

AGENDA REPORT

Ordinance: Approval of Various Amendments to Tariff No. 2-A, Effective July 1, 2020, to (a) clarify and establish certain non-containerized cargo wharfage rates; (b) eliminate monthly dockage rates and rules; (c) make revisions to rules and rates for the Port-owned Truck Parking/Container Depot facilities; (d) establish payment responsibility and fees for security guards; (e) establish a utility connection fee; (f) expand the discretion to deny applications for events at the Middle Harbor Shoreline Park; and (g) make various other administrative updates **(Maritime)**

MEETING DATE: 5/28/2020

AMOUNT: Approx. \$1,064,000 annually
Revenue

PARTIES INVOLVED: Various tenants, customers, and users of the Seaport

SUBMITTED BY: Delphine Prevost, Acting Director of Maritime

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Staff recommends various amendments to Tariff No. 2-A to (a) clarify and establish certain non-containerized cargo wharfage rates; (b) eliminate monthly dockage rates and rules; (c) make revisions to rules and rates for the Port-owned Truck Parking/Container Depot facilities; (d) establish payment responsibility and fees for security guards; (e) establish a utility connection fee; (f) expand the discretion to deny applications for events at the Middle Harbor Shoreline Park; and (g) make various other administrative updates. These amendments all would be effective July 1, 2020, and could result in gross revenue of about \$1,115,000 annually and net recurring revenue of about \$1,064,000 annually.

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.

Tariff No. 2-A was amended most recently in July 2019, to change certain dockage and wharfage rates, including a 10% increase to non-containerized cargo not otherwise specified

(N.O.S.); increase space assignment rates 7%; establish new fees for the registration in the Comprehensive Truck Management Program; establish an electric utility assessment for certain tenancies; establish new rules and use fees for the Middle Harbor Shoreline Park; establish new security restrictions for certain types of aircraft; update fresh water utility service provisions; remove the interior-point-intermodal incentive program established in 2009; and (j) make various other administrative updates. These amendments were all effective July 1, 2019.

This Agenda Report outlines changes Staff recommends for Fiscal Year 2020-21. Changes to Tariff 2-A are typically submitted to the California Association of Port Authorities (CAPA), which reviews changes to port tariffs. Although not required, CAPA approval of changes to Port Tariff 2-A is desirable. Staff has submitted docket proposals to CAPA and has received unanimous approval.

ANALYSIS

It is important that Tariff No. 2-A remain 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 and terms 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, to be effective July 1, 2020.

Non-Containerized Cargo Wharfage

Staff proposes to make some clarifying changes to non-containerized wharfage for bunker fuel and other petroleum products. Staff also proposes to establish wharfage for liquified natural gas bunkering, hydrogen bunkering, and passengers. Refer to Exhibit A.

- Clarification of petroleum bunker wharfage: The current language in Item 07270 for petroleum products for bunker fuel was awkwardly stated and seemingly combined with Item 07274 for bulk petroleum wharfage. The proposed changes clean up the language for bunker fuel and clearly separate bunker wharfage from bulk petroleum wharfage.
- Clarification of bulk petroleum wharfage: Item 07274 is seemingly combined with Item 07270 (bunker wharfage) and has a different rate than petroleum bunker wharfage. The proposed changes simplify the bulk petroleum language, clearly separate it from Item 07270, and revise the rate from \$1.26 to \$1.45 per applicable unit of measure to make Items 07274 and 07270 equal. Currently, there are no bulk petroleum operations at the Seaport.
- Establishment of wharfage for liquified natural gas bunkering: The Port has received inquiries for liquified natural gas (LNG) bunkering opportunities and rates. Rates do not currently exist for LNG. Staff proposes to set rates for LNG bunkering, as new Items 07280 and 07282, in the amounts of 30 and 54 cents per unit of measure. Based

on potential LNG bunkering operations, this could generate revenue of about \$1,000 per bunker event or about \$50,000 per year. Very few comparable rates are available at this time; as this market develops, Staff will track rates to determine if future adjustments are necessary.

