

## AGENDA REPORT

**Ordinance:** Adopt Amendments to the By-Laws and Administrative Rules of the Board of Port Commissioners. **(Port Attorney)**

**MEETING DATE:** 11/21/2019

**AMOUNT:** \$0Choose an item.

**PARTIES INVOLVED:** N/A

**SUBMITTED BY:** Michele Heffes, Interim Port Attorney

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

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

This Agenda Report describes proposed amendments to the By-Laws and Administrative Rules of the Board of Port Commissioners ("By-Laws") for Board consideration and adoption by ordinance. Staff has prepared a proposed ordinance. Proposed changes are redlined against the current By-Laws and are attached to this Agenda Report.

### **BACKGROUND**

Under the Charter of the City of Oakland ("Charter"), the Board of Port Commissioners ("Board") has exclusive control and management of the Port Department (Charter Section 701). To this end, the Board has the power "[t]o adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and power, or for the management and government of the port, and its facilities." (Charter Section 706 (27).)

The By-Laws and Administrative Rules of the Board of Port Commissioners ("By-Laws") have historically been the document by which the Board has codified rules governing its own proceedings, conduct of meetings, election of officers, Port organization, assignment of its duties, and delegation of its powers. The Board has also adopted certain other ordinances or resolutions that govern the delegation and exercise of certain broad categories of the Board's powers, such as classifications and salaries, purchasing, and performance evaluations, and compensation of executive management staff.

Since policy and administrative and operational needs change, it is best practice to periodically update the By-Laws to reflect current policy and needs. The last amendment to the By-Laws was enacted by Ordinance No. 4399 on December 1, 2016.

Over the last several months, the Port Attorney's Office ("Office") has spearheaded the effort to review and make proposed revisions to the By-Laws. As part of this effort, the Office sought and obtained input from a broad range of Port staff, including the Interim Executive Director. The Office synthesized all of the proposed changes and has prepared the proposed revised By-Laws for consideration and eventual adoption by the Board.

The proposed amendments are described in detail below and generally fall into one of the following three categories: i) clarifications/confirming interpretation of existing By-Laws; ii) general "clean up"/tightening of language; and iii) more substantive proposed revisions. Some of the key substantive proposed revisions include the following:

- 1) Designating the Board Secretary as the primary officer to receive claims and accept services of process (this is the current practice);
- 2) Substantially streamlining the Executive Director's authority to enter into Short-Term Rental Agreements lasting no more than one (1) year;
- 3) Delegating to the Executive Director the authority to approve assignment or transfer of Leases under certain circumstances;
- 4) Delegating to the Executive Director the authority to enter into various types of agreements (e.g., Letters of Understanding with employee unions, agreements with public agencies, etc.) which confirms the Port's interpretation of the existing By-Laws; and
- 5) Delegating to the Port Attorney the authority to file actions where the principal amount in dispute is \$100,000 or less and to settle claims where the amount paid is \$100,000 or less; the existing By-Laws set the threshold amount at \$50,000 in each instance.

## **ANALYSIS**

The below table describes in more detail the proposed substantive amendments to the By-Laws, by Article and Section Number:

<b><u>ARTICLE/SECTION(S)</u></b>	<b><u>PROPOSED AMENDMENT</u></b>
I. General Provision.	The proposed amendment aligns this general introductory language with the Charter and also identifies the Port Department's proper name.
II. Members and Officers – Elections; Section 1.	This Article pertains to Board members and officer elections. The proposed amendment deletes superfluous language identifying the Board's "Direct Reporting Officers," as the identification of these Officers, and the Board's ability to appoint and hire them, is already and more appropriately addressed in Section 2 of Article XII., Authorities and Organization.
III. Meetings; Sections 1 & 4.	This Article pertains to meetings of the Board.  The proposed amendment to <b>Section 1</b> adds specificity to the location the Board's formal regular meetings, including the closed session portion of those meetings.

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	<p>The proposed amendment to <b>Section 4</b> adds language to clarify that meetings of the Board shall be conducted pursuant to the Port's <i>Sunshine Ordinance</i> and the <i>Rules for Public Participation at Meetings of the Board of Port Commissioners and Standing Committees</i> ("Rules for Participation") currently in effect, and as they may be amended or superseded. The proposed amendments indicate that in the event of a conflict between the By-Laws and the Sunshine Ordinance the former shall control and in the event of a conflict between the By-Laws and the Rules for Public Participation, the former shall control.</p>
<p>IV. Proceedings of the Board; Sections 4 &amp; 5.</p>	<p>The proposed amendment to <b>Section 4</b> makes clear that parliamentary procedures of the Board shall, to the extent practicable, be governed by the current version of <i>American Institute of Parliamentarians Standard Code of Parliamentary Procedure</i>.</p> <p>With certain enumerated exceptions and under certain parameters, <b>Section 5</b> of the current By-Laws generally delegates to the Executive Director the Board's authority to execute any "contract, agreement, or lease" on its behalf. The proposed amendment to <b>Section 5</b> deletes reference to the latter two specific categories of documents, i.e., agreements and leases, since these technically already fall under the more general category of contracts.</p>
<p>V. Committees; Section 1.</p>	<p>This Article generally pertains to standing and ad hoc committees of the Board.</p> <p>The proposed amendment to <b>Section 1</b> seeks to align the By-Laws with Board practice, which has been to delegate to the Board President the authority to designate members and chairs of any standing committees. (The current By-Laws provide that the President shall nominate and the Board shall appoint by resolution such members and chairs.) The proposed amendment to <b>Section 1</b> also clarifies that there shall be no more than three members, including the chair, on a standing committee.</p>
<p>VIII. Secretary; Sections 1, 5, 7, &amp; 10.</p>	<p><b>Section 1</b> of the current By-Laws requires, among other things, that the Secretary of the Board sign original copies of all minutes of all Board meetings. The proposed amendment to <b>Section 1</b> provides that the Secretary's signature may be in electronic form authorized by the Port Attorney.</p>

