

## AGENDA REPORT

**Ordinance:** Approval of Rate Increases for Tariff No. 2-A, Effective May 1, 2018 and July 1, 2018, Resulting in Estimated Additional Annual Revenue of \$2.1 million; Approval of Various Other Amendments to Tariff No. 2-A Effective July 1, 2018, Including Dredged Material Re-Handling Fee Structure; Comprehensive Truck Management Plan; Shore Power System Maintenance; General Staffing Updates; and Approval of a New Customer Charge for Shore Power System Maintenance in Port Ordinance No. 3439 **(Maritime)**

**MEETING DATE:** 3/8/2018

**AMOUNT:** Approx. \$2.1 million annually (\$0.2 million in FY 2017-18) Revenue

**PARTIES INVOLVED:** Various tenants (approximately 73)

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

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

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

Staff recommends various amendments to Tariff No. 2-A to (a) increase rates and charges for wharfage, dockage, storage, demurrage, and crane rental, effective May 1, 2018; (b) increase wharf/space assignment rates effective July 1, 2018; (b) modify dredged material re-handling facility fees effective July 1, 2018; (c) update requirements of the Comprehensive Truck Management Plan; (d) modify shore power maintenance responsibilities and charges effective July 1, 2018; and (e) update staffing and Board appointments. Staff also recommends various revisions to Port Ordinance No. 3439 to revise charges related to usage and maintenance of the Port's shore power system.

### **BACKGROUND**

Port of Oakland (Port) Tariff No. 2-A (the Tariff) sets forth rates, charges, and general rules and requirements for Maritime facilities. From time to time, Port staff recommends amending the Tariff to reflect changes in Port facilities, to stay current with market rates, to remain consistent with Port policies and laws, and to update requirements based on best practices and experience. The Tariff was most recently amended as follows: (a) a 5% increase in 2005 on wharfage, dockage, storage, demurrage, and crane rental; and (b) a 3% increase in 2017 on Space Assignment rates, as well as updates to a variety of items, such as environmental matters, delinquency terms, shore power reporting, and security deposits.

Port Ordinance No. 3439, as amended from time to time, (the Electric Utility Ordinance) sets forth rates, charges, and general rules for the use of electricity and Port-owned electrical assets provided by the Port as the electric utility provider. This includes the provision of electricity to the Port and its tenants at the Oakland International Airport, former United States Navy Fleet Industrial Supply Center Oakland, former Oakland Army Base (now Seaport Logistics Complex), and for shore power and shore power-related services.

On a regular basis, Staff reviews Tariff No. 2-A and the Electric Utility Ordinance to determine any required changes and appropriate rate adjustments. This report outlines changes Staff recommends for implementation in 2018, as further outlined herein.

## **ANALYSIS**

Below is a discussion of each proposed amendment. Changes to Tariff No. 2-A are typically submitted to the California Association of Port Authorities (CAPA), which reviews all changes to port tariff rates. Although not required, CAPA approval of changes to the Tariff is desirable. Staff has submitted a docket proposal to CAPA to formalize this action, and expects a favorable response.

### **Tariff No. 2-A General Rate Increase**

#### **Wharfage, Dockage, Storage, Demurrage, Crane Rental**

Tariff No. 2-A sets forth rates for various activities on and uses of marine terminal property or Port docks. These activities are wharfage, dockage, storage, demurrage, and crane rental. Many years ago, the Port changed its leasing practices at marine terminals to granting non-exclusive preferential rights to use certain marine terminals and assessing bundled charges called “all-inclusive throughput rates,” which roll up these various components into one rate. The all-inclusive throughput rates are negotiated in each use or occupancy agreement based upon the term of the agreement, the amount of minimum annual guaranty, and other considerations incorporated into each agreement. The stated Tariff rates generally apply to any user who does not have such rates bundled into an all-inclusive throughput rate pursuant to a use or occupancy agreement.

Although marine terminal tenants are typically charged all-inclusive rates, most of the leases stipulate that these rates will increase when the component rates in the Tariff are increased. The Tariff rates are intended to reflect market rates and conditions absent other contractual considerations and commitments from the tenant/user.

