

PORT ORDINANCE NO. 4519

**ORDINANCE AMENDING PORT ORDINANCE NO. 2833 AMENDING
TARIFF NO. 2-A.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.2, dated May 9, 2019 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

SECTION 1. References in this ordinance to an Item Number, or to a Tariff Section number, mean the Item No. or the Tariff Section number, respectively, in Port of Oakland Tariff No. 2-A, adopted by Port Ordinance No. 2833, as amended. Underlined words and phrases indicate modified language to the portions of the Item Nos. referenced in this ordinance.

SECTION 2. The following pages, items and sections shall be amended as set forth herein:

- A. The 32nd Revised Page 1 is hereby revised and replaced with the 33rd Revised Page 1 providing the updated names and titles of Port Board members and staff;
- B. The 26th Revised Page 2 is hereby revised and replaced with the 27th Revised Page 2 providing the updated names and titles of the Port Maritime Division personnel;
- C. The 2nd Revised Page 4 is hereby further revised and updated to reflect the current Table of Contents and Plan of Tariff;
- D. A new Item Number 01142 is hereby created to provide a definition of Consumer Price Index, as further described in the Agenda Report and in Exhibit H thereto.
- E. Item 01255 is hereby amended to clarify the definition of Port Area, as further described in the Agenda Report and in Exhibit H thereto;
- F. Section 02220 is hereby amended to add a new section (h) to establish the following rules and restrictions for certain types of aircraft:

(h) Aircraft Landing and Take Off

No person shall land or take off in any aircraft (including without limitation helicopters, seaplanes, and ultralight vehicles) nor land or takeoff any model aircraft or civil unmanned aircraft system ("UAS"), as those terms are defined in Public Law 112-95, Sections 331 (9) and 336, and 14 CFR Part 107, in the Port Area (including water areas) without having obtained prior written permission from the Port's Director of Maritime or his/her designee. This authorization

does not include requirements of other agencies. Obtaining approval and/or permits from other agencies (such as Federal Aviation Administration, U.S. Coast Guard, etc.) is the sole responsibility of the owner/operator.

Use of any aircraft or UAS as defined in this Item 02220(h) at Middle Harbor Shoreline Park is strictly prohibited without prior written permission of both the Port's Director of Maritime and the Port's Director of Social Responsibility or his/her designees, which may be granted only in conjunction with a Film Permit Request. Also reference Item 11205.

No person shall operate a model aircraft or UAS in the Port Area in a careless or reckless manner that may endanger the life or property of another or allow an object to be dropped from a small unmanned aircraft UAS.

G. Section II is hereby revised to delete Items 2300 through 2310 (IPI Container Rate Reduction and Ocean Common Carrier IPI Incentive Program);

H. The following Item Numbers and Sections are hereby revised and replaced to revise the rates for dockage and wharfage effective July 1, 2019 as set forth in the Agenda Report and Exhibit A thereto:

1. Section IV (Dockage), Item 04105) revised to reflect a decrease in the rate in paragraph (d) from fifty percent (50%) to forty percent (40%);
2. Section IV (Dockage), Item 4130 is revised to reflect a ten percent (10%) increase;
3. Section IV (Dockage), Item 04135, revised to reflect an increase in monthly dockage fee from \$1,425 to \$2,100 per month; and
4. Section VII (Wharfage - Non-Containerized Cargo NOS), Items 07996, 07997.1, 07997.2 and 07997.3 revised to reflect a ten percent (10%) increase;

I. Item No. 02405 Port Registry is hereby amended to add a new item 3 Port Registry Fees which reads as follows:

3. Port Registry Fees

Starting with registrations for calendar year 2020, registrations will be subject to the following Port Registry Fees:

One-time Port Registry Fee:	\$250 per LMC
Annual Drayage Truck	
Registration Fee:	\$60 per Drayage Truck
Temporary STEP Pass Fee:	\$25 per Drayage Truck

Registry Fees shall be due and payable at the time of registration or request for a STEP Pass. A registration year

is January 1 through December 31. Port Registry Fees shall not be prorated.

- J. Items No 11105 and 11110 are hereby revised and replaced in their entirety to read as follows, and as further set forth in the Agenda Report and Exhibit E thereto:

ITEM 11105 ELECTRIC CURRENT

1. Port as Municipal Utility: All electric power in those portions of the Port Area where the Port directly provides electric power as a municipal utility shall be subject to the rates and charges established by Port Ordinance No. 3439 as amended from time to time. For purposes of this Item 11105, electric power provided by Pacific Gas and Electric Company (referred to herein together with any subsequent successors-in-interest as "PG&E") is referred to as "PG&E Electricity," and electric power provided directly by the Port acting as a municipal utility is referred to as "Port Electricity." Port Ordinance No. 3439, as amended, establishes rates and charges that apply to users of Port Electricity.
2. Other Utility Providers: All PG&E Electricity shall be subject to the rates and charges in accordance with PG&E's (or its successor-in-interest's) rate structure, and such rates are subject to change without notification from the Port.
3. Port Common Area Electric Utility Assessment: Port tenants located on the Outer Harbor Terminal, Roundhouse. 7th Street Marine Terminals, and Howard Terminal properties of the Port Area (a) who use PG&E Electricity, and (b) where sub-metering has not been permitted by PG&E, will be assessed a Common Area Electric Utility Assessment charge as set forth in this Item 11105.

