set forth in the Guidelines.

Section 2. Amendment of Section G. The Port hereby amends Section G of the Guidelines by adding the following paragraphs:

All claims for reimbursement of relocation costs incurred shall be filed with the Port at the office of the Port's General Counsel within eighteen months after: (a) for tenants, the date of the displacement; or (b) for owners, the date of displacement or the date of final payment for the acquisition of the real property, whichever is later.

The Port shall review claims for reimbursement of relocation costs incurred in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim for reimbursement of relocation costs incurred shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

If the Port disapproves all or part of a claim for reimbursement of relocation costs incurred, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

Section 3. Amendment of Section H. The Port hereby amends Section H of the Guidelines by deleting existing paragraphs 1 through 5 and adding the following:

Section 3.1. Definitions. The following definitions apply to appeals under the Guidelines and this Section 3. When any of the terms defined below appear in a statute or regulation specifically adopted or incorporated by this Section 3 or otherwise applicable, those terms shall have the meanings as defined below.

- (1) "Administrative proceeding", "adjudicative proceeding" and other similar terms shall mean the appeal procedures and proceedings created by this Section 3.
- (2) "Agency" shall mean the Port of Seattle, a Washington municipal corporation.
- (3) "Agency head" shall mean the executive director of the Port of Seattle, a Washington municipal corporation.
- (4) "Department" shall mean the Port of Seattle, a Washington municipal corporation.
- (5) "Executive director" shall refer to the executive director of the Port of Seattle, a Washington municipal corporation.
- (6) "Guidelines" shall mean the Port of Seattle Marine Division Guidelines for Business Relocation Reimbursements for Container Terminal Expansion Projects AS REVISED JULY 10, 1996.
- (7) "Party" shall mean the Port, any person who has filed a notice of appeal, and any other person who has filed a written petition to intervene in the administrative proceeding.
- (8) "Person" shall mean any individual or business (whether sole proprietorship, partnership, association, corporation, limited liability company, or other similar entity).

- (9) "Port" shall mean the Port of Seattle, a Washington municipal corporation.
- (10) "Secretary" shall mean the executive director of the Port of Seattle, a Washington municipal corporation.

Section 3.2. Commencement of administrative proceedings.

- (1) Any person who has filed a claim for a reimbursement of relocation costs incurred as provided in the Guidelines and Section 2 of this Resolution and has had such claim disapproved in whole or part may appeal the Port's written determination by filing a written notice of appeal. The notice of appeal shall be governed by WAC 468-100-010(3) - (5). There is no right of appeal of a determination denying costs which have not yet been incurred.
- (2) A notice of appeal shall be filed with the Port at the office of the Port's General Counsel.

Section 3.3. Presiding officers.

- (1) The executive director shall designate, in his or her sole discretion, a presiding officer who shall be:
 - (a) The executive director or the executive director's designee;
 - (b) One or more administrative law judges assigned by the Office of Administrative Hearings at the request of the executive director or the executive director's designee; or
 - (c) One or more hearing examiners appointed by the executive director.
- (2) The presiding officer shall not be any staff of the Port's Marine Division.
- (3) The presiding officer shall be designated within thirty (30) days of the filing of the written notice of appeal.

Section 3.4. Notice of hearing.

- (1) Within fifteen (15) days of the designation of a presiding officer, the Port or the presiding officer shall serve a notice of hearing upon the person who filed the written notice of appeal or that person's representative and any other person who has filed a written petition to intervene in the matter or such other person's representative. The notice of hearing shall be governed by RCW 34.05.434(2) - (4).
- (2) The notice of hearing shall be served at least thirty (30) days prior to the date of the first scheduled proceeding in the matter.

Section 3.5. Answer.

- (1) Each person upon whom a notice of hearing is served shall file an answer. The answer shall be governed by WAC 468-10-460(1) -

(23), (4) - (5), except that the reference to RCW 34.05.413(5) therein shall be interpreted to mean Section 3.4 herein.