The Board last approved a 5% increase to wharfage, dockage, storage, demurrage, and crane rental rates in July 2005, following a 5% increase in 2004. Generally speaking, US West Coast ports have not adopted (or have adopted very limited) general rate increases on containerized cargo since the mid-2000’s, given a number of economic factors including but not limited to the Great Recession and related financial pressures in the shipping line industry. These downward pressures on revenue within the supply chain have substantially weakened in the last couple of years, and we have seen industry profitability and outlook becoming increasingly positive. Also, specific to Oakland, consolidation of marine terminal activity at four terminals has further improved financial performance and the overall economic outlook

for our tenants. For general reference only, the CPI has increased approximately 36% since 2005.

Staff is proposing a 6% increase to all wharfage, dockage, storage, demurrage, and crane rental rates, on all containerized and non-containerized cargo, effective May 1, 2018. These rates are set forth in the following sections of Tariff No. 2-A (also listed in Exhibit A):

- Section IV (Dockage), Item 4130
- Section V-A (Wharfage Rules and Regulations), Item 5105, p 62
- Section VI (Wharfage, Containerized Cargo), Item 6200, pp 75-80
- Section VI (Wharfage, Containerized Cargo), Item 6400, p 81
- Section VI (Wharfage, Containerized Cargo), Item 6900-6903, pp 94
- Section VII (Wharfage, Non-Containerized Cargo), Item 7010-7997.3, pp 95-100
- Section VIII-A (Wharf Demurrage Rules and Rates), Item 8140-8150, pp 104-105
- Section VIII-B (Wharf Storage Rules and Rates), Item 8170-8350, pp 109-115
- Section IX (Container Crane Assignment and Rental Rates), Item 9130-9165, pp 123-134

Marine terminal leases typically limit the impact of Tariff rate increases; for example, by placing an annual or multi-year cap, by allowing increases only in certain years, or by establishing pre-negotiated increases in lieu of being subject to Tariff increases. Each terminal lease is slightly different. Based on these limitations, Staff has determined that the proposed increase will affect two marine terminals on May 1, 2018 (i.e., compensation will or has the possibility of increasing starting May 1), and one marine terminal on July 1, 2018. The proposed increase will also affect any tenant who pays the Port one or more of the individual rates after July 1, 2018 (currently, one tenant may fall in this category as of July 1).

Staff estimates that the rate increase will result in about \$0.2 million additional revenue in Fiscal Year (FY) 2017-18, and about \$1.7 million each year thereafter, assuming no changes to lease terms and no changes to cargo activity compared to FY18. The additional revenue will be in the form of both fixed rent and variable rent.

#### Wharf & Space Assignments

Sections X-A and X-B, Items 10130, 10155 and 10160 of Tariff No. 2-A sets forth Wharf and Space Assignment rates. These Assignments are typically month-to-month (or shorter term) lease/rental agreements at Tariff rates (rather than negotiated rates). The Board must approve any Assignment that remains in effect longer than one year. The majority of the Assignments currently in place have been in effect for many years.

Increases to Tariff rates are the primary mechanism by which the Port can increase 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.

The Port last increased Space Assignment rates by 3% on July 1, 2017, following a 3% increase in 2016, 5% increase in 2015, and 2.6% increase in 2014. Prior to that, the Port had

last increased rates in 2007. Effective July 1, 2017, the Board also established a Submerged Land (i.e., water) rate of \$0.131 per square foot per month.

Effective July 1, 2018, Staff is proposing a 3% increase to Wharf and Space Assignment rates, Staff is also recommending the establishment of a rate for mobile food vendors. Exhibit B summarizes the proposed changes. The rate increase would affect 73 Space Assignments, representing about \$16.1 million of annual revenue. The proposed increase would result in approximately \$483,000 of additional annual revenue, which, if approved, will be included in the FY 2018-19 revenue budget currently under development. The Port only has one lease for submerged land from the Port, which expires in July 2018, and for which any renewal negotiations would be informed by the Tariff rate.