- Establishment of wharfage for hydrogen bunkering: The Port has received inquiries for hydrogen bunkering opportunities and rates. Rates do not currently exist for hydrogen. Staff proposes to set a rate for hydrogen bunkering, as new Items 07276 and 07278, in the amounts of 27 and 49 cents per unit of measure. Based on potential hydrogen bunkering operations, this could generate about \$100 per bunker event or about \$4,000 per year. Very few comparable rates are available at this time; as this market develops, Staff will track rates to determine if future adjustments are necessary.
- Establishment of wharfage for passengers. The Port recently received an unanticipated cruise ship with passengers requiring disembarkation. Rates do not currently exist for passengers. While the Port does not expect to receive cruise vessels or passengers as a matter of routine business, establishing a passenger rate would better prepare the Port for unanticipated/urgent activity in the future. Staff proposes to set a rate for passengers, as new Item 07960, in the amount of \$11 per passenger inclusive of baggage. This rate is based on a comparison of rates at various ports around the U.S. For context, during a recent cruise ship passenger debarkation event at the Seaport, wharfage at this rate would have resulted in one-time revenue of about \$26,000.

Monthly Dockage

Item 04135 of Tariff No. 2-A provides the Port with discretion to apply monthly dockage rates in lieu of daily dockage rates in certain circumstances, with a minimum rate of \$2,100 per month. Considering a growing number of dockage arrangements not associated with marine terminals (for example: tugs, layed up vessels, etc.). Staff has found the Monthly Dockage Fee to be confusing and to have the potential to create unintended discrepancies in dockage/rental charges assessed across tenants/properties. Therefore, Staff proposes to eliminate Monthly Dockage Fees. In Fiscal Year 2020-21, this change could result in additional revenue increase of about \$10,000. Refer to Exhibit B.

Port-Owned Truck Parking/Container Depot Facilities

On July 1, 2019, the Port established conditions and rates for the use of the Port-owned and operated truck parking/container depot facility (Depot) in the Seaport. The current operator is ABM Industry Groups, LLC dba ABM Parking Services. The facility currently operates in two areas (Howard Terminal and the Outer Harbor Terminal). Over the last 1-2 years, Staff has reviewed Depot operations in light of several changing factors: a growing number of interested parties for maritime leases for support/ancillary activities as well as marine terminal cargo surges, especially in the outer harbor of the Seaport; market rates for similar Depot operations; as well as the current uses and the originally intended core purpose of the Depot. The Port initially implemented Depot operations on 15 acres of Port land in 2007 for truckers to park truck tractors, stage chassis, and stage containers on a short-term basis (especially overnight) to provide for more efficient transactions at the marine terminals, and reduce the likelihood of trucks and chassis being parked in nearby neighborhoods while truckers “wait” to transact at a marine terminal (e.g., waiting for appointment window, late arrival waiting for

night gate or next day gate, mandatory rest periods, etc.). These uses were consistent with the original purpose of the 15-acre “truck parking” (i.e., Depot) requirement. Over time, particularly after Ports America Outer Harbor Oakland, LLC (PAOH) vacated the Berths 20-26 marine terminal, the Port expanded the land area of the Depot given available land and a sudden “crunch” to retain/redistribute PAOH cargo to the other marine terminals. As the acreage of the Depot expanded, uses also expanded to include longer term equipment staging that would otherwise be handled at a marine terminal, warehousing facility, or off-Port yard; as well as “flex” opportunities for Seaport tenants with volume surges. As demand for Seaport tenancies continues to grow, and available Seaport land becomes increasingly scarce, it is important that such land/facilities be priced properly and used for “highest and best” purposes, and that the original purpose of the Depot (which reduces the likelihood of trucks and chassis being parked in nearby neighborhoods), be prioritized. By Summer 2020, staff plans to reduce the Depot from approximately 50 acres to about 40 acres, with further reductions planned in future years.

While there are other truck parking yards off Seaport property that handle overflow of containers that distribution warehouses are unable to accept, the trucking community has become accustomed to the convenient location, significant value, and service the Depot provides. Comparable facilities at or very near seaport complexes command monthly rates as high as \$600 per stall (for ex, near the Ports of Los Angeles/Long Beach); rates drop to the range of \$200 to \$250 per month per stall for inland locations (e.g., Fairfield and Sacramento). These locations are typically not staffed with gate attendants or security. The Depot, by comparison, is staffed on a 24/7 basis, 365 days a year; controlled by gate attendants; and with staffed with security. Staff believes these services are appropriate and necessary in the Seaport. The Port pays to operate the Depot, with operating expenses covering wages and benefits for security guards, gate attendants, and management/administrative staff; rubbish removal; insurance; portable restrooms; City of Oakland parking tax; and gate management software. Expenses to operate the Depot have ranged between 40% and 55% of gross revenues, but as the size of the Depot shrinks to accommodate development of higher and better uses of Port land, staff expects the expenses as a percentage of gross revenue to increase.

