

AGENDA REPORT

Ordinance: Approval of Various Amendments to Tariff No. 2-A, Effective July 1, 2019, to (a) Increase Certain Dockage Rates, Reduce Other Certain Dockage Rates, and Increase Certain Non-Containerized Cargo Wharfage Rates, Resulting in No Incremental Revenue at this Time; (b) Increase Space Assignment Rates, Resulting in Estimated Incremental Revenue of About \$600,000 Annually; (c) Establish Fees for the Comprehensive Truck Management Plan Port Registry, Resulting in Incremental Annual Revenue of About \$595,000 in FY 2019-20 and \$420,000 thereafter; (d) Establish Rates for Port-Owned Truck Parking/Container Depot Facilities, Resulting in Estimated Incremental Revenue of \$700,000 Annually; (e) Update Electric Utility Service Provisions, Including Formal Establishment of a Common Area Electric Utility Assessment, Which Already Generates About \$339,500 Annually; (f) Establish Rules and Fees for the Middle Harbor Shoreline Park Resulting in No Incremental Revenue at this Time; (g) Establish New Security-Related Aircraft Restrictions; (h) Update Fresh Water Utility Service Provisions; (i) Remove the 2009 IPI Incentive Program; and (j) Make Various Administrative Updates (**Maritime**)

MEETING DATE: 5/9/2019

AMOUNT: Approx. \$2.2 million annually
Revenue

PARTIES INVOLVED: Various tenants (approximately 65)
Port customers and users, including the public

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/decrease rates for certain dockage, and increase certain non-containerized cargo wharfage rates; (b) increase space assignment rates; (c) establish new fees for the Port Registry component of the Comprehensive Truck Management Program; (d) establish rates for users of the Port-owned truck parking/container depot facilities; (e) establish an electric utility assessment for certain maritime properties; (f) establish rules and fees for use of the Middle Harbor Shoreline Park; (g) establish new security restrictions for certain types of aircraft; (h) update fresh water utility service provisions; (i) remove the interior-point-intermodal incentive program established in 2009; and (j) make various other administrative updates. These amendments all would be effective July 1, 2019, and are

expected to generate total revenue of approximately \$2.2 million in FY 2019-20, of which \$1.9 million is new revenue.

BACKGROUND

Port of Oakland (Port) Tariff No. 2-A (Tariff) sets forth rates, charges, and general rules and requirements for Port Maritime (Seaport) facilities. From time to time, Port staff recommends amending the Tariff to reflect changes in Seaport facilities, stay current with market rates, remain consistent with Port policies and laws, and update requirements based on best practices and experience.

Generally, U.S. West Coast ports did not adopt (or adopted very limited) rate increases on containerized cargo in the last 10 years, given numerous economic factors including but not limited to the Great Recession and related financial pressures in the shipping line industry. As the financial performance of and overall economic outlook for carriers and tenants has improved, ports have begun to implement more regular rate increases.

Tariff No. 2-A was amended most recently in May 2018 and July 2018, to increase all wharfage, dockage, storage, demurrage and crane rental rates by 6%; increase space assignment rates 3%; and make various changes to shore power and Comprehensive Truck Management Plan requirements. This Agenda Report outlines changes Staff recommends for 2019, as further outlined below.

ANALYSIS

It is important that Tariff No. 2-A be current and reflect market rates because it is the Port's published rules and schedule of rates and charges for the Seaport. For example, in the absence of negotiated terms with a tenant or user, Tariff rates govern; even under negotiated agreements, the Tariff remains applicable in many ways; and rent negotiations typically consider Tariff rates as one of many inputs. Below is a discussion of each proposed amendment to Tariff No. 2-A.

Dockage and Wharfage

Tariff No. 2-A sets forth rates for various activities on and uses of marine terminal property or Seaport docks. These activities include wharfage and dockage, among others (e.g., storage, demurrage, and crane rental). At the container terminals, these individual rates typically roll up into an "all-inclusive throughput rate." At other terminals and/or for users who do not have all-inclusive throughput rates in their agreement with the Port, the individual Tariff rates apply, either at the amounts stated in the Tariff or at a negotiated amount. Bulk, break bulk, and project cargo operations are typically charged individual Tariff-based rates, rather than all-inclusive rates.