Staff does not anticipate any tenants to vacate Port maritime property in response to the proposed rate increase. There is currently little to no available land for Space Assignments while there continues to be demand. Therefore, any potential resulting vacancies are expected to be very limited in duration.

#### Dredged Material Re-Handling Facility

Effective July 1, 2017, the Board adopted a new rate in Tariff Section X-B, Item 10160 (Space Assignments) for dredged material re-handling at the Berth 10 re-handling facility. Specifically, the Board approved a tipping fee<sup>1</sup> of \$20 per cubic yard and a minimum land rental rate of \$0.193 per square foot per month, which is equal to the proposed updated rate for paved land w/o lighting or fencing. Upon further review of dredging projects and anticipated re-handling needs in the San Francisco Area, Staff recommends applying the \$20/cubic yard tipping fee to small projects (i.e., equal to or less than 10,000 cubic yards). For larger projects, the fee would be negotiated and subject to Board approval because larger projects will likely require more scrutiny and negotiation of additional terms (e.g., potential infrastructure improvements to the re-handling facility). Exhibit B summarizes the proposed changes.

#### **Comprehensive Truck Management Plan**

In 2009, by Ordinance No. 4112, the Board adopted the Comprehensive Truck Management Plan (CTMP), and approved a related amendment to Tariff No. 2-A to create new Section II, Items 02400-02415. Items 02410 and 02415 set forth requirements related to compliance with the CARB Drayage Truck Regulation (Title 13, section 2027, California Code of Regulations). At the time the CTMP was adopted, there was some uncertainty about CARB regulatory deadlines beyond January 1, 2010. In 2011, after those uncertainties were resolved, the Board adopted Port Ordinances 4151 and 4174, modifying the CTMP to clarify procedures for Temporary Non-Compliance Passes and to include additional “clean truck” compliance deadlines in January 2012, 2013, and 2014. Although the Ordinances have been in full force and effect since adoption, Staff did not amend the Tariff to reflect these 2011 modifications to the CTMP. For administrative clarity and completeness, Staff proposes to now incorporate these modifications into the Tariff. Refer to Exhibit C.

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<sup>1</sup> The cost to “dispose” of dredged material at a site is referred to as a “tipping fee.”

Item 02405 of the same Tariff Section II sets forth requirements for users and tenants of the Port to comply with the Secure Truck Enrollment Program (STEP). To help improve compliance with the STEP, Staff recommends updating and clarifying Item 02405 to make clear the requirements (i.e., entry controls, alternative means of demonstrating compliance, temporary passes, etc.) of Seaport Facility Operators vis a vis STEP enforcement. Additionally, Staff is proposing that effective January 1, 2019, Radio Frequency Identification (RFID) tags be the primary means of demonstrating/verifying STEP compliance at marine terminals, leveraging past and upcoming investments by the Port and its tenants in this technology. Exhibit C presents the proposed addition to the Tariff.

### **Shore Power System Vessel Commissioning**

In 2013, the Board adopted Section 8 of the Electric Utility Ordinance, the “Vessel Commissioning” charge. 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 with the Port’s shore power system and that all industry standard safety mechanisms on the vessel are functioning. The Port charges \$3,600 per vessel commissioning event. In the event a vessel fails a vessel commissioning, the vessel must be recommissioned at its next visit.

Staff is not recommending any changes to the vessel commissioning charge. However, staff recommends updating the language in the Ordinance No. 3439 to reflect current operational needs and practices. Specifically, the current language requires staff to issue a “Notice of Completion of Vessel Commissioning” so that a vessel has documentation that it has been successfully commissioned. For administrative expediency and to avoid potential record conflicts, Staff recommends changing this requirement to only require the Port to publish a list of all successfully commissioned vessels on a publicly-available website so that all Port users can access the same data in one location, and to update that list once a vessel has been successfully commissioned. Additionally, Staff recommends updating the title of the applicable shore power connections protocols adopted by International Electrotechnical Commission (IEC), International Organization for Standardization (ISO), and the International of Electrical and Electronics Engineers (IEEE) standards. Refer to Exhibit D.