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	<p>The proposed amendment to <b>Section 5</b> deletes the footnote thereto, which explains that immediately prior to the 2016 By-Law revisions the Secretary was the custodian of more than the official seal of the Port and all minutes, resolutions, and ordinances of the Board.</p> <p><b>Section 7</b>, as proposed, is an entirely new provision. It seeks to codify current Port administrative policy and procedure regarding receipt of claims and services of legal process. The proposed amendment designates the Board Secretary as the primary officer authorized to receive service of legal process on behalf of the Port, the Board, and individual Port employees concerning Port-related business. It also authorizes the Board Secretary to delegate this authority to another Port employee in the event of his or her absence or disability or the absence or disability of the Assistant Secretary. Lastly, it authorizes the Port Attorney to make this written designation if the Secretary is not able to do so.</p> <p><b>Section 10</b> (<b>Section 9</b> in the current By-Laws) authorizes the Secretary to appoint one or more Assistant Secretaries to assist in the performance of the Secretary's duties. In addition, the proposed amendments to <b>Section 10</b> clarify that the Secretary's power over Assistant Secretaries is subject to Article XII of the By-Laws and any applicable Laws and employment agreements, including collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance. Finally, the proposed amendment to this Section requires the Secretary, in the event both s/he and the Assistant Secretary are absent and/or disabled, to designate in writing another Port employee to act in his or her stead.</p>
IX. Executive Director; Sections 2, 4, 6, 7, 8, 10, 14, 16, 17, 18, 19, 22, 23, and 24.	<p>The proposed amendment to <b>Section 2</b> clarifies that the Executive Director's authority with respect to employment matters is subject to Article XII of the By-Laws and any applicable Laws and employment agreements, including collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.</p> <p>The proposed amendment to <b>Section 4</b> makes clear that the term "Port Area" is used as defined in Section 706(4) of the Charter.</p> <p><b>Section 6</b> grants to the Executive Director the delegated authority to enter into certain enumerated agreements that are not longer</p>

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	<p>than one year in length. The proposed amendment to <b>Section 6</b> seeks to simplify and streamline the conditions under which the Executive Director can exercise this authority via Short-Term Agreements.</p> <p>The proposed amendment to <b>Section 7</b> simply clarifies that the Executive Director's delegated purchasing authority is for management and operation of Port (versus Board) affairs and is subject to the Port's Purchasing Ordinance, <i>as it may be amended or superseded</i>. In addition, the proposed amendment to <b>Section 7</b> codifies existing interpretation that the Executive Director has authority to enter into reimbursement agreements with parties who occupy Port property subject to the purchasing amount specified by the Purchasing Ordinance.</p> <p><b>Section 8</b> of the current By-Laws authorizes the Executive Director to act in cases of "extreme emergency," subject to Board ratification and the conditions set forth in the Purchasing Ordinance. The proposed amendment to <b>Section 8</b> seeks to reconcile the inconsistencies that currently exist between it and the Purchasing Ordinance vis-à-vis the Executive Director's ability to act in cases of Emergency by, among other things: (1) expressly granting to the Executive Director the authority to declare an "Emergency" (the Purchasing Ordinance contemplates, but does not expressly authorize, such a declaration); (2) deleting reference to the undefined term "extreme emergency" and replacing it with the defined term "Emergency" by cross-referencing the Purchasing Ordinance definition; and (3) omitting the requirement that the Executive Director's actions in the event of an Emergency are subject to Board ratification, as this is not contemplated in the Purchasing Ordinance (the Purchasing Ordinance currently requires, in <b>Section 7(C)(2)</b>, that the Executive Director inform the Board and that the Board review the circumstances and findings of an emergency to determine, by a four-fifths vote, that there is a need to continue the Emergency action).</p> <p>The proposed amendment to <b>Section 10</b> updates the language to reflect current Port practice regarding the Executive Director's signing authority.</p> <p>The proposed amendments seek to move current <b>Section 14</b> to <b>Section 27</b> and re-numbers current <b>Section 15</b> to new <b>Section 14</b>. The new <b>Section 14</b> relates to the Executive Director's</p>

