

## AGENDA REPORT

**Ordinance:** Various Changes to Tariff No. 2-A Regarding Space Assignment Rates, Termination and Modification Rights for Wharf and Space Assignments, and Shore Power Maintenance Rates, effective July 1, 2015; and Amendment of Port Ordinance No. 3439 to Revise Shore Power Vessel Commissioning Charge effective July 1, 2015. **(Maritime)**

**MEETING DATE:** 5/28/2015

**AMOUNT:** \$256,000 revenue FY2015-16  
\$428,580 of expense offset in FY 2015-16

**PARTIES INVOLVED:** Various tenants in Port Maritime Area, Oakland, CA

**SUBMITTED BY:** John C. Driscoll, Director of Maritime

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

Staff is proposing modifications to Port of Oakland Tariff No. 2-A to increase rates for Space Assignments; modify terms for Space and Wharf Assignments to provide greater operational flexibility; and, increase the shore power maintenance charge for marine terminal tenants. Staff is also proposing modification of the shore power vessel commissioning charge set forth in Port Ordinance No. 3439. These changes are the result of Staff's evaluation of real estate market conditions, the desire to capture revenue opportunities as they arise, and the goal of ensuring cost recovery for key services related to the provision of shore power at the marine terminals.

### **BACKGROUND**

Port of Oakland (Port) Tariff No. 2-A (Tariff) sets forth rates and charges for Maritime (seaport) facilities. Port Ordinance No. 3439, as amended from time to time, sets forth utility rates and charges for the whole Port area. In 2013 and 2014, the Tariff and Ordinance No. 3439 were amended to (a) increase Space Assignment Agreement rates, and (b) unrelated to such increase, incorporate the Port's new shore power system.

### **Space Assignment Rates**

Space Assignments are short term, month-to-month (or shorter term) lease/rental agreements. The Port last increased Tariff rates for Space Assignments by 2.6% on September 1, 2014. At that time, rates had not been increased since 2007. The Port's Space

Assignment rates in the Tariff have fallen below local industry norms and Staff is proposing a 5% increase to address this concern.

### **Wharf and Space Assignment Terms**

At the same time, Staff has identified a need to revise various terms of Wharf and Space Assignments to allow greater operational flexibility, such as early termination, adjusting boundaries, reclassifying space types and relocating tenant operations. Currently, the Tariff requires Wharf and Space Assignment tenants to submit a 30-day written notice of termination or other operational adjustments to the Port; however, the Port can terminate on only 3-days' notice. This has caused equity concerns with certain current and prospective tenants. Further, the Tariff does not currently provide sufficient flexibility for the Port to adjust boundaries, relocate tenants, and reclassifying Space Assignments based on the type of land rented, in order to maximize tenancies and revenue.

### **Shore Power Maintenance and Vessel Commissioning**

In 2013 and 2014, the Port adopted various changes to Tariff 2-A and Port Ordinance No. 3439 to set forth shore power maintenance charges and to provide power to vessels, respectively. Since that time, Staff has determined that certain charges for the use and maintenance of the shore power system need to be increased in order for the Port to recover its costs as intended. Staff is proposing to revise maintenance and vessel commissioning charges, both of which are billed to the marine terminal tenants.

## **ANALYSIS**

### **Space Assignment Rates**

Increases to Tariff rates are the primary mechanism by which the Port can increase Space Assignment revenue to keep pace with inflation and market conditions, as compared to other forms of agreements at the Port, such as long-term leases in which certain provisions provide for rent adjustments independent of the Tariff rates. As a result of only increasing Space Assignment rates once in the last 8 years, the Port's property rates have fallen below local industry norms. Staff is proposing a 5% increase to Space Assignment rates to better align Port rates with rates seen in the local Oakland industrial/commercial real estate market.

Current Space Assignment revenue is approximately \$13 million annually. Four of the Space Assignments are longer term leases at the former Oakland Army Base that were previously approved by the Board, which have a fixed rent until December 31, 2015 and will not be affected by the proposed increase. The remaining Space Assignments (revenue of \$9.6 million) would be subject to the proposed 5% increase, resulting in approximately \$256,000 of additional revenue annually. If the proposed increase is approved, Maritime staff will send the tenants of the affected Space Assignments appropriate written notices of rate increases.