The Board last approved a 6% general rate increase (including wharfage and dockage) in May 2018, following a 5% increase in 2005. Staff is now proposing, effective July 1, 2019:

- 10% increase to daily dockage - *Section IV (Dockage), Item 04105*;
- Increase minimum monthly dockage from \$1,425 to \$2,100 per month - *Section IV (Dockage), Item 04130*;
- Reduce dockage for ancillary or special vessels such as barges, lighters, and non-operative vessels, from 50% to 40% of the full Tariff rate - *Section IV (Dockage), Item 04135*; and
- 10% increase to wharfage rates for non-containerized Cargo N.O.S. (Not Otherwise Specified) - *Section VII (Wharfage, Non-Containerized Cargo), Items 07996, 07997.1, 07997.2, and 07997.3*.

These changes would better align Oakland rates with those of competitor ports. The subject rates are set forth in the following sections of Tariff No. 2-A (also refer to Exhibit A). Given the current tenant portfolio, Staff expects the revenue benefit of the proposed changes to Dockage and Wharfage to be realized almost entirely through anticipated future tenancies.

Space Assignments

Sections X-B, Item 10160 of the Tariff sets forth Space Assignment rates. These Assignments are typically month-to-month (or shorter term) lease/rental agreements at Tariff rates (rather than at negotiated rates).

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, 2018, following a series of 3% to 5% increases from 2014 through 2017. Prior to 2014, the Port had last increased rates in 2007.

Staff is proposing a 7% increase to Space Assignment rates effective July 1, 2019. The rate increase would affect 65 Space Assignments, representing about \$9.9 million of annual revenue. The proposed increase would result in approximately \$600,000 of additional annual revenue. Staff is also proposing the addition of new categories of land (land with neither fencing nor lighting), to better reflect the Port's service offering. Lastly, Staff proposes to clarify that land immediately around a warehouse/building (i.e., an "apron") is additional to the warehouse/building rent. Refer to Exhibit B for the proposed amendment effective July 1, 2019.

Based on our review of comparable facilities/rates at other ports, as well as Seaport-specific factors, Staff believes the proposed rates are competitive. 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 for industrial land in the Seaport. Therefore, any potential resulting vacancies are expected to be very limited in duration.

Comprehensive Truck Management Plan – Port Registry

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. 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), which requires Licensed Motor Carriers (LMC) to register their companies and trucks in the Port Registry. Since adoption of the CTMP, the Port has dedicated staff resources to manage the CTMP, and has retained a consultant at a cost of about \$400,000 per year.

To date, unlike other ports in California with similar programs, the Port does not charge a Port Registry fee. Considering sustained pressure on Seaport operating expenses, Staff proposes to implement new Port Registry Fees, which are intended to cover the Port's costs to implement the STEP. Staff also believes the fee will motivate LMCs/trucks currently registered but no longer serving the Port to update their records, so that the Port's database more accurately represents Seaport operations and current safety/security risks.

Staff is proposing a one-time LMC registration fee, annual truck registration fee, and a temporary pass fee. Fees could be adjusted after the first year, depending on actual cost and actual revenue. Exhibit C presents the proposed Port Registry Fees that would go into effect July 1, 2019 (though actual implementation would start in January 2020).

Port-Operated Truck Parking/Container Depot Facilities

For several years, and increasingly so since the consolidation of marine terminals in 2013 and 2016, the Port has contracted with a third party to operate a truck parking/container depot facility(ies) in the Seaport. The current operator is ABM Industry Groups, LLC dba ABM Parking Services. The facility is used by truckers to park truck tractors, stage chassis, and stage containers for more efficient transactions at the marine terminals. Users of the facility pay the operator daily or monthly rates set by the Port through its contract with the operator. The rates were last increased approximately 3% in July 1, 2018.

Upon further review of truck parking/container depot operations, Staff recommends that the rates, and the method for adjustment of the rates, be published in Tariff No. 2-A for greater transparency to users of the Port. Further, Staff recommends that the monthly rates be increased approximately 10% from current, and that daily rates increase from \$25/\$40 (standard/reefer plug stall) to \$30/\$75 (standard/reefer plug stall). Absent a future Tariff amendment, rates would increase annually by 3% of CPI, whichever is higher.