- (2) The answer shall be filed with the Port at the office of the Port's General Counsel within fifteen (15) days of the service of the notice of hearing.

Section 3.6. Presiding officers -- disqualification, substitution. The disqualification and substitution of presiding officers shall be governed by RCW 34.05.425(3) - (5), (7) - (8).

Section 3.7. Prehearing conference. Prehearing conferences shall be governed by WAC 468-10-500.

Section 3.8. Motions before presiding officers. Motions before presiding officers shall be governed by WAC 468-10-490.

Section 3.9. Discovery. Discovery shall be governed by WAC 468-100-010(7).

Section 3.10. Subpoenas. Subpoenas shall be governed by RCW 34.05.446(1), (5), (6) and (7).

Section 3.11. Evidence. Evidence shall be governed by WAC 468-10-510.

Section 3.12. Standards of Ethical Conduct. Ethical conduct of persons appearing in administrative proceedings shall be governed by WAC 468-10-440.

Section 3.13. Appearance and practice. The appearance and practice of persons desiring to appear in administrative proceedings shall be governed by WAC 468-10-450.

Section 3.14. Administrative proceedings -- interpreters. Use of interpreters in administrative proceedings shall be governed by WAC 10-08-150.

Section 3.15. Administrative proceedings -- testimony under oath or affirmation. Testimony in administrative proceedings shall be governed by WAC 10-08-160.

Section 3.16. Administrative proceedings -- reporting -- recording. Reporting and recording of administrative proceedings shall be governed by WAC 10-08-170.

Section 3.17. Administrative proceedings -- teleconference hearings.

- (1) Teleconference hearings shall be governed by WAC 10-08-180(1).
- (2) Documentary evidence which is to be offered during a teleconference hearing shall be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence.
- (3) Documentary evidence not submitted in advance of a teleconference hearing shall not be received in evidence in the teleconference hearing in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes.

Section 3.18. Administrative proceedings -- cameras -- recording devices.

The use of cameras and recording devices in administrative proceedings shall be governed by WAC 10-08-190.

Section 3.19. Administrative proceedings -- authority of presiding officer.

The authority of the presiding officer shall be as set forth in WAC 10-08-200.

Section 3.20. Initial and final orders -- contents.

- (1) Initial and final orders shall be governed by RCW 34.05.461(3) - (5), (9).
- (2) Initial and final orders shall also include specialized findings of fact and conclusions of law necessary to specifically identify and itemize any payment which any party argues is, or in the future could be, interpreted as an actual or potential duplication of payment prohibited by Section F of the Guidelines. Specifically and without limitation, findings and conclusions shall separately delineate any payments for modifications to real property at the replacement site and any payments relating to costs incurred in connection with items which any party argues are, in full or in part, real property.
- (3) No party may file and no presiding officer may hear or grant a petition or motion for stay of effectiveness of an initial or final order.

Section 3.21. Initial orders -- final order if executive director.

- (1) Except as provided in paragraph 2 of this Section 3.21, the presiding officer shall enter an initial order.
- (2) If the presiding officer is the executive director, the presiding officer shall enter a final order.
- (3) Initial orders in all administrative proceedings under the Guidelines and this Section 3 shall become final orders without further action by the presiding officer or any party unless a petition for review is filed as provided in Section 3.22 herein.

Section 3.22. Petitions for review of initial orders -- reply.

- (1) Any party to an administrative proceeding may file a petition for review of an initial order.
- (2) The petition for review shall be filed with the person named and the address stated in the initial order for such purpose or, if no such person is named or address is stated, with the Port at the offices of the Port's General Counsel, within thirty (30) days of the date of service of the initial order. Copies of the petition for review shall be served upon all other parties or their representatives at the time the petition is filed.

- (3) The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.
- (4) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition was filed within twenty (20) days of the date of service of the petition, and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

Section 3.23. Reviewing officer -- final orders.