The Depot uses need to be re-focused on the original intent, reducing the likelihood of trucks and chassis being parked in nearby neighborhoods, and other uses should be re-transitioned to leases or off-Port yards, given the competing demands for Seaport land that provide higher/better uses and higher net revenue to the Port. Bringing the Port’s rates more in line with market comparables will help foster this transition and ensure Seaport facilities are properly valued. Staff therefore recommends the following changes to the Depot Conditions of Use and Rates, as outlined below:

- Revise Item 10180 to provide information on the purpose of the subject facilities, including Port’s discretion to impose use limitations and rules to actively manage capacity;
- Revise Item 10185 to change the categories of stalls from being based on stall size (e.g., 40-foot) to being based on the type of use (e.g., tractor or container/chassis);

- Revise Item 10185 to increase the monthly rates from a range of \$150 - \$330, to a range of \$200 - \$400;
- Revise Item 10185 to add a new daily rate for “other,” in the amount of \$40 per stall.

The proposed rate increases would not result in incremental annual revenue because the available acreage of the Depot will be shrinking by Fall 2020 as noted above. However, without the rate increase, Depot revenue would be about \$1 million less than budgeted for FY21. Refer to the Budget section of this Report for more information about revenue and to Exhibit C for the proposed amendment to the Tariff.

Security Guard Fees

Staff proposes to establish responsibility for security guard costs in Tariff No. 2-A. The Tariff would state that U.S. Government regulations require trained security guards to be posted in the restricted areas where a vessel subject to such regulations is berthed, and to require that fees for such guards be payable by the vessel owner. The Port has seen an increase in berthing of vessels not associated with marine terminals under lease with the Port (for example, layed up vessels). Where there is no stevedore, the Port provides and pays for the security guards. Staff recommends the Port recover the actual costs of such security guards plus a 10% administrative fee and wants to clearly set forth financial responsibility in the Tariff as an addition to Item 02220. In Fiscal Year 2020-21, this change could result in revenue (cost recovery) of about \$20,000 for each 1-month vessel operation requiring the use of Port-provided guards. Please refer to Exhibit D for the proposed amendment.

Utility Connection Fee

Staff proposes to establish a Utility Connection Fee as Item 11120 of Tariff No. 2-A. This fee would apply in instances where the Port is physically performing utility connections for a new or existing tenant. Staff routinely provide utility connection services for existing and/or new tenants. With changes in the Port’s service area and a growing number of short-term tenants in recent years, the time and cost to perform this service has grown. Staff recommends the Port recover its costs for providing such service. The proposal is for a minimum fee of \$500 per connection event. This fee may be superseded in the future by changes to the Port’s utility ordinance. In Fiscal Year 2020-21, this change could result in revenue (cost recovery) of about \$5,000 per year assuming 10 connections. Refer to Exhibit E for the proposed Tariff item.

Middle Harbor Shoreline Park

On July 1, 2019, the Port established rules and fees for the use of the Middle Harbor Shoreline Park (MHSP), 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 rules (Item 11225) included providing the Director of Maritime with sole discretion to deny applications for an event if the proposed activity would negatively impact Seaport operations. Staff proposes to expand that discretion to include *without limitation*, Seaport operations and *regulatory considerations* (italicized text reflects proposed changes). Refer to Exhibit F.

Miscellaneous Administrative Items

Staff proposes to update a variety of administrative items:

- Remove Item 09130 to reflect that Port Cranes X-402, 403, and 404 are no longer available (these are the old cranes at Berth 20/21 scheduled for demolition), and update the berth identifications for the cranes at the Oakland International Container Terminal (Items 09163-09164). Refer to Exhibit G;
- Update security deposit requirements for leaseholds, to be more specific and aligned with Port administrative policy (Item 02145). Generally, the requirement is for a 3-month security deposit where the lease term is 30 days or longer, and three times the rent if the lease term is less than 30 days. This is consistent with current practice. Refer to Exhibit G;
- Update provisions relating to violations of ordinance, including remedies available to the Port (Item 02125). Refer to Exhibit G;
- Update names of countries in various trade zones (Item 01340). Refer to Exhibit G;
- Update staffing names and contacts, and reflect current Board appointments; and
- Correct typographical errors, update the Table of Contents, update the Correction Number Sheet.

