

## REPORT

**Report:** Proposed Revisions to Port of Oakland Environmental Ordinance No. 4345. **(Port Attorney)**

**MEETING DATE:** 9/30/2021

**SUBMITTED BY:** Michele Heffes, Port Attorney

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

### **SUMMARY**

The purpose of this Information Report is to describe proposed amendments to Port of Oakland ("Port") Environmental Ordinance No. 4345 (the "Environmental Ordinance" or "Ordinance") for consideration by the Board of Port Commissioners ("Board") before Port staff presents the proposed amendments to the Board for consideration and approval at a future Board meeting. This Information Report summarizes the proposed amendments and the rationale behind them.

### **BACKGROUND**

It has been more than six years since the Board adopted the Environmental Ordinance, which became effective on September 1, 2015. The Environmental Ordinance applies to all parties who access Port property whether or not the party has entered into an agreement with the Port ("Accessing Parties").

As stated in the Environmental Ordinance, the purpose of the Ordinance is to: i) promote the health, safety, and general welfare of citizens; ii) protect and enhance the environmental quality of Port property and the San Francisco Bay; and iii) support implementation and administration of the Port's environmental programs.

The Port Attorney's Office and the Environmental Programs and Planning Division collaborated on proposed revisions to the Environmental Ordinance to further clarify and streamline the Environmental Ordinance and to address best practices and lessons learned from more than six years of implementation of the Ordinance.

The Environmental Ordinance is particularly important to the effective management of Port property that has historically been used for heavy industrial and commercial purposes, with much of the land subject to legacy contamination. As a public agency and tidelands trustee, the Port has certain responsibilities to address public and worker health and safety, as well as to protect the public's resources and assets through clean up, prevention of further contamination, and regulatory compliance.

Many of the activities conducted by Accessing Parties are subject to federal, state, and local environmental laws, regulations, and other requirements (including Port-specific requirements) and some of those activities have a potential impact on the environment and the Port's liabilities. The Environmental Ordinance outlines a set of rules applicable to Accessing Parties. In addition to complying with the Environmental Ordinance (and other Port ordinances such as the Port's Storm Water Ordinance and the Port's Private Sewer Lateral Ordinance), all Port tenants must comply with the Environmental Exhibits or environmental provisions that are incorporated into their tenancy agreements which may contain additional and more tailored environmental requirements specific to the tenancy agreement and operation.

The comprehensive review by the Port Attorney's Office and the Environmental Programs and Planning Division confirmed that the Board's adoption of the Environmental Ordinance in 2015 helped streamline negotiations with Port tenants regarding their environmental obligations. Since the adoption of the Environmental Ordinance, federal, state, and local environmental liability laws and toxic clean-up standards have continued to evolve, including the inevitable adoption of new laws and regulations that are accounted for in the proposed amendment to the Environmental Ordinance. The Board has also adopted new or updated policies with respect to other environmental matters and these too are accounted for in the proposed revisions to the Environmental Ordinance.

As part of the Port Attorney's Office and Environmental Programs and Planning Division's review, a broad spectrum of other Port staff was consulted to determine specific areas to target for potential revisions and sections of the Environmental Ordinance that may benefit from updates, refinement, clarification, as well as incorporation of provisions previously included in the Environmental Exhibits in an effort to further streamline negotiations with Port tenants. The resulting proposed revisions are outlined below for the Board's consideration; capitalized terms in the chart below are defined in the Environmental Ordinance. In addition, attached to this Information Report is a redlined version of the existing Environmental Ordinance showing the proposed revisions.

## **PROPOSED REVISIONS**

<b>SECTION</b>	<b>PROPOSED REVISIONS</b>
<b>1. Purpose, Intent and Applicability</b>	<ul style="list-style-type: none"> <li>• Clarify applicability to Port Property</li> <li>• Clarify applicability to Port environmental policies</li> </ul>
<b>2. Definitions</b>	Updates and revisions to existing terms and the addition of new terms in accordance with other edits to the Ordinance
<b>3. General Prohibitions</b>	<ul style="list-style-type: none"> <li>• Clarify releases are prohibited on Port Property</li> <li>• Require written notice of the commencement of a Response Action in the event of an emergency</li> </ul>
<b>4. Compliance with Environmental Laws</b>	Clarify Accessing Parties' responsibility for all costs associated with compliance
<b>5. Third Party Enforcement</b>	Refine existing language