### **Shore Power System Maintenance Charge**

#### Background Re: Maintenance Charge

In 2013, the Board adopted Tariff No. 2-A Section II, Items 02500 through 02540 – “Shore Power System,” following the Port’s construction of shore power infrastructure at 11 berths. In 2015, the Board amended Items 02535-02040 to increase the monthly maintenance charge assessed to tenants for Port-performed maintenance activities (i.e., at berths where the Port has retained shore power system maintenance responsibilities, which is typically the berths where the Port constructed the system). The charge is currently \$2,265 per berth per month. The intent of the charge is for the Port to recover its maintenance cost. Maintenance of the shore power system is critical to the ability of vessels to plug in (rather than run auxiliary engines) safely and consistently while at berth.

### Analysis of the Maintenance Charge & Cost Recovery

There are currently 10 berths equipped with a shore power system maintained by the Port under an active marine terminal lease. Staff analyzed the Port's costs to maintain the shore power system in 2016 and 2017 at these 10 berths, for which tenants are assessed the monthly maintenance charge. In 2017, the Port spent approximately \$331,000 per year to maintain the system at those 10 berths, but recovered only \$270,000 (a loss of about \$61,000). Over the last couple of years, the loss has averaged about \$60,000 per year.

As part of the analysis, Staff has identified that (a) tenants are generally not fully performing their maintenance responsibilities, which increases Port work; (b) tenant and Port responsibilities sometimes overlap; (c) the system has reached major maintenance milestones that are more expensive than previously anticipated; (d) Port labor rates are expected to continue increasing minimally with inflation; (e) damage to under-wharf infrastructure is more frequent and costly than anticipated; (f) additional inspections are necessary to comply with OSHA requirements; and (g) the cost and frequency of replacement and repairs is higher than anticipated.

Staff forecast the average annual cost of shore power maintenance to increase significantly to about \$624,000 or approximately \$5,200 per berth per month. While some costs are fixed (i.e., routine inspections), many of the costs are variable (i.e., tied to usage of the system).

### Revision to the Cost Recovery Method

Staff has considered simply increasing the monthly maintenance charge to \$5,200 per berth per month, by notice of the Director of Maritime to the tenants, as allowed by the Tariff. However, Staff also analyzed alternative cost recovery methods for shore power system maintenance, as we gain more knowledge about the system and seek to improve our practices for the benefit of both the Port and its tenants. Staff is recommending changing the Port's method for recovering maintenance costs, as follows:

- Because shore power is fundamentally an electrical utility system, Staff recommends addressing both the system's maintenance charge and usage charge in one Port ordinance. The usage charge is currently in the form of an hourly rate (Hourly Customer Charge, currently \$267/hour), set forth in Section 9 of Electric Utility Ordinance, adopted in 2013. The maintenance charge is currently in Tariff No. 2-A.
- Staff recommends that the maintenance charge be removed from Tariff No. 2-A and added to Ordinance 3439, in the form of an hourly charge. This would allow Staff to manage all shore power-related costs as part of the Port's utility business. It would also (a) simplify administration of the billing system for the Port, marine terminal operators, and shipping lines; and (b) more directly link all utility-related cost to usage.
- Based on the number of billable (plug-in) hours in Calendar Year 2017, and using the forecasted maintenance cost of \$624,000 annually, the equivalent hourly cost would be approximately \$31/hour. Staff will continue to periodically review this charge and recommend adjustments as needed.

### Revision to Section 9 of the Port's Electric Utility Ordinance

Staff proposes to revise the Port's Electric Utility Ordinance to add an "Hourly Customer Maintenance Charge" component of \$31 per hour for a vessel connected to the shore power system, where the on-terminal portion of the system is owned and maintained by the Port. This Hourly Customer Maintenance Charge would be additional to the current "Hourly Customer Charge." So, for example:

- If a vessel is receiving shore power from an on-terminal system owned and maintained by the Port, and for which the Port is the electric utility provider, the Port will bill an Hourly Customer Charge of \$267/hour and an Hourly Customer Maintenance Charge of \$31/hour, for a total of \$298/hour.
- If a vessel is receiving shore power from an on-terminal system not owned and maintained by the Port, and for which the Port is the electric utility provider, the Port will bill \$267/hour. Refer to Exhibit D.