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	<p>delegated authority to approve subleases, assignments, and transfers of Leases. The proposed amendment to <b>Section 14</b> seeks to delegate to the Executive Director the authority to approve for and on behalf of the Board all assignments or transfers of Leases, provided that the assignor (or a party wholly owned or controlled by the assignor) remains liable under the Lease. The proposed amendment also seeks to clarify the Executive Director's delegated authority to approve "Below Standard Security Deposits."</p> <p>The proposed amendments delete former <b>Section 17</b> since the provisions in former <b>Section 17</b> are now captured in new <b>Section 16</b>.</p> <p><b>Section 16</b> (currently <b>Section 18</b>) currently <i>allows</i> the Executive Director to designate in writing one or more acting, assistant, or deputy Executive Directors or Department Directors to act pursuant to his or her authority during the Executive Director's absence, disability, or for the more efficient operation of the Port. The proposed amendments to <b>Section 16</b> <i>obligate</i> the Executive Director to designate such a person in writing and eliminates the phrase "or for the more efficient operation of the Port".</p> <p>The proposed amendment to <b>Section 17</b> (currently <b>Section 19</b>) adds specificity to and clarifies the general reference to storm water regulations.</p> <p>The proposed amendments to <b>Section 18</b> (currently <b>Section 20</b>) include clarifying non-substantive edits and includes a reference to the Port's Master Fee Schedule.</p> <p><b>Section 19</b> (current <b>Section 21</b>) pertains to the Executive Director's authority to sign and accept on behalf of the Port regulatory permits and approvals. The proposed amendment to <b>Section 19</b> adds the San Francisco Regional Water Quality Control Board as one of the agencies that may grant certain permits or approvals to the Port and deletes the requirement that the Port Attorney approve in writing the form and legality of any Executive Director delegation of that authority to a Port employee. The proposed amendment is consistent with current Port practice.</p> <p>The proposed amendments contemplate adding three new Sections – which appear as <b>22, 23, and 24</b> – to the By-Laws, to codify the authorities needed for current Port practice. <b>Section</b></p>

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	<p><b>22</b> proposes to give the Executive Director the authority to enter into agreements that further the Port's interests consistent with its Tidelands Trust obligations including agreements granting the Port access to third party property if certain enumerated conditions are met. <b>Section 23</b> proposes to give the Executive Director the express authority to enter into Side Letter Agreements/Letters of Understanding with Port employee unions under specified conditions. <b>Section 24</b> proposes to grant the Executive Director under certain circumstances the authority to enter into agreements with other public entities for the purpose of sharing information, defining or clarifying jurisdictional boundaries, and coordinating emergency-response type situations.</p>
<p>X. Port Attorney; Sections 1, 2, 7, 8, 9, 10, 11, 12, &amp; 13.</p>	<p>The proposed amendments to <b>Section 1</b> add clarifying language to better define who the Port Attorney's client is, while the proposed amendments to <b>Section 2</b> clarify and collectively define the "Port Entities" for whom the Port Attorney shall defend and/or prosecute actions.</p> <p><b>Section 7</b> authorizes the Port Attorney to file lawsuits and prosecute actions, while <b>Section 8</b> authorizes the Port Attorney to defend the Board and the Port against claims and lawsuits. These Sections also authorize the Port Attorney to settle claims or lawsuits (a) when the settlement to be <i>paid</i> by the Port is \$50,000 or less in instances where the Port is defending such claims or lawsuits; or (b) when the <i>amount in dispute</i> is \$50,000 or less in instances where the Port is prosecuting such claims or lawsuits. The proposed amendments to <b>Sections 7 and 8</b> make clear that the Port Attorney's authority to prosecute and defend actions and claims extends to matters involving the collectively defined Port Entities. Additionally, and in order to eliminate the need to seek Board approval for settlements involving relatively minor or routine claims or disputes, the proposed amendments seek to raise the Port Attorney's settlement authority amount to \$100,000 or less in both instances when the Port is paying out no more than \$100,000, or when the Port is receiving payment where the principal amount in dispute is not more than \$100,000. This dollar threshold is consistent with the Port's Collections Policy (AP 509), which, generally speaking, allows the Port to write-off uncollectible debts of \$100,000 or less without Board approval. The proposed amendments also make clear that the dollar threshold on the Port Attorney's settlement authority only applies in those situations where the Port is itself paying money, as opposed to those situations where a third party such as an insurer</p>

