

SUPPLEMENTAL AGENDA REPORT

Resolution: Adoption of a Resolution Necessary to Extend the Appointment of Michele Heffes as the Acting Port Attorney through February 28, 2019, 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: 12/13/18

AMOUNT: \$3,700 (for two months)
Operating Expense

PARTIES INVOLVED: Port Attorney, Assistant 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 Michele Heffes as the Acting Port Attorney through February 28, 2019, 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.

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. Such extension also necessitates the extension of Ms. Heffes' Acting Port Attorney Appointment.

There is need for the Board to take action on this item during its December 13, 2018 Board meeting because the Acting Port Attorney 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 Port Attorney Appointment is to be extended, it must be done by the Board at its December 13 meeting.

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...."

By Resolution adopted at its October 11, 2018 meeting, the Board appointed Assistant Port Attorney Michele Heffes as Acting Port Attorney for the period October 19, 2018 through December 31, 2018, or upon return of the Port Attorney, whichever is earlier, due to the absence of the Port Attorney who had been appointed Acting Executive Director given the Executive Director's approved absence. Ms. Heffes began her appointment as Acting Port Attorney on October 25, 2018. In light of the anticipated extension of Mr. Wan's appointment as Acting Executive Director, it is imperative that the Board extend the appointment of Ms. Heffes as the 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 extend the appointment of Ms. Heffes as the Acting Port Attorney through February 28, 2019, or upon return of the Port Attorney, whichever is earlier.

ANALYSIS

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. Ms. Heffes began her employment with the Port in 1988 in the Environmental Department, and she moved to the Port Attorney's Office in 1990 and served in multiple Deputy Port Attorney roles before

becoming as Assistant Port Attorney. Prior to being appointed as Assistant Port Attorney, Ms. Heffes also served as a Deputy Port Attorney V. 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 served as acting Port Attorney from May 2012 through December 2012; through her employment at the Port, Ms. Heffes has obtained 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 has demonstrated that she is qualified to serve as the Acting Port Attorney.

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

BUDGET & STAFFING

The cost to the Port for two months, including benefits, is approximately \$3,700.

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 Michele Heffes as the Acting Port Attorney through February 28, 2019, 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 extend the appointment of Michele Heffes as the Acting Port Attorney through February 28, 2019, 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 extend the appointment of Michele Heffes as the Acting Port Attorney through February 28, 2019, 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.