The proposed increase would result in approximately \$700,000 of incremental annual revenue, assuming no changes in facility acreage or utilization from FY 2018-19. Refer to Exhibit D for the proposed amendment to the Tariff.

Common Area Electric Utility Assessment

In recent years, certain areas of the Seaport with electricity service provided by Pacific Gas & Electric Company (PG&E) have been leased to multiple tenants under short and medium-term tenancy agreements. These areas are currently Howard Terminal, Roundhouse Property, portions of the Outer Harbor Terminal, and portions of the 7th Street Marine Terminals – prior to 2013-2016, these areas typically were each leased to a single tenant. In these four areas, electric utility costs are common. That is, the Port pays the utility bill to PG&E, and then charges a land-based utility assessment to recover its cost.

In Calendar Year 2018, the Port's annual electric utility cost in these areas was approximately \$654,000 in aggregate. As approved by the Board in November 2018 on an interim basis, the Port charges an assessment of \$0.01 per square foot per month to recover that cost. The amount of the assessment may be updated in the future based on Staff's review of annual electric utility cost, and subject to Board approval. As planned and as indicated to the Board in November 2018, Staff recommends this assessment be incorporated into Tariff No. 2-A as a Common Area Electric Utility Assessment as part of Item 11105 of the Tariff. In the future, if these areas were no longer "common," then the Assessment likely would no longer be applicable.

Staff also recommends updating the entire Item 11105 to update other statements about electric utility service. Refer to Exhibit E for the proposed Tariff item.

Middle Harbor Shoreline Park – Rules and Fees

Middle Harbor Shoreline Park (MHSP) is a 38-acre shoreline park built and operated by the Port, located on the Oakland Harbor. The MHSP is open to the public from dawn to dusk. The MHSP is a popular venue for picnics, bird watching, and various special events. Since FY 2010-11, the Port has incurred average annual cost of approximately \$500,000 to maintain the MHSP; as the Park ages, maintenance needs increase in both scope and cost.

To help offset these costs the Port has been charging users of the MHSP for certain activities, such as picnic area reservations, concerts, film/photography, etc. Use fees have not been updated routinely and were never incorporated into Tariff No. 2-A. Staff recommends that the rules and fees for use of the MHSP be established in the Tariff because the MHSP is within the Seaport and to promote greater transparency to users of the MHSP.

Staff reviewed fees charged at other public parks, including the East Bay Regional Park District, and concluded that the proposed fees at the MHSP are consistent with similar venues. For small picnic area reservations, jumpers, film/photo permits, and small special events are about the same as current. However, fees for large special events have increased from \$8,000 per day (plus ancillary fees) to \$18,000 per day (plus ancillary fees). Other fees for vendor/concession permits, park manager oversight, and security deposits have been clarified and updated. Absent a future Tariff amendment, rates would increase annually by 3% of CPI, whichever is higher.

Revenue can vary significantly from year to year (in recent years, from \$15,000 to \$100,000). The proposed fees for inclusion in the Tariff are expected to significantly increase revenue from large events, when large events occur. Refer to Exhibit F.

Security Restrictions for Aircraft Landing and Take Off

With the increasing use of unmanned aircraft (e.g., drones) for recreational and professional purposes, Staff recommends following the practices of other ports that have put in place restrictions on the use of aircraft within seaport facilities.

The proposed amendment would prohibit the use of any aircraft (including without limitation helicopters, seaplanes, and ultralight vehicles) any model aircraft or civil unmanned aircraft system ("UAS") without having obtained prior written permission from the Port's Director of Maritime. At the MHSP, use of any aircraft or UAS would be strictly prohibited without prior written permission of both the Port's Director of Maritime and the Port's Director of Social Responsibility, which may be granted only in conjunction with a Film Permit Request.

In the future, Staff may recommend further amending of Tariff No. 2-A to outline a permit and permit fee process, after gaining more experience enforcing this proposed new provision. Please refer to Exhibit G for the proposed amendment.

Fresh Water Utility Service

Item 11110 of Tariff No. 2-A references fresh water service rates that are no longer applicable. Staff proposes to update Item 11110 to reflect current and permissible practice. Refer to Exhibit E for the proposed amendment.