ITEM 1110 FRESH WATER SERVICE

Users of fresh water who do not have an account or meter for such water in the user's name with the East Bay Municipal Utility District (referenced herein together with any successors-in-interest as "EBMUD") may be assessed charges by the Port in accordance with EBMUD's (or its successors-in-interest) rate structure. Said rates are subject to change without notification from the Port.

- K. Section X-B, Item No. 10160 Space Assignment Rates are hereby revised and replaced to increase space assignments rates by seven percent (7%) effective July 1, 2019 and establishing new land rates for paved and rocked land that has neither fencing or lighting, as further set forth in the Agenda Report and Exhibit B thereto.

L. A new Section X-C, Items 10180 to 10190 is hereby created and added to read as follows:

Item 10180 - Application and Condition of Use for Port-Operated Truck Parking/Container Depot Facilities Use

- (a) The Port may provide truck parking/container depot facilities operated by the Port, or by a third party on behalf of the Port, to users of the Port for the purpose of parking drayage trucks and/or staging containers associated with seaport activity. Prior to using any such facility, a user shall enter into an agreement with the Port, or a third party designated by and on behalf of the Port, for the use of such facility.
- (b) Effective July 1, 2019, users of truck parking/container depot facilities operated by the Port, or by a third party on behalf of the Port, will be assessed per Items 10185 and 10190, which sets forth the types of truck parking/container depot facilities used, if and as available:

Item 10185 - Rates for Port-Operated Truck Parking/Container Depot Facilities Use

All Monthly and Daily Rates include City of Oakland Parking Tax. Rates shall be paid in full prior to the commencement of use.

(a) Monthly Rates

The Monthly Rate is per calendar month.

Stall Size	Monthly Rate
25 ft.	\$150
40 ft.	\$280
45 ft.	\$300
53 ft.	\$330

(b) Daily Rates

The Daily Rate is per 24-hour period, and is a flat rate regardless of stall size.

Standard Stall: \$30
Standard Stall (with Reefer Plug In): \$75

Item 10190 - Adjustment of Rates for Use of Port-Operated Truck Parking/Container Depot Facilities

The Monthly and Daily Rates shall increase annually on July 1 of each year by the greater of: (i) 3%; or (ii) the percentage increase, if any, in the published CPI for the preceding 12-month period, with or without prior notice. The most recently published CPI as of June 1 of each year will be used to calculate the increase in the CPI.

- M. Section XI is hereby amended to add new Items 11200 through 11225 to establish the following rules and fees for use of the Middle Harbor Shoreline Park:

ITEM 11200 Middle Harbor Shoreline Park (MHSP)

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. More information about the MHSP can be found on the Port's website at <https://www.portofoakland.com/community/recreation/parks-and-waterways>.

Item 11205 General Park Rules

- Hours of operation: dawn to dusk (unless approved by a special event permit)
- Visitors must park in parking lot only; no other parking is allowed
- No firearms and dangerous weapons, including without limitation spears, bow and arrows, crossbow, sling shot, air or gas weapon, practice swords, nunchakus, and throwing stars
- No fireworks
- No camping
- No littering or dumping
- No possession or use of drug paraphernalia, as defined in Section 11364 of the California Health and Safety Code
- No pets or animals. Service dogs are allowed but must remain on leash always
- No use of aircraft or UAS of any kind, unless specifically authorized in writing by the Port per Item 02220(h).
- No use of bicycles off pathways
- No use of golf equipment or hitting golf balls
- No use of missiles, rockets, or similar projectiles, or kites with a string length of more than 400 feet
- No swimming, scuba diving, or snorkeling
- No boating
- No smoking
- No open outdoor fires (personal cooking appliances such as gas or propane camp stoves, barbecues, or hibachis allowed only in designated picnic areas)
- No alcoholic beverages without prior written approval by the Port
- No commercial filming or photography without prior written approval by the Port
- No use of metal detectors or similar devices without prior written approval by the Port
- No use of generators without prior written approval by the Port

Item 11210 Picnic Area Reservations and Filming/Photography

- Picnic area reservations can be booked up to one year in advance, but must be reserved at least fourteen (14) days in advance
- Commercial film or photography shoots can be booked up to one year in advance, but must be reserved at least sixty (60) days in advance
- All permit forms can be downloaded at: <https://www.portofoakland.com/community/recreation/parks-and-waterways/>

