

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

1/26/2023
MCR/PCM



**RESOLUTION DETERMINING THAT CONDUCTING IN-
PERSON MEETINGS OF THE BOARD OF PORT
COMMISSIONERS WOULD PRESENT IMMINENT RISKS TO
ATTENDEES' HEALTH AND SAFETY AND ELECTING TO
CONTINUE CONDUCTING MEETINGS USING
TELECONFERENCING IN ACCORDANCE WITH
CALIFORNIA GOVERNMENT CODE SECTION 54953(e).**

WHEREAS, the Board of Port Commissioners ("Board") of the City of Oakland ("City") has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, the ongoing spread of SARS-CoV-2 and the resulting Coronavirus Disease ("COVID-19") is a pandemic posing an imminent and serious threat to health and safety of the public, the Port and its employees, customers, tenants, contractors, and other stakeholders; and

WHEREAS, on January 30, 2020, the World Health Organization declared the COVID-19 outbreak a Public Health Emergency of International Concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States; and

WHEREAS, on March 4, 2020, the Governor of the State of California ("Governor") proclaimed a State of Emergency in response to the threat posed by COVID-19 and issued various Executive Orders in response to such threat, and such declaration has not been lifted or rescinded; and

WHEREAS, on March 9, 2020, the City Administrator in his capacity as the Director of the Emergency Operations Center ("EOC"), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, on March 12, 2020, the Governor issued Executive Order N-25-20, which waived certain requirements that public meetings occur in-person and allowed public meetings to proceed through teleconference; and

WHEREAS, on March 23, 2020, the Executive Director declared an emergency determining that the COVID-19 pandemic posed a threat to the health and safety of Port employees and the safe efficient operation of critical Port operations ("Executive Director's Declaration of Emergency"); and

WHEREAS, on March 26, 2020, the Board ratified the Executive Director's Declaration of Emergency and found that the COVID-19 pandemic constituted a condition of "extreme emergency" or "emergency" for the purposes of all Board-approved policies that affect Port operations, including, without limitation, the By-Laws, the Purchasing Ordinance, the Personnel Rules and Procedures of the Port of Oakland, the Employer-Employee Relations Ordinance, and the Rules and Regulations for Oakland International Airport ("Airport Rules and Regulations"), the Meyers-Milias-Brown Act ("MMBA"), and the Charter; and

WHEREAS, on September 16, 2021, the Governor signed into law Assembly Bill 361 ("AB 361") through Executive Order N-1-22, which amended the Government Code and Education Code to provide flexibility for public agencies to conduct public meetings; and

WHEREAS, Executive Order N-1-22 made specific findings that the Omicron variant is more transmissible than prior COVID-19 variants and that requiring large numbers of individuals to travel and gather for in-person public meetings could potentially expose individuals to COVID-19, including the Omicron variant; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing difficult; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home; and

WHEREAS, at its regular meeting on September 28, 2021, the Alameda County Board of Supervisors adopted the recommendation of the Alameda County Health Care Services Agency Director for continued social distancing at all meetings of the full Board of Supervisors and at all committee meetings, with said recommendation based on the continued threat of COVID-19 to the community, the unique characteristics of public government meetings, and the continued increased safety protection provided through social distancing as one method to reduce the risk of COVID-19 transmission; and

WHEREAS, Article 7 of the Charter of the City of Oakland ("Charter") vests in the Board the exclusive control and management of the Port Department including, among other things, the complete and exclusive power to: "sue and defend in the name of the City in all actions and proceedings wherein there is involved any matters within the jurisdiction of the Board" (706(1)), "have control and jurisdiction of...the 'Port Area'" (706(4)), "expend all funds necessary to the carrying out of the powers and duties [expressed in Article 7 of the Charter]" (706(26)), and "do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any provisions of [Article 7 of the Charter]" (706(30)); and

WHEREAS, holding in-person meetings may encourage community members to come to Port facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, on September 30, 2021, October 28, 2021, January 27, 2022, February 24, 2022, March 24, 2022, April 28, 2022, May 26, 2022, June 23, 2022, July 21, 2022, September 15, 2022, October 13, 2022, November 10, 2022, December 1, 2022, and December 15, 2022 the Board passed resolutions, which contain many of the same provisions as contained herein; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained herein and in testimony received, the Board finds and determines that:

- A. The requested action is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the proposed actions will not have a significant effect on the environment and therefore is not a "project" under CEQA.
- B. Based on the findings above and consistent with federal, state, and local health guidance, it has been determined that, at this time in light of the continued threat of COVID-19 to the community and to protect health and safety, conducting in-person meetings for all participants would pose imminent risks to the health and safety of attendees.
- C. The community's health and safety risks and the community's right to participate in local government are both critically important and the Port will balance these interests by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e).

Section 2. This resolution is not evidence of and does not create or constitute: (a) a contract, or the grant of any right, entitlement, or property interest; or (b) any obligation or liability on the part of the Board or any officer or employee of the Port.

Section 3. This resolution shall be effective immediately upon adoption by the Board.