

SUPPLEMENTAL AGENDA REPORT

Resolution: Adoption of a Resolution Necessary to Extend the Appointment of Danny Wan as the Acting Executive Director Through February 28, 2019, or Upon Return of the Executive Director, whichever is Earlier, and to Provide Temporary Supplemental Compensation of Six Percent for the Duration of the Temporary Appointment. **(Finance & Admin.)**

MEETING DATE: 12/13/18

AMOUNT: \$3,800 (for two months)
Operating Expense

PARTIES INVOLVED: Port Attorney

SUBMITTED BY: Danny Wan, Executive Director (Acting)

APPROVED BY: Danny Wan, Executive Director (Acting)

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port staff requests that the Board of Port Commissioners ("Board") adopt the resolution necessary to extend the appointment of Danny Wan as the Acting Executive Director through February 28, 2019, or upon return of the Executive Director, whichever is earlier, and to approve temporary supplemental compensation of six percent (6%) for Mr. Wan for serving as the Acting Executive Director.

PRELIMINARY PROCEDURAL MATTER

This item was placed on the Board's December 13, 2018 Meeting Agenda ("Agenda") as an urgency item, and before the Board can take action on it, the minimum notice requirements of the Brown Act (Open Meeting law) must have been met, and the Board, by a two-thirds vote of those present, must adopt a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements of its Sunshine Ordinance and that it is necessary to take immediate action on this item during the Board's December 13 meeting. (Port Ordinance No. 4265; Section VII(A))

By supplementing the Agenda with this item effective December 7, 2018, the Brown Act's 72 hour minimum notice requirement has been met. (Govt. Code Section 54954.2(a))

Port staff learned on or about December 4, 2018 that Mr. Lytle would not return to his position as Executive Director effective January 1, 2019 and that it was thus necessary to extend Mr. Wan's Acting Executive Director Appointment.

There is need for the Board to take action on this item during its December 13, 2018 Board meeting because the Acting Executive Director Appointment expires January 1, 2019, and there are no additional meetings in December for the Board to take action to extend the acting appointment. If the Acting Executive Director Appointment is to be extended, it must be done by the Board at its December 13 meeting.

BACKGROUND

Article IX, Section 1 of the By-Laws of the Board of Port Commissioners ("Bylaws") provides that the Board is vested with the authority to "appoint the Executive Director by resolution." The Executive Director is the chief executive charged with achieving the strategic goals and objectives established by the Board, including insuring sound financial stability, economic development, transparency and legal compliance as a steward of the Port. Article IX, Section 17 of the Bylaws provides that "in case of the absence or disability of the Executive Director or to the extent directed to do so by the Executive Director, the acting, assistant or deputy Executive Director shall perform the necessary duties of the Executive Director." Further, 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 Executive Director...and to prescribe and fix their duties, authority, and compensation...."

By Resolution adopted at its October 11, 2018 meeting, the Board appointed Danny Wan as Acting Executive Director for the period October 19, 2018 through December 31, 2018, or upon return of the Executive Director, whichever is earlier, due to the approved leave of the Port's Executive Director. Mr. Wan began his appointment as Acting Executive Director on October 25, 2018. Mr. Lytle will not return as Executive Director effective January 1, 2019, and given Mr. Lytle's anticipated absence, it is imperative for the Port to extend Mr. Wan's appointment as acting Executive Director by one month to ensure the continuity of the Port's commercial and organizational operations. Accordingly, Staff recommends that the Board extend the appointment of Mr. Danny Wan as the Acting Executive Director through February 28, 2019, or upon the return of J. Christopher Lytle to his position as Executive Director, whichever is earlier.

ANALYSIS

Currently, Mr. Danny Wan serves as the Port Attorney and has served in the position since December 17, 2012. In his role as Port Attorney, Mr. Wan reports to the Board of Port Commissioners and provides legal advice to the Board as well as to Port staff on a broad range of complex business, financial, governance, aviation, maritime and other related matters. Prior to being appointed as Port Attorney, Mr. Wan served as the City Attorney for the City of Morgan Hill and in that capacity acted as the chief legal advisor to the City Council for Morgan Hill. Mr. Wan's prior experience also includes service with the Port of Oakland as

a Deputy Port Attorney from 2004 to 2008. Mr. Wan's prior responsibilities with the Port were primarily in land use, property management, CEQA, environmental regulatory compliance and inter-agency relations. He also advised the Board on the Brown and Public Records Act, ethics, meeting procedures and Charter requirements. Mr. Wan's experience spans across the public and private sector and his background includes an extensive list of public and community service activities. Mr. Wan is a former Oakland City Council member and has served on a number of boards including the Oakland/Alameda Joint Powers Coliseum Authority and East Bay Municipal Utility District. Mr. Wan holds a Bachelor of Arts degree from University of California at Berkeley and a law degree from University of California at Los Angeles.

As the Acting Executive Director, Mr. Wan will continue to be tasked with performing all of the functions and duties of the Executive Director as described in Article IX of the By-Laws. With the extension of his acting appointment, Mr. Wan will be required to work in an upgraded position of limited duration. In recognition of Mr. Wan's appointment as the Acting Executive Director, a temporary supplemental compensation of six percent (6%) is recommended through February 28, 2019, or upon the return of J. Christopher Lytle to his position as Executive Director, whichever is earlier.

BUDGET & STAFFING

The cost to the Port for two months, including benefits, is approximately \$3,800.

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 extend the appointment of Danny Wan as the Acting Executive Director through February 28, 2019, or upon return of J. Christopher Lytle to his position as Executive Director, 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 extend the appointment of Danny Wan as the Acting Executive Director through February 28, 2019, or upon return of J. Christopher Lytle to his position as Executive Director, 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 extend the appointment of Danny Wan as the Acting Executive Director through February 28, 2019, or upon return of J. Christopher Lytle to his position as Executive Director, whichever is earlier, and to provide temporary supplemental compensation of six percent (6%) for the duration of the temporary appointment.