

## AGENDA REPORT

**Ordinance:** Approval of Various Amendments to Tariff No. 2-A, Effective July 1, 2021, to (a) establish certain non-containerized cargo wharfage rates; (b) increase rates for Space Assignments; (c) increase rates for the Port-owned Truck Parking/Container Depot facilities; (d) increase rates for events at the Middle Harbor Shoreline Park and clarify certain conditions of use; (e) add/remove cranes scheduled to be placed into/removed from service, including rates for new cranes; and (f) make various other administrative updates (**Maritime**)

**MEETING DATE:** 5/13/2021

**AMOUNT:** Approx. \$1.9 million annually  
Revenue

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

**SUBMITTED BY:** Bryan Brandes, Director of Maritime

**APPROVED BY:** Danny Wan, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

Staff recommends various amendments to Tariff No. 2-A effective July 1, 2021 to (a) establish certain non-containerized cargo wharfage rates; (b) increase rates for Space Assignments; (c) increase rates for the Port-owned Truck Parking/Container Depot facilities; (d) increase rates for events at the Middle Harbor Shoreline Park and clarify certain conditions of use; (e) add/remove cranes scheduled to be placed/removed from service, including rates for new cranes; and (f) make various other administrative updates. Amendments related to (b) and (c) are anticipated to result in gross revenue of about \$1.9 million annually and net annual revenue of about \$1.5 million annually. The other amendments either do not affect Tariff rates or will generate revenue based on activity which cannot be estimated at this time.

### **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 2020, to clarify petroleum bunker wharfage rates; eliminate Monthly Dockage; establish new fees for registration in the Comprehensive Truck Management Program; increase Truck Parking/Container Depot monthly rates from a range of \$150 to \$330, to a range of \$200 to \$400; establish security guard fees; establish a utility connection fee; clarify the Maritime Director's discretion to approve applications for events; and make various other administrative updates.

Following Staff's informational report to the Board on April 22, 2021, this Agenda Report outlines changes Staff recommends for approval effective July 1, 2021. 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 prepared docket proposals for CAPA approval and will report on the status of such approval on May 13.

## **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, 2021.

### **Non-Containerized Cargo Wharfage (Section VII)**

Staff proposes to establish wharfage for liquified natural gas bunkering and passengers. Wharfage is a charge for the use of a port's wharf or dock to transfer cargo. Bunkering is the fueling of vessels at dock, typically from water (via barge) and less frequently from land (via truck). Bunkering activities are subject to wharfage per the rules of Tariff 2-A, even though cargo (in this case, fuel) may not pass over a wharf. Without rates in the Port's Tariff, it may be difficult or impossible for the Port to collect revenue for these types of wharfage. Refer to Exhibit A.

- Liquified natural gas (LNG) bunkering: Port staff has received inquiries for LNG bunkering rates at the Seaport, and has become aware that several ocean carriers have already committed to, or are investigating, the use of LNG as a means of complying with various air pollution-related environmental laws and regulations. As noted above, a wharfage rate for LNG would ensure the Port can collect revenue for this service, when the ocean carriers begin using LNG. The absence of a wharfage rate for LNG does not prevent an ocean carrier from bunkering with LNG – ocean carriers contract independently for fueling services of their choice, just as they do other services. Staff proposes to set rates for LNG bunkering, as new Items 07280 and 07282, in the amounts of 34 and 63 cents per unit of measure. Based on potential LNG bunkering operations, this could generate revenue of about \$1,100 per bunker event or about \$57,000 per year. Very few comparable rates are available at this time; as this market develops, Staff would track rates (if approved) to determine if future adjustments are necessary.

- Passengers. In 2020, the Port received an unanticipated cruise ship with passengers requiring disembarkation. Rates do not currently exist for passengers in the Tariff. While the Port does not expect to receive cruise vessels or passengers routinely, establishing a passenger wharfage rate would allow the Port to collect revenue for such 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, at the proposed rate, the 2020 passenger debarkation would have resulted in one-time revenue of about \$26,000.

**Space Assignments (Section X-B)**

Section 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. Rent adjustments of some longer-term leases are also tied to changes to these rates. Agreements governed by these rates represent about \$22.9 million of revenue annually.

The Port last increased Space Assignment rates by 3% on July 1, 2018, and 7% on July 1, 2019. Staff proposes a 5% increase to each rate effective July 1, 2021, with a few exceptions, all as shown in Table 1 below (also see Exhibit B). This proposed increase would result in about \$1.1 million of incremental revenue in FY 2021-22. Staff also proposes to increase the minimum Space Assignment charge to \$500 for agreements executed on or after July 1, 2021.