- (1) The review of initial orders and the reviewing officer shall be governed by RCW 34.05.464(4) - (7), (9).
- (2) In the sole discretion of the executive director, the reviewing officer shall be:
 - (a) The executive director;
 - (b) The executive director's designee;
 - (c) One or more hearing examiners appointed by the executive director.
- (3) The provisions of Section 3.6 shall govern the disqualification and substitution of reviewing officers.
- (4) A final order shall include, or incorporate by reference to the initial order, all matters required in Section 3.20.

Section 3.24. Reconsideration. There shall be no further review or reconsideration of a final order except as provided by Section 3.26.

Section 3.25. Official record. An official record of the administrative proceeding shall be kept pursuant to the terms of RCW 34.05.476.

Section 3.26. Judicial Review.

- (1) Any party may seek judicial review of a final order as provided in RCW 34.05.510 - .598 and not otherwise.
- (2) Whenever any party seeks judicial review of a final order, the executive director or the executive director's designee shall at the request of any party and upon payment of the reasonable costs thereof prepare and transmit to the reviewing court a certified copy of the official record of the administrative proceeding or such shortened record as may be agreed to by the parties or ordered by the court. At the request or direction of the court, the presiding officer may take additional evidence and modify his or her findings or the final order in accordance therewith. Such additional evidence and any modifications shall become a part of the official record and where appropriate shall be prepared and transmitted to the reviewing court as provided in this Section 3.26.

Section 3.27. Incorporation of additional provisions. The presiding officer, on his or her own motion or on the motion of any party, may incorporate any other provisions of the Administrative Procedure Act, Ch. 34.05 RCW, or the regulations adopted thereunder which are not in conflict with the provisions of this Resolution if the presiding officer deems it necessary to afford a full and fair hearing to all parties on issues relevant under the Guidelines.

Section 3.28. Attorneys' fees and costs. Each party shall bear its own attorneys fees and costs incurred in connection with any administrative proceeding under this Section 3.

Section 3.29. Amendments to statutes or regulations adopted. To the extent any statutes or regulations are adopted and incorporated by this Section 3, said statutes and regulations shall be those in effect as of the date of this Resolution or as they may thereafter be amended or recodified.

Section 3.30. Conflicts. In the event of any conflict between the provisions of this Section 3 and the provisions of any statute or regulation adopted and incorporated herein, the provisions of this Section 3 are controlling.

Section 3.31. Time. In computing any period of time prescribed or allowed by this Section 3 or by any adopted and incorporated statutes or regulations, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays shall be determined in accordance with RCW 1.16.050.

Section 4. Effective Dates. Section 2 shall apply to all claims not yet made. Section 3 shall govern all appeals.

Section 5. Delegation of Authority. The Port hereby delegates to the executive director of the Port or the executive director's designee, as the case may be, all authority necessary to implement this Resolution and the provisions of Section 3 herein, including the provisions of any statutes or regulations adopted and incorporated in Section 3.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 25th day of November, 19 97, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Paige R Miller

Gary Grant

Paul Schief

Patricia Davis

Port Commission

**Port of Seattle Marine Division Guidelines for Business Relocation
Reimbursements for Container Terminal Expansion Projects
AS REVISED JULY 10, 1996.**

The following are guidelines for the reimbursement of relocation costs to businesses displaced by Port of Seattle ("Port") Marine Division container terminal expansion projects. These guidelines are intended to be consistent with the requirements of Chapter 468-100 Washington Administrative Code, as may be amended.

A. Eligible Moving and Related Expenses. Pursuant to WAC 468-100-303, a business displaced as a result of a container terminal expansion project by the Port's Marine Division, may be eligible to receive reimbursement for the following moving and related expenses associated with relocation of the business. The Port may choose to exceed the reimbursement limitations contained in WAC 468-100-303, if it determines that the reimbursement in question is "reasonable and necessary" considering the specific circumstances of each individual relocation.