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	<p>or tenant is paying money on behalf of the Port. In the latter situation, Board approval of the settlement is not required, regardless of the settlement amount. This amendment clarification is consistent with current By-Law interpretation and Port practice. Finally, the proposed amendments clarify current By-Law interpretation and Port practice that the Port Attorney shall have the sole authority to file and amend proofs of claim and otherwise act in bankruptcy proceedings, so long as such actions are reasonable in light of the proposed benefit to the Port and are done in consultation with the relevant Port division or department.</p> <p><b>Section 9</b> currently provides that the Port Attorney may enter into contracts to retain “special legal counsel, legal experts, legal assistants or research services,” so long as the contract amount is consistent with the limitations of the Port’s Purchasing Ordinance. The proposed amendments to this Section would expand the authority of the Port Attorney to also contract for “technical experts,” who are often necessary in the course of both litigation and transactional matters.</p> <p>The proposed amendments to <b>Section 10</b> clarify the Port Attorney’s authority to enter into contingent fee service contracts with collection attorneys and confirm that such authority vis-à-vis each delinquent account is consistent with the Port Attorney’s contracting authority.</p> <p>The proposed amendments to <b>Sections 11 and 12</b>, which grant the Port Attorney the authority to enter into tolling agreements, joint or mutual confidentiality agreements, and joint prosecution or defense agreements, clarify that such authority extends to agreements for and on behalf of the collectively defined Port Entities, rather than for and on behalf of the Board alone, which is how the By-Laws currently read. This is consistent with the Port Attorney’s jurisdiction.</p> <p>The proposed amendments to <b>Section 13</b> clarify that the Port Attorney’s power over employees appointed by the Port Attorney is subject to Article XII of the By-Laws and any applicable Laws and employment agreements, including collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.</p>
XI. Auditor; Sections 1 through 6.	The proposed amendments seek to make a universal change to the current By-Laws (including to the title of this Article), by



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	<p>replacing “Auditor,” with “Chief Audit Officer,” to more accurately describe the class title of this position. In addition, proposed amendments to <b>Section 1</b> document some of the areas of responsibility of the Chief Audit Officer including conducting investigations of Whistleblower Complaints and auditing the records of Port vendors and tenants to ensure compliance with applicable agreements, ordinances, resolutions, and other related Laws and policies. Finally, Port staff are currently evaluating what other proposed revisions to the By-Laws and Port Administrative Policies may be appropriate to propose to the Board regarding the Chief Audit Officer.</p> <p>The proposed amendments to <b>Section 3</b> clarify that the Chief Audit Officer’s power over employees appointed by the Chief Audit Officer is subject to Article XII of the By-Laws and any applicable Laws and employment agreements, including collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.</p>
<p>XII. Authorities and Organization; Sections 5, 6, &amp; 8.</p>	<p>The proposed amendments to <b>Section 5(d)</b>, which pertains to each Appointing Authority’s ability to, among other things, set, increase, and/or advance salaries of the Port employees he or she appoints, deletes inclusive reference to “premium pay under performance pay programs’ and substitutes therefor “additional pay under Board-approved programs, if any.”</p> <p>The proposed amendments to <b>Section 6</b> seek to clarify when Board approval is required for employee appointments, promotions, and redesignations: they require Board approval only in those instances where the proposed action will exceed the Board-approved staffing plan and budget during the applicable fiscal year.</p> <p>The proposed amendments to <b>Section 8</b> codify existing practice of the Executive Director reporting certain personnel-related information to the Board on a quarterly basis including the appointment of employees, suspensions, terminations, and leaves of absence.</p>

## **BUDGET & STAFFING**

Certain of the proposed amendments will further streamline Port leasing and claim and litigation settlement approval procedures, which, in turn, will increase staff efficiency and result in a savings of Port staff time as fewer items will be required to comport with Board agenda

requirements.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters included 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
- Goal: Serve Our Community

The ordinance would further clarify the Board's delegation of duties and powers and promote the efficient management of Port operations.

### **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 California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3) ("the general rule") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. No such effect is anticipated here.

### **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)**

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

### **OPTIONS**

- Adopt and approve the proposed amendments to the By-Laws by ordinance. This is the recommended action.
- Direct staff to adopt different amendments to the By-Laws.
- Do not amend the By-Laws and leave them as they are.

### **RECOMMENDATION**

Staff recommends that the Board approve and adopt an ordinance amending the Board's By-Laws and Administrative Rules ("By-Laws"), effectuating the revisions described in this Agenda Report and the attachment hereto, which redlines the proposed changes against the current By-Laws.

## BY-LAWS AND ADMINISTRATIVE RULES

### BOARD OF PORT COMMISSIONERS

#### ARTICLE I.

##### General Provision.

Under the Charter of the City of Oakland ("Charter"), the Board of Port Commissioners ("Board") shall have the complete and exclusive power, and it shall be its duty for and on behalf of the City of Oakland ("City"), to undertake the actions specified in subsections (1) through (30) of Section 706 of the Charter or as otherwise provided in the Charter, including complete and exclusive control and management of the Port Department.<sup>1</sup> Subject only to the provisions of the Charter and applicable superior laws of the State of California or of the United States of America ("Law"), these By-Laws and Administrative Rules ("By-Laws") shall govern the organization of the Port Department, proceedings of the Board, and the conduct of its business. The Board reserves to itself all of its Charter powers to carry out its duties and obligations unless any such power is expressly delegated as set forth in these By-Laws.

