

## AGENDA REPORT

**Resolution:** Adoption of a Resolution Necessary to Appoint Michele Heffes as the Interim Port Attorney Effective October 1, 2019 at an Annual Salary of \$323,655 Plus Benefits. **(Finance & Admin.)**

**MEETING DATE:** 9/26/19

**AMOUNT:** \$495,000 (estimated annual cost including benefits)  
Operating Expense

**PARTIES INVOLVED:** Michele Heffes

**SUBMITTED BY:** Sara Lee, Chief Financial Officer

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

**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 Interim Port Attorney effective October 1, 2019 at an annual salary of \$323,655 plus benefits until the permanent appointment of a Port Attorney.

### **BACKGROUND**

Article VII, Section 706(20) of the Oakland City Charter provides that the Board of Port Commissioners ("Board") shall have the complete and exclusive power to appoint a Port Attorney. Similarly, Article X, Section 1 of the Board's "By-Laws and Administrative Rules, Board of Port Commissioners" ("By-Laws") provides that the Board is vested with the authority to "appoint the Port Attorney by resolution." The Port Attorney is the attorney for 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 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...."

On July 22, 2019, the Board appointed Port Attorney Danny Wan as Acting Executive Director due to the retirement of former Executive Director Chris Lytle. Upon Mr. Wan's appointment as Acting Executive Director, the Board immediately appointed Michele Heffes as Acting Port Attorney and provided her temporary supplemental compensation of

six (6%) percent for the duration of the acting appointment. The appointment of Ms. Heffes to Acting Port Attorney was necessary to temporarily fill the vacancy resulting from Mr. Wan's appointment as Acting Executive Director.

The Board has determined that an Interim Port Attorney is critical for the operations of the Port Attorney's Office to enable it to continue maintaining a high level of performance as it provides legal counsel and advice to the organization during this transitional period. Therefore, is it necessary to appoint Michele Heffes as Interim Port Attorney to provide the requisite leadership and fulfill the Port Attorney's responsibilities as described in Article X of the Bylaws. The appointment of Ms. Heffes as Interim Port Attorney will provide Ms. Heffes with compensation commensurate with the scope and duties of the Port Attorney position. It is recommended the Board approve the appointment of Ms. Michele Heffes as the Interim Port Attorney.

## **ANALYSIS**

Prior to her appointment as Acting Port Attorney, Ms. Heffes served as the Assistant Port Attorney since April 2015. In her role as Assistant Port Attorney, Ms. Heffes functioned 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 has provided 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. 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. Since her tenure began in 1992, 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 she received her law degree from the University of San Francisco. As the Interim 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. In recognition of Ms. Heffes' appointment as the Interim Port Attorney, Ms. Heffes will be compensated at an annual salary of \$323,655 plus benefits. Ms. Heffes' appointment will be effective October 1, 2019.

## **BUDGET & STAFFING**

The annual cost to the Port including benefits, is approximately \$495,000.

## **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 Interim Port Attorney Effective October 1, 2019 at an Annual Salary of \$323,655 plus benefits.
2. The Board not adopt the Resolution Necessary to Appoint Michele Heffes as the Interim Port Attorney Effective October 1, 2019 at an Annual Salary of \$323,655 plus benefits.

## **RECOMMENDATION**

Port staff recommends that the Board adopt the Resolution Necessary to Appoint Michele Heffes as the Interim Port Attorney Effective October 1, 2019 at an Annual Salary of \$323,655 plus benefits.