

AGENDA REPORT

Resolution: Adoption of a Resolution Necessary to Appoint Michele Heffes as the Acting Port Attorney Effective October 19, 2018 through December 3, 2018, or Upon Return of the Port Attorney, whichever is Earlier, and to Provide Temporary Supplemental Compensation of Six Percent for the Duration of the Temporary Appointment. **(Finance & Admin.)**

MEETING DATE: 10/11/18

AMOUNT: \$2,200 (Six Weeks)
Operating Expense

PARTIES INVOLVED: Port Attorney, Assistant Port Attorney

SUBMITTED BY: Danny Wan, Port Attorney

APPROVED BY: Danny Wan, Port Attorney

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port staff requests that the Board of Port Commissioners ("Board") adopt the resolution necessary to appoint Michele Heffes as the Acting Port Attorney effective October 19, 2018 through December 3, 2018, or upon return of the Port Attorney, whichever is earlier, and to approve temporary supplemental compensation of six percent (6%) for Ms. Heffes for serving as the Acting Port Attorney.

BACKGROUND

Article X, Section 1 of the By-Laws of the Board of Port Commissioners provides that the Board of Port Commissioners is vested with the authority to "appoint the Port Attorney by resolution." The Port Attorney is the attorney of the Board and is charged with providing legal counsel to the Board as well as internal staff on a broad range of complex business, financial, governance and other legal matters. Article X, Section 13 of the Bylaws provides in pertinent part that "subject to Article XII of these By-Laws, the Port Attorney shall have the authority to...designate and instruct any such assistant or deputy attorneys to act or perform the duties of the Port Attorney in case of the Port Attorney's absence or disability." Article XII, Section 2 provides in pertinent part that the Board "reserves to itself the power and duty to appoint and hire the "Direct-Reporting Officers," which shall include...the Port Attorney...and to prescribe and fix their duties, authority, and compensation...."

The Executive Director, J. Christopher Lytle will be on approved leave for six (6) weeks effective October 19, 2018 through December 3, 2018. Given Mr. Lytle's absence, the Board will appoint Port Attorney Danny Wan as the Acting Executive Director effective October 19, 2018 through December 3, 2018, or upon the return of Mr. Lytle to his position as Executive Director, whichever is earlier. During the time Mr. Wan acts as the Executive Director, it is necessary for the Port to appoint an acting Port Attorney to ensure the continuity of the Port Attorney's Office and in particular the performance of the Port Attorney's duties and responsibilities as described in Article X of the Bylaws. Staff recommends that the Board approve the temporary appointment of Ms. Michele Heffes as the Acting Port Attorney given Mr. Wan's appointment as the acting Executive Director.

ANALYSIS

Currently, Ms. Michele Heffes serves as the Assistant Port Attorney and has served in this position since April 2015. In her role as Assistant Port Attorney, Ms. Heffes functions as the principal assistant to the Port Attorney providing legal advice and assistance, as well as daily oversight of the Deputy Port Attorneys within the Office of the Port Attorney. Prior to being appointed as Assistant Port Attorney, Ms. Heffes also served as a Deputy Port Attorney V. Ms. Heffes is an experienced attorney and has served the Port in several Deputy Port Attorney roles since joining the Port Attorney's Office in 1992. Ms. Heffes provides expert legal advice in several practice areas; during her tenure with the Port Attorney's Office, she has played an integral role in cost recovery efforts and environmental compliance legal matters. Ms. Heffes has provided counsel to the Board and Port staff on various complex real estate matters at the airport and seaport. Ms. Heffes previously acted as Port Attorney from May 2012 through December 2012; through her employment at the Port, Ms. Heffes has attained a substantial amount of institutional knowledge that has proved helpful for the Port Attorney's Office as well as other Port departments. Ms. Heffes possesses a Bachelor of Science degree in Nuclear Engineering from the University of California at Berkeley, and received her law degree from the University of San Francisco. Based on the above, Ms. Heffes is qualified to serve as the Acting Port Attorney.

As the Acting Port Attorney, Ms. Heffes will be tasked with performing all of the functions and duties of the Port Attorney as described in Article X of the By-Laws. With this appointment, Ms. Heffes will be required to work in an upgraded position of limited duration. In recognition of Ms. Heffes' appointment as the Acting Port Attorney, a temporary supplemental compensation of six percent (6%) is recommended for the period from October 19, 2018 through December 3, 2018, or upon the return of Danny Wan to his position as Port Attorney, whichever is earlier.

BUDGET & STAFFING

The cost to the Port for six weeks, including benefits is approximately \$2,300.

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

Goal: Pursue Employee Excellence

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

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities.

ENVIRONMENTAL

The matters contained in this Agenda Report were reviewed in conjunction with the requirements of the California Environmental Quality Act (CEQA) and the Port's CEQA Guidelines. The requested Board actions are not projects pursuant to CEQA Guidelines, Sections 15060(c)(3) and 15378(b)(2), and no environmental review is required.

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)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

The Owner Controlled Insurance Program (OCIP) and Professional Liability Insurance Program (PLIP) do not apply to the matters addressed by this Agenda Report as they are not capital improvement construction or design projects.

OPTIONS

1. The Board adopt the Resolution necessary to appoint Michele Heffes as the Acting Port Attorney effective October 19, 2018 through December 3, 2018, or upon the return of Danny Wan to his position as Port Attorney, whichever is earlier, and to provide temporary supplemental compensation of six percent (6%) for the duration of the temporary appointment.
2. The Board not adopt the Resolution necessary to appoint Michele Heffes as the Acting Port Attorney effective October 19, 2018 through December 3, 2018, or upon the return of Danny Wan to his position as Port Attorney, whichever is earlier, and to provide temporary supplemental compensation of six percent (6%) for the duration of the temporary appointment.

RECOMMENDATION

Port staff recommends that the Board adopt the Resolution necessary to appoint Michele Heffes as the Acting Port Attorney effective October 19, 2018 through December 3, 2018, or upon the return of Danny Wan to his position as Port Attorney, whichever is earlier, and to provide temporary supplemental compensation of six percent (6%) for the duration of the temporary appointment.