#### ARTICLE II.

##### Members and Officers - Elections.

1. The Board shall consist of seven Commissioners, including a President, First Vice President, and Second Vice President. ~~— The Secretary, Executive Director, Port Attorney, Auditor, and such other officers as may be appointed by the Board, shall each report directly to the Board ("Direct-Reporting Officers", as further defined in Article XII of these By-Laws).~~

2. The President, First Vice President, and Second Vice President shall be elected by majority vote of the Board from among members of the Board at the first meeting held during the month of July in each year. Unless the Board adopts a different election method by unanimous vote, the nominations and elections for each of the three Board officers shall be conducted in turn separately in the following order: President, ~~1st~~First Vice-President, and ~~2nd~~Second Vice-President. Candidates not prevailing in the election for one office may be nominated and voted on for another office. The

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<sup>1</sup> The Port Department is otherwise known as the Port of Oakland or the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port").

current President shall call for nominations from the floor, including self-nominations, which shall be recorded in the order received, and which shall not require a second. When nominations for each office are completed, voting on each nominee shall be conducted by voice vote in the order the nominations were received and the first nominee to receive a majority vote shall be elected. At the conclusion of the election of all officers, the Board will ratify the results by resolution.

### ARTICLE III.

#### Meetings.

1. Regular meetings of the Board shall be held in the Port ~~of Oakland~~ ("Port") Building, 530 Water Street, in the City of Oakland ~~("City")~~, unless the Board designates and notices another location pursuant to Article III, Section 3 hereof. The Board shall set a regular meeting schedule by resolution or motion which may be amended from time to time by the Board. The formal regular meeting, at which motions, resolutions, or ordinances may be adopted and public hearings may be conducted, shall be held in the Board Room, located on the Second Floor of the Port Building (with the closed session portion of the meeting held in the adjacent Courtyard Conference Room), unless another location has been selected, and shall commence upon the Board Roll Call establishing a quorum of the Board in accordance with Article III, Section 2 hereof.

2. Four Board Commissioners shall constitute a quorum for the transaction of business, and four affirmative votes shall be required to pass any ordinance, resolution, or motion, or such other greater numbers of votes as are required by the Charter or other applicable Law.

3. Whenever a meeting of the Board shall be held at a place other than the Board Room, in addition to other applicable legal requirements, public notice of the place of such meeting and subjects to be discussed shall be posted in the public notice cabinet in the lobby of the Port ~~of Oakland~~ Building for a period prior to such meeting as required by Law.

4. The provisions of Title 5, Division 2, Part 1, Chapter 9 of the Government Code of the State of California ("Ralph M. Brown Act"), relating to the meetings of legislative bodies of local public agencies, including the conduct of closed sessions, shall apply with respect to the meetings of the Board. In the event of any conflict between these By-Laws and the Ralph M. Brown Act, the latter shall

control and apply. Additionally, meetings of the Board will be conducted pursuant to applicable provisions of the Port of Oakland Sunshine Ordinance (Ordinance No. 4265, as it may be amended or its successor ordinance), superseded, "Sunshine Ordinance"); provided, however, the failure to strictly follow the Sunshine Ordinance shall not be cause for invalidation of any Board action, resolution, or ordinance. In the event of any conflict between these By-Laws and the Sunshine Ordinance, the former shall control. Finally, meetings of the Board will be conducted pursuant to the Rules for Public Participation at Meetings of the Board of Port Commissioners and Standing Committees adopted by Port Ordinance No. 4127, as it may be amended from time to time ("Rules for Public Participation"). In the event of any conflict between these By-Laws and the Rules for Public Participation, the former shall control and apply.

5. The order of business at meetings of the Board, including the placement of the closed session portion of meetings, shall be established by the President in his or her reasonable discretion in order to facilitate the orderly and efficient conduct of business, subject to the requirements of Law.

#### ARTICLE IV.

##### Proceedings of the Board.

1. All actions taken by the Board shall be by resolution, except when, pursuant to the provisions of the Charter or Law, it is necessary to act by ordinance. The Board's adoption of a motion shall be the means by which the Board implements parliamentary procedure at meetings or instructs the Port staff, but in no event shall the adoption of a motion bind the Port on any matter, contractual or otherwise, with regard to any third party. All instructions to investigate, to draft any resolution or ordinance, to conduct studies or to propose recommendations on any subject area shall be made only to the relevant Direct-Reporting Officer and by way of a motion of the Board as a whole or of a committee of the Board with subject-matter jurisdiction duly constituted under these By-Laws.

2. To constitute an ordinance of the Board, an action shall comply with the requirements of an ordinance set forth in Article VII of the Charter. Ordinances may be introduced and passed at regular or special meetings of the Board, except as otherwise required by applicable Law. To constitute a resolution of the Board, an action shall be evidenced by a document entitled "Resolution" and signed or

initialed by the Port Attorney (which signature or initial may be in electronic form authorized by the Port Attorney).

3. A record of the vote on any ordinance, resolution, or motion shall be made by "ayes", "noes", "abstained", "excused", or "recused" in the minutes of the Board. Any recusal of or by a member of the Board shall be recorded along with the stated cause or reason for the recusal.