1. Transportation of personal property from the existing site of business to the new site of business.
2. Packing, crating, unpacking, and uncrating of the personal property that is being moved as a direct result of the relocation.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property that is being moved as a direct result of the relocation. Also, the connection to utilities available nearby, modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities from the right of way to the building or improvement are excluded.
4. Storage of personal property for a period not to exceed 12 months.*
5. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

* Denotes Specific Category Limit or Cap

6. Any license, permit, or certification of the relocating business at the replacement location. The payment may be based upon the remaining useful life of the existing license, permit, or certification.
 7. Replacement value of property lost, stolen, or damaged in the process of relocating the business, other than as a result of negligence, where insurance covering loss is not available.
 8. Professional services necessary for planning and executing the relocation of the business (including installation of personal property at the replacement location), which may include legal fees, not to exceed Seven Thousand Five Hundred Dollars (\$7,500)* other than legal fees ineligible for reimbursement under Section B of these guidelines, real property or special equipment appraisals, not to exceed Five Thousand Dollars (\$5,000)*, property surveys for replacement location, and accounting, architectural and contractors fees, including all applicable local and state taxes associated with those fees.
 9. Replacement of business signs, stationary, and business cards that are made obsolete as a result of the relocation.
 10. The cost of purchasing a substitute item where an item that is used as part of the business is not moved but is promptly replaced with a substitute item that performs a comparable function, minus any proceeds from the sale of the replaced item.
 11. Reasonable cost incurred in attempting to sell an item that is not to be relocated.
 12. The cost of searching for a replacement location. This may include, but not necessarily be limited to, the cost of transportation, meals and lodging away from home, time spent searching, and fees paid to a real estate agent or broker to locate a replacement site exclusive of any fees, commissions related to the purchase of the site.
 13. Other relocation-related fees that the Port determines are reasonable and necessary for the relocation of the business in question.
- B. Ineligible Moving and Related Expenses.** Pursuant to WAC 468-100-305, the following moving and related expenses are not reimbursable for the relocation of a business displaced as a result of a container terminal expansion project by the Port's Marine Division .

* Denotes Specific Category Limit or Cap

1. The cost of moving any structure or other real property improvement in which the displaced business retained ownership.
2. The interest on any loan to cover relocation related expenses.
3. The loss of business "goodwill", the loss of profits or revenue, or the loss of employees caused in whole or in part by the relocation of the business.
4. Any additional operating expenses of a business incurred because of operating or doing business in a new location, including the training or retraining of employees at the replacement location.
5. Legal fees or other costs incurred in preparing a claim or for representing the displaced business on a claim for a relocation payment or reimbursement.
6. Any personal injury.
7. Costs for storage of personal property on real property already owned or leased by the displaced business.

C. Fixed Payment for Moving Expenses. Pursuant to WAC 386-100-304, a displaced business may be eligible to choose a fixed payment in lieu of actual moving and related expenses under Section A of these guidelines.

1. The payment, except for payment to a non-profit organization, shall equal the average annual net earnings of the business. For purposes of this Section C, the "average annual net earnings" is defined as: one half (1/2) the net earnings of the business before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced.
2. Average annual net earnings may be based upon a different period of time if the Port determines it to be more equitable.
3. If the business was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two years prior to displacement, projected to an annual rate.
4. The business shall provide the Port with evidence of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Port determines to be satisfactory.

5. To be eligible for a fixed payment for moving expenses, the Port must determine that:

- **The business owns or rents personal property which must be moved in connection with the displacement, and the business must relocate; and**
- **The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Port demonstrates that it will not suffer a substantial loss of its existing patronage; and**
- **The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Port, and which are under the same ownership and engaged in the same or similar business activities; and**
- **The business is not operated at the displacement site solely for the purpose of renting the site to others; and**
- **The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. For purposes of this Section C, "contribute materially" means that during the two (2) taxable years prior to the year in which displacement occurs, or during such other period as the Port determines to be more equitable, a business:**
 - (i) **Had average annual gross receipts of at least Five Thousand Dollars (\$5,000); or**
 - (ii) **Had average annual net earnings of at least One Thousand Dollars (\$1,000); or**
 - (iii) **Contributed at least thirty-three and one third percent (33 1/3%) of the owner's or operator's average annual gross income from all sources.**
- **If application of the above criteria creates an inequity or hardship in any given case, the Port may approve the use of other criteria that it determines appropriate.**