Maritime Division staff is requesting that the Tariff increase become effective on July 1, 2015, so that the increase aligns with the Port's fiscal year. The proposed rate increase is not anticipated to result in any tenant vacancies in the Maritime area. There is currently no available land for Space Assignments while there continues to be demand. Therefore, any

potential resulting vacancies are expected to be very short given the sustained demand for space.

### **Wharf and Space Assignment Terms**

Staff is proposing the following changes to Wharf and Space Assignment terms in the Tariff.

- The Port's notice requirement to terminate a Wharf or Space Assignment increases to no less than 30 days.
- The Port and Assignee can terminate a Wharf or Space Assignment on less than 30 days' notice by mutual written agreement of the parties.
- By mutual written agreement, the Director of Maritime or his/her designee may modify a Space Assignment to provide operational flexibility (e.g., modify boundaries, relocate a tenant, reclassify space type).

These changes will provide the Port and tenants with flexibility to maintain and enhance operations and will allow the Port to attract tenants that require greater flexibility than the Tariff currently allows. This is particularly meaningful for the potential leasing of facilities such as Howard Terminal and Berths 33-34 wharf and yard areas.

### **Shore Power Maintenance**

In December 2013, the Tariff was amended to include a number of procedures and requirements for the use of the then-newly constructed shore power system at the Port's marine terminals. Among these, the Tariff provided that the Port would retain most maintenance responsibilities, and charge each tenant up to \$1,285 per berth per month for those activities through December 31, 2014. Because the infrastructure was new and maintenance requirements were uncertain at the time, the Port stated it would review its rates after December 2014 to determine any necessary increases.

In 2014, the Port did not recover its full cost for maintenance. To ensure cost recovery, Staff has determined that the rate needs to increase to a maximum of \$2,265 per berth per month. The maintenance program has been updated to include the main electrical substations that feed the smaller berth-specific substations, eye wash stations, fire extinguisher systems, and 3-year major maintenance events. Note that the routine maintenance comprises \$1,981 of the \$2,265 total, with the remaining \$284 being the cost of 3-year major maintenance events spread over 3 years (36 months). Tenants will be billed only for actual costs incurred for routine maintenance services, up to \$1,981 per berth per month, plus a monthly charge of \$284 for the 3-year service event. The per-berth, per-month maximum charge will be applied on an aggregated basis based on the number of berths at the marine terminal. For example, at a marine terminal with 2 berths, the maximum charge would be \$3,962 for routine maintenance plus \$568 for the 3-year service event.

The Tariff requires that the Port notify its tenants 60 days prior to any rate increase; Staff notified its tenants by e-mail correspondence dated April 30, 2015. The increase would be effective July 1, 2015, to coincide with the Port's fiscal year.

Changes to the Tariff are typically submitted to the California Association of Port Authorities (CAPA) for review and approval. Accordingly, in parallel with the Board's consideration of the proposed actions, Staff will submit a docket proposal to the CAPA for the proposed amendments to Tariff 2-A for review and vote by the CAPA member ports. Staff expects a favorable response from CAPA. However, should a favorable response not be obtained, the Port has the ability to proceed independently to amend the Tariff.

### **Shore Power Vessel Commissioning**

Also in 2013, the Port adopted changes to Ordinance No. 3439 and subsequent amendments, setting forth shore power related charges, including vessel commissioning charges. A vessel commissioning is required the first time a vessel plugs into the Port's shore power system for the purpose of ensuring the vessel system's compatibility and safety prior to connection.

Ordinance No. 4260 (which amends Ordinance 3439) currently provides for a vessel commissioning charge of \$4,430 for up to two vessel commissioning events, inclusive of the hourly customer charge of \$267 per hour for provision of power. Staff proposes to change the commissioning charge to \$3,600 per event, exclusive of the provision of power. The provision of power will be charged at the hourly rate during a commissioning event as it would be during a routine plug-in (post-commissioning) event. Staff is not proposing to change the hourly charge at this time. The proposed changes are intended to reflect the amount of staff time required to commission a vessel and the observation that a vessel draws power for the entire call while it is commissioned, as opposed to a short period of time during the call, as originally anticipated in 2013.