4. The proceedings of the Board shall be carried on in such manner and with such dispatch as may be mutually agreeable to the members of the Board. To the extent practicable, *American Institute of Parliamentarians Standard Code of Parliamentary Procedure* (2012) as it may be updated from time to time ("Parliamentary Procedures") will govern the parliamentary procedures of the Board, except to the extent any such Parliamentary Procedure is inconsistent with these By-Laws, any Board-adopted rules and procedures, the Charter, or ~~Law~~ Law. No resolution or ordinance shall be considered or other action taken until the same has been duly moved, seconded, and carried, individually or as a group. All ordinances and resolutions passed by the vote of the members of the Board present at any meeting shall be deemed to have been moved, seconded, and passed in due form. No action of the Board shall be invalidated by reasons of noncompliance with the Parliamentary Procedures.

5. Except as otherwise may be required by the Charter, Law or resolution or ordinance of the Board, whenever the Board has approved and authorized execution for and on behalf of the Board of any contract, ~~agreement or lease~~, the Executive Director shall be authorized to execute, and the Secretary to attest, if necessary, the ~~document~~ contract for and on behalf of the Board subject to the approval of the Port Attorney as to form and legality.

6. No contracts, including any contract with respect to any lease, development, or use of any Port property, shall be binding on the Board or the Port unless approved by resolution, or by an ordinance when an ordinance is required by the Charter or Law, or unless otherwise provided by Port ordinance or these By-Laws. Except as expressly provided in the written contract approved by resolution or ordinance of the Board, or in the resolution or ordinance itself, no agreement approved by the Board may be modified except in accordance with such written contract, a resolution, or an ordinance.

7. Approval of any building permit for building and construction on Port-owned property by a Port tenant (or

subtenant) or by a licensed contractor for which the Executive Director recommends a determination of exemption from the California Environmental Quality Act ("CEQA") may be presented for Board consideration and action as part of a blanket resolution covering all such permits to be considered at that Board meeting and will not require presentation of an Agenda Report for the individual or collective permit items. Building permits for work included in a project which has previously been given approval, including any approvals under CEQA, by resolution or ordinance of the Board may also be included in said blanket resolution without the presentation of a separate Agenda Report; provided the work is consistent with project design, as approved by the Board.

#### ARTICLE V.

##### Committees.

1. The Board may at any time convene as a Committee of the Whole and may designate by resolution standing committees of its members. The Board hereby delegates to the President shall nominatethe authority to designate and the Board shall appoint by resolution the members of the standing committees and the chairs of such committees- (which members shall total no more than three including the chair).

2. The President or Board (by resolution) may from time-to-time designate and appoint members and chairs of such other ad hoc committees consistent with the Ralph M. Brown Act to assist in the transaction of the business of the Board.

3. Each committee shall be advisory to the Board. It shall investigate and formulate recommendations on matters referred to it by the President or by the Board. In the course of its investigation and formulation of recommendations to the Board, it shall consult with the Executive Director ~~and/or~~, to the extent necessary, other Direct-Reporting Officers. Each committee shall meet from time-to-time, as its responsibilities require and upon the call of the committee's ~~Chair~~chair. Each committee shall report to the Board at a regular or special meeting a summary of all matters considered and its findings and recommendations thereon.



## ARTICLE VI.

### President.

1. The President shall be the presiding officer of the Board, shall preside at all meetings of the Board, and shall have the right to vote on all questions. The President shall see that the laws of the City pertaining to the activities of the Port and the actions of the Board are faithfully executed, and shall exercise such other powers and perform such other duties consistent with the office of the Presidency as may be conferred upon the President by the Board, the ~~City~~ Charter, or otherwise by Law.

2. The President may, subject to legal requirements, call meetings of the Board and shall call a meeting upon the written request of three Commissioners. The President, in consultation with the Executive Director, may withdraw from consideration any item appearing on the Board Agenda.

3. In the absence of any Board member of a standing committee, if such a committee has been established, the President may designate another Commissioner to substitute for the absent member for that meeting.

4. The President shall sign all ordinances and such contracts, drawings~~—or~~, plans, and other documents required to be signed for and in the name of the Board unless otherwise provided for in these By-Laws, resolution, or ordinance of the Board.

## ARTICLE VII.

### First Vice President and Second Vice President.

The First Vice President shall, in case of the absence, disability, resignation, or removal of the President, act in the President's place and stead and perform the duties of such office. In case of the absence, disability, resignation, or removal of both the President and First Vice President, the Second Vice President shall act in the place and stead of the President or First Vice President.

## ARTICLE VIII.

### Secretary.

1. The Board shall appoint the Secretary of the Board by resolution. The Secretary shall personally, or

through the ~~assistant secretary~~ Assistant Secretary, attend all meetings of the Board and keep a true and correct record of all of its proceedings and the minutes of all meetings, which minutes shall include the number and title of all resolutions passed by the Board and a record of the vote thereon. The minutes shall also include the title of all ordinances passed by the Board, the number of the ordinance at the time of its final adoption, and a record of the vote thereon upon its passage to print and final adoption. Original copies of minutes, bearing the signature of the Secretary (which signature may be in electronic form authorized by the Port Attorney) and approval stamp of the Board, shall, following approval, be kept in permanent volumes entitled "Minute Book." Copies of such approved minutes shall also be made and kept in an electronic format available to the public.