Item 11215 Special Events

Special events, such as festivals, corporate parties, or other organized activities, go beyond the scope of day-to-day park use and require a special permit. Special events may have the following sample characteristics:

- 1,000 - 4,000 people (Small Special Event) or more than 4,000 people (Large Special Event)
- Amplified sound
- Require partially exclusive or exclusive use of the park
- Occurs outside of normal MHSP operating hours
- An advertised event, and/or an event with a participation and/or ticket fee
- Require the Port Park Manager to be present
- Require special set up of stages, tents, barricades, fences, or other structures

Users of the MHSP under a Special Event Permit shall note and comply with, at a minimum, the rules set forth below:

- Special Events can be booked up to two years in advance, but must be booked at least one-hundred eighty (180) days in advance
- No more than four (4) Special Events per calendar year
- No more than 4,000 people per day if Small Special Event or 12,000 people per day if Large Special Event
- Duration must be 72 hours or less (not inclusive of set-up/take down)
- Use of amplified sound limited between 8 AM and 10 PM
- Event must end by 10 PM
- On-site parking limited to parking lot within the MHSP. No additional parking inside the Seaport is allowed
- Route maps for event access, including, without limitation, shuttle access and event ingress or egress to/from MHSP, are subject to Port approval
- Special Events require Port Park Manager Oversight, at Permit holder's sole cost
- Special Event permittee is responsible for various facility costs, including without limitation parking facilities outside the Seaport and shuttles to/from event, custodial clean up and trash removal, Port Park Manager

oversight, engineering services provided, on-site security, all applicable fees, damages to Port property, and music licensing fees

Special events that result in extended and/or multiple periods of ingress/egress at the MHSP and onto adjacent areas of the Seaport (including but not limited to running, biking, triathlon events) are strongly discouraged because of interaction with Seaport traffic.

Item 11220 MHSP Fees

Effective July 1, 2019, users of the MHSP will be assessed per this Item, which sets forth the types of areas and uses at the MHSP that are subject to fees, if and as available.

Event (other than Special Event)	Fee
Type	
Up to 55 people (Picnic Area A or B)	\$150
Up to 105 people (Picnic Area C)	\$200
Up to 215 people (Picnic Areas A, B, and C together)	\$500
Inflatable Jumper brought on site	\$25
Commercial Film or Photography Shoots	\$500 per hour
Special Event	Fee
Event Rental (Large Special Event)	\$18,000 per day
Event Rental (Small Special Event)	\$8,000 per day
Security Deposit (Large Special Event)	\$8,000 per day
Security Deposit (Small Special Event)	\$5,000 per day
Port Park Manager Oversight	\$250 per hour (4-hour minimum charge)
Vendor/Concession Permit	\$100 per day per vendor
All Events	Cancellation Fee
Over 60 calendar days' notice	50% security deposit
31-60 calendar days' notice	100% security deposit
11-30 calendar days' notice	100% security deposit plus 50% Event Rental

Fewer than 30 calendar days' notice	100% deposit plus all fees
-------------------------------------	----------------------------

Per-day Fees set forth in his Item will be assessed for set-up and take-down days, as well as event days. All Fees, including Security Deposit, are due and payable at the time of application. Such Security Deposit may be applied by the Port to pay the cost of any of the following: (a) restoration and cleaning; (b) repair of any damage caused by Permit Holder; (c) replacement of any improvements which are the property of the Port and which have been damaged, removed or otherwise misplaced by the Permit Holder; (d) payment of the Port Park Manager Oversight fees; or (e) the payment of any other outstanding amounts due the Port from Permit Holder. The Performance Deposit shall be cash, or an equivalent instrument if approved by the Port's Director of Maritime.

The MHSP Fees may increase annually on July 1 of each year by the greater of: (i) 3%; or (ii) the percentage increase, if any, in the published CPI for the preceding 12-month period, with or without prior notice. The most recently published CPI as of June 1 of each year will be used to calculate the increase in the CPI.

Item 11225 MHSP Application Review

The Port reserves the right to deny application for a reservation, filming/photography event, or special event if the Port, in its sole discretion of the Port Director of Maritime, determines that the proposed activity or event would negatively impact Seaport operations.

SECTION 3. The Board of Port Commissioners hereby finds and determines that:

(a) This Ordinance is adopted pursuant to the authority under Article 7 of the Charter of the City of Oakland, including but not limited to Section 706(10) of the Charter, and the rates, dockage, rentals, tolls, wharfage, and charges are reasonable for the use of Port properties, appliances and facilities or to recover costs of services rendered;

(b) The proposed amendments to Port Tariff No. 2-A were reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. The proposed amendments are exempt from CEQA under Section 15301, Class I, which does not apply to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and

(c) In addition, the proposed Space Assignment rate amendments in Tariff No. 2-A 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, so therefore meets the criteria for this exemption.

The Board of Port Commissioners, Oakland, California, May 9, 2019.
Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board