<b>6. Entry, Inspection and Oversight</b>	<ul style="list-style-type: none"> <li>• Define Governmental Authorities access rights to premises</li> <li>• Refinements to purpose and authority for environmental audits</li> </ul>
<b>7. Limitation of Liability and Indemnity; Release</b>	<ul style="list-style-type: none"> <li>• General language cleanup and clarifications to liability and indemnity language</li> <li>• Addition of new subsection incorporating release language for Accessing Parties previously contained only in the Environmental Exhibit</li> </ul>
<b>8. Responsibility for Toxic Materials</b>	<ul style="list-style-type: none"> <li>• Further specify responsibility for Toxic Materials, including releases thereof</li> <li>• Clarify obligations relating to generation, importation, and excavation of materials</li> </ul>
<b>9. Environmental Documentation</b>	<ul style="list-style-type: none"> <li>• Require documentation to be submitted to Governmental Authorities by the Accessing Party to be provided to the Port for review and comment prior to submittal</li> <li>• Incorporate non-substantive edits to existing language</li> </ul>
<b>10. Closure Activities at Expiration or Termination of Any Agreement</b>	<ul style="list-style-type: none"> <li>• Further prescribe timeline for submittal of plans for Closure Activities and obligations relating to other Governmental Authority requirements for Closure Activities</li> <li>• Non-substantive edits to existing language</li> </ul>
<b>11. Asbestos and Lead-Based Paint</b>	Add provisions pertaining to lead-based paint
<b>12. Approvals, Permits, California Environmental Quality Act (“CEQA”), and National Environmental Policy Act (“NEPA”)</b>	<ul style="list-style-type: none"> <li>• Non-substantive edits to existing language</li> <li>• Add provisions that the Port shall select, retain, and manage environmental consultants and legal counsel relating to the preparation and review of Projects under CEQA and NEPA, with all Costs reimbursed by the Accessing Party</li> </ul>
<b>13. Air Quality</b>	<p>Add a new section requiring compliance by Accessing Parties with Port’s various air quality provisions previously contained in the Environmental Exhibit including provisions requiring compliance with, or relating to, the following:</p> <ul style="list-style-type: none"> <li>• The Port’s Maritime Air Quality Improvement Plan (“MAQIP”);</li> <li>• The Port’s Seaport Air Quality 2020 and Beyond Plan;</li> <li>• Air emissions monitoring and facilities;</li> <li>• Annual equipment inventories, use, and meeting requirements;</li> <li>• Best efforts to utilize least polluting emissions sources;</li> </ul>

	<ul style="list-style-type: none"> <li>• Participation in air quality related pilot projects;</li> <li>• For Accessing Parties that operate Cargo Handling Equipment, requirement to provide the Port with a written Implementation Plan for the conversion of all Cargo Handling Equipment to zero emissions or near zero emissions: (A) by December 31, 2023, for tenancy agreements that are in effect prior to the effective date of the Ordinance or future tenancy agreements that become effective on or prior to December 31, 2023; or (B) concurrent with tenancy agreements that become effective on or after January 1, 2024. Accessing Parties are then required to implement the Implementation Plan consistent with the feasibility criteria in the Seaport Airport Quality 2020 and Beyond Plan.</li> </ul>
<b>14. Sustainability</b>	Add a new section requiring Accessing Party compliance with the Port's Sustainability Policy previously contained only in the Environmental Exhibit to tenancy agreements
<b>15. Violations</b>	No change other than section numbering based on addition of new provisions
<b>16. Enforcement Actions</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Minor clarifying edits including deemed receipt of notice provision</li> </ul>
<b>17. Penalties</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Minor non-substantive clarifying edits</li> </ul>
<b>18. Protests</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Minor non-substantive clarifying edits</li> </ul>
<b>19. Remedies</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Define applicability of remedies outlined in prior sections</li> </ul>
<b>20. Conflicting Agreement Provisions</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Delineate relationship between the Ordinance and prior non-tenancy or future agreements with conflicting provisions</li> </ul>
<b>21. Miscellaneous Provisions</b>	<ul style="list-style-type: none"> <li>• New section number based on addition of new provisions</li> <li>• Addition of applicability provision</li> <li>• Addition of provision clarifying relationship to the Port's Private Sewer Lateral Ordinance</li> <li>• Addition of provision clarifying Port's discretion</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Other minor non-substantive edits</li></ul> |
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### **NEXT STEPS**

Staff plans to incorporate any comments the Board may have on this Information Report into the final proposed amendments to the Environmental Ordinance. Then, Staff will prepare an Agenda Report recommending that the Board adopt an ordinance amending the Environmental Ordinance.