2. The Secretary shall keep intact the original copy of, and index to, all ordinances adopted by the Board. The original copy of all ordinances shall contain a record of the vote or other action of the members of the Board and shall be signed by the President ~~and~~, be attested by the Secretary, and bear the approval of the Port Attorney as to form and legality. The Secretary shall also cause a permanent record to be kept electronically of each ordinance. All ordinances shall be numbered in numerical order, and at all times be open to public inspection. Following the adoption of any ordinance, the Secretary shall duly certify and file a true copy thereof with the City Clerk on an annual basis.

3. The Secretary shall also keep intact the original copy of all resolutions of the Board, with a record thereon of the vote or other action, and when convenient shall keep such documents into permanent records in books ~~and~~ entitled "Port Resolutions." The Secretary shall also cause a permanent record to be kept electronically of each resolution. All resolutions shall be numbered in numerical order.

4. The Secretary shall, whenever required, prepare copies of any ordinance or resolution, with the Secretary's certificate annexed thereto, stating that the same is a true copy duly and regularly passed by the Board on the date specified, and that the same was published and passed in the time, form, and manner required by Law, and shall furnish such other certificates for and on behalf of the Board as may be required.

5. The Secretary shall be the custodian of the official seal of the Port, and of all minutes, resolutions, and ordinances of the Board.<sup>2</sup>

6. The Secretary shall, in the Secretary's official capacity, sign or attest such documents and official papers relating to the Port, and affix the official seal thereto, when and as may be directed by the Board, and perform such other duties as may be assigned to the Secretary by the Board or be required by Law.

7. The Secretary is designated by the Board as the primary officer authorized to receive claims and accept services of legal process on behalf of the Port, Board, and individual Port employees concerning Port-related business. In the absence or disability of the Secretary or Assistant Secretary, the Secretary may delegate in writing the responsibility in this Section to another Port employee. If the Secretary is not able to so delegate, the Port Attorney shall designate in writing such other Port employee to perform the duties described in this Section.

8. The Secretary shall perform such other services and assume such other responsibilities and duties as the Board may require.

9. The Secretary shall log and track all requests received by the Port under the California Public Records Act.

10. Subject to Article XII of these By-Laws, the Secretary shall have the authority to appoint one or more ~~assistant secretaries~~ Assistant Secretaries to assist in the performance of duties of the Secretary and may designate and instruct any such ~~assistant~~ Assistant to act or perform the duties of the Secretary in case of the Secretary's absence or disability. The Secretary shall prescribe and supervise the duties of and have the authority to assign, evaluate, reassign, release, and discipline (including, but not limited to, suspension, dismissal, and termination) any such employees appointed by the Secretary provided the exercise of such power shall be subject to Article XII of these By-Laws and any applicable Laws and employment agreements, including, but not limited to, collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance. In the absence or disability of both the Secretary and Assistant Secretary, the Secretary shall designate in writing another Port employee to act in his or her stead.

<sup>2</sup> Immediately prior to the 2016 revision, this provision read: "The Secretary shall be the custodian of the official seal of the Port, and of all reports, books, papers, contracts, deeds, leases and other documents and records of the Board."

1011. The Secretary shall provide assistance to other Direct-Reporting Officers and their designees in order to enhance the effectiveness, efficiency, and economy of Port operations consistent with Board policies and direction.

#### ARTICLE IX.

##### Executive Director.

1. The Board shall appoint the Executive Director by resolution. The Executive Director shall be the chief executive and administrative officer of the Port and is the Executive Director employed and appointed in accordance with Section 706(21) of the Charter. The Executive Director shall be in charge of the Port's business and properties and shall be responsible for its efficient and economical administration. The Executive Director shall, as directed by the Board, carry out its policies and projects.

2. Except for appointments reserved to the Board or delegated to another Direct-Reporting Officer, the Executive Director, for and on behalf of the Board and subject to Article XII of these By-Laws, shall have the power and it shall be his/her duty to employ and appoint (including making all permanent, temporary, and provisional appointments) such other officers, employees, and agents as may be necessary in the efficient and economical carrying out of Port functions. The Executive Director shall prescribe and fix the duties, authority, and compensation of, and have the authority to assign, evaluate, reassign, release, and discipline (including, but not limited to, suspension, dismissal, and termination) any such employees appointed by the Executive Director provided the exercise of such power shall be subject to Article XII of these By-Laws and any applicable Laws and employment agreements, including, but not limited to, collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.

3. The Executive Director shall prepare, or cause to be prepared, estimates, plans, specifications, and drawings required for the Board, and act as purchasing agent for all the divisions of the Port.