### **BUDGET & STAFFING**

Approval of the increase to Space Assignment rates will result in approximately \$256,000 of additional revenue in FY 2015-16 compared to FY 2014-15 Budget. The FY 2015-16 Maritime revenue budget under development accounted for a 2.5% Tariff increase, so this increase would result in a net increase of \$128,000.

The shore power maintenance charge revision will result in cost recovery of up to \$298,980 and the revision to the vessel commissioning charge (assuming an average of three commissionings per month) will result in cost recovery of \$129,600, each in FY 2015-16.

No staffing impact is anticipated by any of the proposed actions.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

### **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- **Goal A: Create Sustainable Economic Growth for the Port and Beyond**
  - Objective 3: Increase revenue, job creation and small business growth
- **Goal B: Maintain and Aggressively Grow Core Businesses**
  - Objective 1: Retain existing customers and tenants
  - Objective 3: Price Port services to provide highly competitive value

### **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

### **ENVIRONMENTAL**

The proposed amendments to Port Tariff No. 2-A and Ordinance 3439 were reviewed in accordance with the requirements of the California Environmental Quality Act, and the Port CEQA Guidelines. The proposed changes to rates and charges are statutorily exempt from CEQA under Section 15273(a) of the CEQA Guidelines since CEQA does not apply to the modification or approval of rates and other charges by public agencies that the public agency finds are for the purpose of meeting operating expenses or for funding capital projects necessary to maintain service within existing service areas. The proposed rate changes are for those funding purposes, so they meet the criteria for this exemption. CEQA also does not apply to the proposal to amend Port Tariff 2-A to modify the notice periods for notices of termination and boundary adjustments under Section 15061(b)(3) of the CEQA Guidelines, since it can be seen with certainty that there is no possibility that changing a notice period may have a significant effect on the environment. Therefore, it is recommended that the Board make the finding that the proposed amendments to Port Tariff 2-A and Ordinance 3439 are not subject to CEQA under the provisions of CEQA Guidelines Sections 15273(a) and 15061(b)(3).

### **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)**

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

## **OPTIONS**

Staff has identified the following options for the Board:

1. Adopt ordinances to enact the following changes effective July 1, 2015:
  - a. Amend Port Tariff 2-A Section X-B to increase Space Assignment rates 5%;
  - b. Amend Port Tariff 2-A Sections X-A and X-B to increase the Port's notice period for terminating a Space/Wharf Assignment to no less than 30 days.
  - c. Amend Port Tariff 2-A Sections X-A and X-B to allow earlier termination of a Space/Wharf Assignment and modification of operational parameters by mutual agreement of the Assignee and Port, as described herein;
  - d. Amend Port Tariff 2-A (Item 2535) to increase the shore power maintenance rate to \$2,265 per berth per month, as described herein; and
  - e. Amend Port Ordinance No. 3439 to change the shore power vessel commissioning charge to \$3,600, as described herein.
2. Adopt ordinances to enact only some of the requested changes, as may be determined by the Board.
3. Do not approve any of the proposed changes.

## **RECOMMENDATION**

Staff recommends that the Board Adopt ordinances to enact the following changes effective July 1, 2015:

Adopt ordinances to enact the following changes effective July 1, 2015:

- Amend Port Tariff 2-A Section X-B to increase Space Assignment rates 5%;
- Amend Port Tariff 2-A Sections X-A and X-B to increase the Port's notice period for terminating a Space/Wharf Assignment to no less than 30 days.
- Amend Port Tariff 2-A Sections X-A and X-B to allow earlier termination of a Space/Wharf Assignment and modification of operational parameters by mutual agreement of the Assignee and Port, as described herein;
- Amend Port Tariff 2-A (Item 2535) to increase the shore power maintenance rate to \$2,265 per berth per month, as described herein; and
- Amend Port Ordinance No. 3439 to change the shore power vessel commissioning charge to \$3,600, as described herein.