Interior-Point-Intermodal (IPI) Incentive Program

In 2009, the Port amended Tariff No. 2-A to include Items 02300-02310 to set forth an IPI Container Rate Reduction and Ocean Common Carrier IPI Incentive Program. The Program was generally unsuccessful in generating sustained, incremental IPI cargo throughput. The Program is specific to Calendar Year 2009, and outdated. Its presence in the Tariff sometimes creates confusion; Staff recommends removing the Program from the Tariff since it is no longer in effect.

Miscellaneous Administrative Items

Staff proposes to update a variety of administrative items:

- Revise the definition of Port Area to clarify that Tariff No. 2-A applies to the Seaport. Refer to Exhibit H.
- Create a new definition for Consumer Price Index that applies to some of the amendments proposed to be effective July 1, 2019, as described herein. Refer to Exhibit H.
- Reflect current Board appointments and staffing.
- Update the Table of Contents and Plan of Tariff.

BUDGET & STAFFING

The proposed changes to Tariff No. 2-A would result in approximately \$2.2 million of annual revenue in FY 2019-20 as compared to FY 2018-19, assuming no changes in tenancies, lease terms, or cargo activity from those currently anticipated. Of the \$2.2 million, about \$1.9 million is new revenue. The breakdown of revenue is as follows:

Tariff Item	Est. Annual Revenue	Type of Revenue
Dockage	\$8,000	New. Results from rate adjustment.
Space Assignments	\$600,000	New. Results from rate adjustment.
CTMP Port Registry Fees	\$420,000 (Year 1: \$595,000)	New. Directly offsets Port costs to operate/manage the Port Registry.
Truck Parking/Container Depot Facilities Charges	\$700,000	New. Includes only incremental revenue resulting from rate adjustment. Truck parking revenue would increase from an estimated \$7.8m in FY19 to \$8.5m in FY20.
Common Area Electric Utility Assessment	\$339,500	No change to Port revenue. The assessment is already being charged; the only change is that it is now included in Tariff No. 2-A. Directly offsets Port utility costs.

The wharfage and MHSP Tariff items discussed in this Report are not shown here because they do not affect current tenants/activities or are too speculative to estimate now. If approved, the financial impact of the proposed amendments preliminarily will be reflected in the FY 2019-20 operating revenue budget currently under development.

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 Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenue
- Goal: Modernize and Maintain Infrastructure
- Goal: Strengthen Safety and Security

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 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 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 rates are for those funding purposes. No 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, as described herein.
2. Adopt an ordinance to amend Port Tariff No. 2-A 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 at this time. Under this option, incremental revenue would not accrue to the Port, current and future tenants could be paying below market rates, and certain sections of the Tariff would remain outdated.

RECOMMENDATION

Staff recommends that the Board adopt an ordinance approving, as described herein and effective July 1, 2019, the following changes to Tariff No. 2-A:

- An increase of 10% to Tariff No. 2-A rates for dockage (Item 04130);
- An increase of the monthly dockage rate from \$1,425 to \$2,100 per month (Item 04135);

- A decrease of the dockage rate for certain ancillary vessel types from 50% of the full Tariff rate to 40% of the full Tariff rate (Item 04105);
- An increase of 10% to Tariff No. 2-A rates for non-containerized Cargo N.O.S. wharfage (Items 07996, 07997.1, 07997.2, and 07997.3);
- An increase of 7% to Tariff No. 2-A rates for Space Assignments, and establishment of new land rates for paved and rocked land that has neither fencing nor lighting (Item 10160);
- Establishment of fees for the CTMP Port Registry (Item 02405);
- Establishment of rates for the Port-owned truck parking/container depot facilities (Item 10185);
- Update electric utility service provisions, including the establishment of a Common Area Electric Utility Assessment for the Howard Terminal, Roundhouse Property, and portions of the Outer Harbor Terminal and 7th Street Marine Terminals (Item 11105);
- Establishment of rules and fees for use of the Middle Harbor Shoreline Park (Items 11200-11225);
- Establishment of new security restrictions for certain types of aircraft (Item 02220, Section (h));
- Update to fresh water utility service provisions (Item 11110);
- Deletion of the IPI Container Rate Reduction and Ocean Common Carrier IPI Incentive Program established in 2009; and
- Various administrative updates including Board appointments, staffing, clarification of the Port Area definition, and addition of a definition of Consumer Price Index (Items 01255 and 01142).