BUDGET & STAFFING

The revenue impact of the proposed changes to Tariff No. 2-A is highly uncertain given the underlying assumptions discussed earlier in this Agenda Report. Table 1 (below) summarizes Staff's best current estimate of the revenue impact. Perhaps more important than the estimated revenue, the proposed changes position the Port to collect revenue in the future when opportunities arise. No staffing impact is anticipated by the proposed action.

Table 1. Summary of Revenue from Proposed Tariff Changes¹

Tariff Revision	Estimated Gross Revenue from Tariff Revision	Net Revenue?²
Petroleum bunker wharfage	\$0	NA
Petroleum bulk wharfage	\$0	NA
LNG bunkering wharfage (*)(**)	\$50,000	Maybe
Hydrogen bunkering wharfage (*)(**)	\$4,000	Yes
Passenger wharfage (*)	\$26,000	Yes
Monthly dockage - removal (*)(**)	\$10,000	Yes
Truck parking/container depot (*)(**)	\$1,000,000 ³	Yes
Security guard fees	\$20,000	No
Utility connection fee	\$5,000	No
Middle Harbor Shoreline Park events	\$0	NA
Various administrative updates	\$0	NA
Total Est. Gross Annual Revenue	\$1,115,000	
Total Est. Net Annual Revenue (*)	\$1,090,000	
Total Est. Net Recurring Annual Revenue (**)	\$1,064,000	

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.portoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenue
- Goal: Modernize and Maintain Infrastructure

¹ Revenue is based on assumptions discussed earlier in this report. These assumptions are subject to high uncertainty.

² Revenue intended to recover costs is not considered net revenue to the Port.

³ Without the proposed increase to rates, truck parking revenue in FY21 would be about \$3.3 million instead of \$4.3 million. Regardless, however, truck parking revenue is expected to decrease relative to FY20 because acreage is shrinking as discussed above.

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.

SUSTAINABILITY

The proposed amendments do not directly result in sustainability enhancements. However, certain of the proposed wharfage amendments position the Port to support and promote alternative fuels for vessels. Also, by positioning the Port for future revenue at or near market rates, the proposed amendments support the Port's financial health and, therefore, its ability to invest in sustainability initiatives where feasible.

ENVIRONMENTAL

CEQA Determination: The proposed amendments to Port Tariff No. 2-A were reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). Per Section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the proposed amendments to Port Tariff No. 2-A would have a significant effect on the environment, and therefore the proposed action is not subject to CEQA.

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. Under this option, incremental revenue would not accrue to the Port 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, 2020, the following changes to Tariff No. 2-A:

- Clarification of petroleum bunker wharfage (Item 07270); clarification of bulk petroleum wharfage and increase of the rate to \$1.45 per applicable unit of measure (Item 07274); establishment of wharfage for liquified natural gas bunkering in the amounts of 30 cents and 54 cents per applicable unit of measure (Items 07280 and 07282); establishment of wharfage for hydrogen bunkering in the amount of 27 cents and 49 cents per applicable unit of measure (Items 07276 and 07278); and establishment of wharfage for passengers in the amount of \$11 per passenger (Item 07960);
- Elimination of Monthly Dockage Fees (Item 04135);
- Revisions to the conditions of use for the Port-owned/operated truck parking/container depot facilities, including changes to the rate structure and rates which increase the monthly rates from a range of \$150-\$330 to a range of \$200-\$400 (Items 10180 and 10185) and the addition of a new daily rate for "other" in the amount of \$40 per stall;
- Establishment of payment responsibility for security guard fees (Item 02220);
- Establishment of a utility connection fee in the minimum amount of \$500 per connection event (Item 11120);
- Revisions to the Maritime Director's discretion to deny applications for events at the Middle Harbor Shoreline Park (Item 11225); and
- Various administrative updates including Board appointments, staffing, updates to trade zone countries, update to security deposit requirements, update to provisions related to violations of ordinance, and updates to crane identifications and offerings (various Items).

Exhibits A through G