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 is a growing demand for industrial land in the Seaport.

Table 1. Proposed Space Assignment Rate Changes

<b>Space Assignment Type</b>	<b>Current</b>	<b>Proposed</b>
<b>Land</b>	<b>\$ per sq ft per mo</b>	<b>\$ per sq ft per mo</b>
Unpaved	\$0.144	\$0.151
Rocked no light/fence	\$0.179	\$0.184
Rocked light or fence	\$0.179	\$0.188
Rocked light and fence	\$0.201	\$0.211
Paved no light/fence	\$0.213	\$0.219
Paved light or fence	\$0.213	\$0.224
Paved light and fence	\$0.264	\$0.277
Submerged land	\$0.144	\$0.151

Buildings/Office	\$ per sq ft per mo	\$ per sq ft per mo
Warehouse	\$0.42	\$0.44
Warehouse in bond storage	\$0.45	\$0.47
Office space no air conditioning	\$1.40	\$1.47
Office space air conditioning	\$1.57	\$1.65
<b>Other</b>		
Mobile food vendor	\$171/mo	\$200/mo
Dredged Material Rehandling Tipping Fee	\$21/cy	\$22/cy
Dredged Material Rehandling Facility Rate	\$0.213/sf/mo	\$0.224/sf/mo

Sq ft = square foot; mo = month; cy = cubic yard

### Port-Owned Truck Parking/Container Depot Facilities (Section X-C)

As staff reported to the Board in 2020, facilities comparable to the Port's Truck Parking/Container Depot 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 staffed with security – all services Staff believes are appropriate and necessary in the Seaport. The Port pays to operate the Depot, with operating expenses of about 50% of gross revenues.

In 2020, the Tariff (Item 10185) was amended to raise the Depot rates, but the rates remain below market. Staff once again proposes to raise the rates 13% as shown in Table 2 (also see Exhibit C). Staff believes the increase is appropriate given the Depot's prime location in the heart of the Seaport. Given foreseeable Depot operations (e.g., size and location), the proposed rate increases are expected to result in additional revenue of approximately \$860,000 per year.

Table 2. Proposed Truck Parking/Container Depot Rate Changes

	Current	Proposed
<b>Monthly Rates</b>		
Tractor	\$200	\$225
Chassis / Container on Chassis	\$375	\$425
Other	\$400	\$450
<b>Daily Rates</b>		
Tractor / Chassis/ Container on Chassis	\$30	\$34
Reefer Stall	\$75	\$85
Other	\$40	\$45

### **Middle Harbor Shoreline Park (Section XI)**

In 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.

Staff proposes to increase the rates for “rental” of the MHSP as shown in Table 3 (also see Exhibit D). With the exception of the vendor permit, the proposed increase is approximately 8%, which includes a 3% increase already allowed by the Tariff (for FY 2019-20), as well as an additional 5%, which matches land rate increases (see above, Space Assignments).

Although there are few comparables for the MHSP, given its unique location, these increases are consistent with other parks in the region. Further, Staff proposes to clarify that the fees shall (not ‘may’) increase by 3% minimum annually; increase the security deposits for Special Events to three times their current amounts to be more protective of the Port given the nature of Special Events; and clarify the characteristics of special events used by the Port to determine applicable fees and conditions of use. These changes would affect Items 11215-11220.

Table 3. Proposed MHSP Fee Changes

<b>Use Category</b>	<b>Current</b>	<b>Proposed</b>
Event 55 people	\$150	\$160
Event 105 people	\$200	\$215
Event 215 people	\$500	\$540
Jumper	\$25	\$30
Film or Photography (per hour)	\$500	\$540
Special Event – Large (per day)	\$18,000	\$19,500
Special Event – Small (per day)	\$8,000	\$8,700
Special Event – Large; Security Deposit	\$8,000	\$24,000
Special Event – Small; Security Deposit	\$5,000	\$15,000
Port Park Mgr oversight (per hour, 4-hour min)	\$250	\$270
Vendor/concession permit	\$100	\$250

## Other Items

Staff proposes to make a variety of other less substantive updates:

- Various clarifications in Sections I (Definition) and II (General Rules and Regulations) – Exhibit E:
  - Cross-reference the terms “maritime” and “seaport,” and “Port Area” with references to piers, wharves, and other facilities in various sections but notably in Section I (Definition).
  - Clearly distinguishing between Toxic Materials (which are the subject of the Port’s Environmental Ordinance No. 4345) and Hazardous Cargo.
  - Update insurance requirements to match current practices.
  - Update ballast water management and reporting last adopted/updated in 2000, to refer to compliance with current regulations and requirements of federal and state regulatory agencies.
  - Clarify delinquency regarding monthly rent and recurring monthly charges.
- Various changes to Section IX (Container Crane Assignment and Rental Rates) – Exhibit F:
  - Add the new cranes that are anticipated to be placed into service at the OICT and Nutter Terminals, with rental rates 20% higher than the rates for the next-newest cranes on the terminals. Because these new cranes are tenant-owned, it is unlikely they would be rented under “secondary use;” however, in the event of an emergency or other unforeseen event it is important these cranes be in the Tariff.
  - Add a note regarding the cranes at the same terminals that will be demolished and taken out of service.
- Various changes in Sections X-A (Wharf Assignments) and X-B (Space Assignments) – Exhibit B:
  - Modify the Wharf Assignment and Space Assignment sections so that they are updated and consistent regarding maintenance requirements and responsibilities, prohibitions on subletting and transfers; and eliminate outdated references to an application form. In summary, these changes more clearly place all maintenance responsibility on tenants/users except for structural maintenance (unless due to damage by tenant); prohibit subletting and transfers; and require updated insurance coverage.
- Various miscellaneous updates:
  - Update staffing names and contacts and reflect current Board appointments.

- Correct various typographical errors, update the Table of Contents, update the Correction Number Sheet.

## **BUDGET & STAFFING**

Staff estimates the combined FY 2021-22 revenue impact of the proposed changes to Tariff No. 2-A for Space Assignments and the Depot at \$1.9 million (gross) and \$1.5 million (net). This revenue has been included in the FY 2021-22 maritime division revenue budget currently under development. Additional revenue from other proposed changes, such as LNG bunkering and the MHSP event fees, is uncertain and will depend on activity (timing, type, and quantity). 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.portoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

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

## **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 growth, 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 CEQA Guidelines Section 15378, amending Tariff 2-A would not qualify as a "Project" because it would not result in a physical change in the environment. Specifically, Section 15378(b)(4) states that the "creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project" are not considered a project. 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, 2021, the following changes to Tariff No. 2-A:

- Amend Tariff Section VII to establish wharfage for liquified natural gas bunkering in the amounts of 34 cents and 63 cents per applicable unit of measure (Items 07280 and 07282); and establishment of wharfage for passengers in the amount of \$11 per passenger (Item 07960);
- Amend Tariff Section X-B to increase rates for Space Assignments (Item 10160) by approximately 5%, with some exceptions as detailed in this Report; and establish a \$500 minimum, as detailed in this Report;

- Amend Tariff Section X-C to increase the rates for use of the Port's truck parking/container depot facilities by 13% (Items 10180 and 10185);
- Amend Tariff Section XI to increase the rates for use of the Middle Harbor Shoreline Park by approximately 8%, with some exceptions as detailed in this Report; increase security deposits for special events to three times the current amounts; set the annual fee increase at an automatic 3%; clarify the characteristics of special events used by the Port to determine applicable fees and conditions of use (Items 11215-11220);
- Amend Tariff Section IX to add the new cranes that are anticipated to be placed into service at the OICT and Nutter Terminals, with rental rates 20% higher than the rates for the next-newest cranes on the terminals; note that certain cranes at the same terminals that will be demolished and taken out of service; and make various editorial updates (Items 09150-09163);
- Amend Tariff Sections I and II to make various clarifications – various Tariff Items - regarding (a) the use of terms “maritime,” “seaport,” and “Port Area;” (b) the distinction between Toxic Materials and Hazardous Cargo; (c) update insurance requirements to match current practice; (d) update ballast water rules to defer to responsible federal and state agencies; (e) clarify delinquency regarding recurring monthly charges;
- Amend Tariff Sections X-A and X-B to update the Wharf Assignment (Items 10105-10130) and Space Assignment (Items 10135-10155) sections, respectively, so that they are consistent regarding maintenance requirements and responsibilities, prohibitions on subletting and transfers; and eliminate outdated references to an application form; and
- Make miscellaneous updates including Board appointments, staffing changes, typographical errors, etc.

[Exhibits A through F follow]