### Revision to Tariff No. 2A

Specifically, Staff also proposes to revise Section II, Item 02535 to eliminate the maintenance charge and, instead, cross-reference to the Electric Utility Ordinance. Staff also proposes to modify Section II (General Rules and Regulations) Item 02525 to update IEC, ISO, and IEEE standards; and Item 02530 to update the tenant's and Port's respective shore power maintenance obligations. Refer to Exhibit E.

### **Staffing and Board Appointments**

Since the 2017 Tariff amendment, there have been staffing changes in the Maritime Department. There have also been new appointments to the Board. Staff intends to update the Tariff to reflect current staffing and Board appointments.

### **BUDGET & STAFFING**

The proposed changes to Tariff No. 2A are anticipated to result in approximately \$0.2 million of additional revenue in the last two months of FY 2017-18. In each of FY 2018-19, FY19-20, and FY 2020-21, the proposed rate increases are expected to generate approximately \$2.1 million of annual additional revenue, as compared to FY 2017-18, assuming no changes in lease terms or cargo activity or lease terms.

The proposed changes to Tariff No. 2-A and Electric Utility Ordinance related to shore power maintenance are structured to recover the Port's cost. The changes will help ensure cost recovery for the Port, as the increase in shore power electric revenue is expected to offset the projected increase in the maintenance cost of shore power electric infrastructure. If approved, the revenue and expense from these changes will be included in future operating budgets, starting with FY 2018-19.

No staffing impact is anticipated by the proposed action.

## **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: Objective 1: Maximize the use of existing assets
- Goal A: Objective 3: Increase revenue, job creation and small business growth

## **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**

**CEQA Determination:** The proposed amendments to Port Tariff No. 2A and Port Ordinance No. 3439 were reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines. The proposed amendments to Tariff No. 2A and Port Ordinance 3439 are statutorily exempt from CEQA under Section 15273(a) of the CEQA Guidelines because 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 increase is for those funding purposes. No additional CEQA review is required.

## **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)**

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.



## **OPTIONS**

Staff has identified the following options for the Board:

1. Adopt an ordinance to amend Port Tariff No. 2-A and Port Ordinance 3439, as described herein.
2. Adopt an ordinance to amend Port Tariff No. 2-A and Port Ordinance 3439 with modifications to Staff's proposal, as may be directed by the Board.
3. Do not approve any modifications to Port Tariff No. 2-A and Port Ordinance 3439 at this time. Under this option, additional revenue would not accrue to the Port, and the assessment of the shore power system maintenance charge would continue to be assessed per the Tariff, which allows the Director of Maritime to change the amount of the charge with 60 days' written notice to tenants (but does not allow any other changes).

## **RECOMMENDATION**

Staff recommends that the Board adopt an ordinance approving:

- An increase of 6% to Tariff No. 2-A rates for wharfage, dockage, storage, demurrage, and crane rental, effective May 1, 2018, as described herein;
- An increase of 3% to Tariff No. 2-A rates for Wharf and Space Assignments, effective July 1, 2018, as described herein;
- Various other amendments to Tariff No. 2-A effective July 1, 2018, including:
  - Restructuring dredged material re-handling fees;
  - Clarifying requirements for STEP and Drayage Truck Ban Compliance in the Comprehensive Truck Management Plan, including a requirement for Radio Frequency Identification controls at marine terminals effective January 1, 2019;
  - Revising shore power system maintenance responsibilities and removing the monthly maintenance charge; and
  - General staffing updates, as described herein; and
- An amendment to Port Ordinance No. 3439 to establish a new Hourly Customer Maintenance Charge in the amount of \$31/hour for the shore power system, and to revise administrative requirements related to vessel commissioning, as described herein.