D. Eligible Re-establishment Expenses. Pursuant to WAC 468-100-306, in addition to the payments available under Section A of these guidelines, a small business, as defined below, or nonprofit organization may be eligible to receive payment, not to exceed Ten Thousand Dollars (**\$10,000**)*, for expenses actually incurred in relocating and reestablishing such small business or nonprofit organization at a replacement site. Re-establishment expenses must be

* Denotes Specific Category Limit or Cap

reasonable and necessary, as determined by the Port. They may include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code or ordinance.
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
3. Construction and installation costs, not to exceed One Thousand Five Hundred Dollars (\$1,500)* for exterior signing to advertise the business.
4. Provision of utilities from right of way to improvements on the replacement site.
5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
6. Licenses, fees, and permits when not paid as part of moving expenses.
7. Feasibility surveys, soil testing and marketing studies.
8. Advertisement or replacement location, not to exceed One Thousand Five Hundred Dollars (\$1,500)*.
9. Professional services in connection with the purchase or lease of a replacement site.
10. Increased costs of operation during the first two (2) years at the replacement site, not to exceed Five Thousand Dollars (\$5,000)*, for such items as:
 - Lease or rental charges;
 - Personal or real property taxes;
 - Insurance premiums; and
 - Utility charges, excluding impact fees.
11. Impact fees or one-time assessments for anticipated heavy utility usage.
12. Other items that the Port considers essential to the re-establishment of the business.

* Denotes Specific Category Limit or Cap

13. Expenses in excess of the regulatory maximums set forth in 1, 8 and 10 of this Section D may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may be waived by the Port, but in no event shall total costs payable under this section exceed the Ten Thousand Dollar (\$10,000)* maximum under these guidelines.

14. For purposes of this Section D, a "small business" means any business having not more than five hundred (500) employees working at the site being displaced by a Port Marine Division container terminal expansion project.

E. Ineligible Re-establishment Expenses. Pursuant to WAC 468-100-306, the following is a nonexclusive listing of re-establishment expenditures not considered to be reasonable, necessary, or otherwise eligible for reimbursement:

- 1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.**
- 2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of business operations.**
- 3. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in Section D. 5.**
- 4. Interest on money borrowed to make the move or purchase the replacement property.**
- 5. Payment to a part-time business in the home which does not contribute materially to the household income.**

F. No Duplication of Payments. As provided in WAC 468-100-003, a displaced business is not entitled to receive any payment under these guidelines if that business receives a payment under federal, state, or local law, including payment pursuant to an eminent domain proceeding, which is determined to have the same purpose and effect as a payment under these guidelines. The Port shall have the right to obtain information from the displaced business at the time it evaluates the relocation claim to avoid creating such duplication.

* Denotes Specific Category Limit or Cap

G. Documentation. Any claim for relocation reimbursement must be supported by such documentation as may be reasonably required by the Port to support expenses incurred, such as bills, certified prices, appraisals, or bids.

H. Appeals.

1. Impacted businesses may appeal the Port's determination of eligibility for and payment of a relocation claim. Pursuant to WAC 468-100-010, a person/business is entitled only to those benefits set forth in these guidelines, Chapter 8.26 RCW, and Chapter 468-100 WAC.
2. Appeals must be in writing and include the following:
 - Reason and basis for appeal.
 - Name of Port project.
 - Property involved.
 - Signature of appellant.
3. Appeals must be filed with the Port no later than sixty (60) days after the claimant receives the Port's written determination.
4. Appellants may inspect and copy all materials pertinent to their appeal, except those deemed confidential by the Port. The Port may impose reasonable conditions on appellant's right to inspect.
5. Hearing process for all appeals shall be subject to the requirements of WAC 468-100-010 and the Washington State Administrative Procedure Act Chapter 34.05 RCW.

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