4. The Executive Director shall enforce all resolutions and ordinances adopted by the Board relative to regulations, operation, and control of the "Port Area," (as defined in Section 706(4) of the Charter), and the operation and management of the Port and its facilities.

5. The Executive Director shall supervise and manage the construction and maintenance work authorized or ordered by the Board.

6. The Executive Director shall have and is hereby granted the delegated authority to enter into the below listed types of short-term leases, licenses, license and concession agreements, space/use permits, or similar grants of the right of entry for use, or occupancy of Port property ("Short-Term Rental Agreements"); provided that if all of the following conditions are met: (a) the permitted use is consistent with the public trust and all applicable Laws, Law; (b) the use is exempt from CEQA or has been studied and approved pursuant to CEQA, and (c) the Short-Term Rental Agreement is made in writing and in a form approved by the Port Attorney-

a. Short Term Rental Agreements that are cancelable or revocable upon thirty (30) days notice, with a rental period not longer than; (c) the term is no longer than one (1) year (aggregated by including all hold-overs, extensions, and/or renewal), and subject to s); (d) the Short-Term Agreement identifies the specific tariffs, rates, charges, or target rents duly established by the Board for such use, and;

b. Short-Term Rental Agreements with a rental period of no longer than a one (1) year term (aggregated by including all hold-overs, extensions or renewals) for the purposes of (i) performing temporary construction by a contractor, (ii) installing utility lines or equipment by a third party authorized to install such lines or equipment, (iii) installing and implementing environmental testing, monitoring or data collection, (iv) environmental or toxic material remediation, clean up or monitoring, or (v) other similar temporary occupancy and use necessary for utility service or compliance with regulatory, health and safety standards, provided that such Short-Term Rental Agreements shall be subject ("Standard Rent") that apply to the tariffs, rates, charges or target rents duly established by tenancy; and (e) the Board for such use Short-Term Agreement requires the payment of at least the Standard Rent, except where the Executive Director has determined that it is in the best interest of the Port to charge a lesser amount and has determined that such lesser amount is reasonable in light of the proposed benefit to the Port; and;

c. Short-Term Rental Agreements for continuous use activities lasting no more than one hundred eighty (180) days (aggregated by including all hold-overs,

~~extensions, and renewals) or recurring but non-continuous use activities aggregating up to a maximum of one (1) year, provided that such Short-Term Rental Agreements shall be subject to to charge an amount that is less than the tariffs, rates, charges or target rents duly established by the Board for such use except where Standard Rent. the Executive Director has determined that it is in the best interest of the Port to charge a lesser amount and has determined that such lesser amount is reasonable in light of the proposed benefit to the Port~~

7. The Executive Director shall, without the approval of the Board, have authority to make purchases of ~~material~~materials, supplies, and services needed in the management and operation of the ~~Board~~Port affairs and to let contracts (including, without limitation, reimbursement agreements with parties who occupy Port property) pursuant to, and subject to the limitations of, any ordinance adopted by the Board, and as amended from time to time, pertaining to the delegation of purchasing authority and bidding or competitive purchasing requirements (currently, BoardPort Ordinance No. 4321, as it may be amended or superseded) ("Purchasing Ordinance")."

8. The Executive Director shall, ~~subject to ratification by the Board,~~ have authority to declare an Emergency (as defined in the Purchasing Ordinance) and thereafter act in cases of extreme emergencyEmergency requiring immediate action on the ~~Executive Director's~~his or her part, to grant permits or let contracts essential to alleviating the conditions creating the emergency, subject to the conditions set forth in the Purchasing Ordinance.

9. The Executive Director may from time-to-time, render such reports, estimates, or recommendations to the Board as the Executive Director may deem necessary or convenient for the proper dispatch of the business of the Port, or the furtherance of its welfare.

10. ~~The Executive Director shall draw checks upon the revolving and petty funds of the Port in payment of transient laborers and other incidental expenses in the manner prescribed by Port ordinance, and shall sign as Executive Director.~~The Executive Director shall approve purchasing orders, contracts, rental and other agreements, warehouse receipts, maps and drawings, and other documents pertaining to the business of the Port when so directed by the Board, or when required in the prompt dispatch of the business of the Port by resolution, by ordinance, or as otherwise authorized by the Charter or these By-Laws.

11. The Executive Director shall regularly inform and report to the Board the state of Port business and progress toward Port strategic goals established by the Board. The Executive Director shall also give regular updates and information to City officials, shippers, tenants, and other community representatives and persons, as may be designated by the Board. On an annual basis, the Executive Director shall issue a written annual report of the operations and financial summary of the Port for the preceding fiscal year and shall publish such report either online or in print, or both.

12. The Executive Director shall have the authority to issue, from time-to-time, Administrative Policies and Procedures ("APs") governing the conduct of the affairs of the Port Department, provided that the ~~Administrative Policies and Procedures~~ APs are consistent with these By-Laws, the Charter, and applicable Law.

13. The Executive Director shall personally, or through the ~~acting, assistant~~ Acting, Assistant, or deputy Deputy Executive Director, attend all meetings of the Board and represent the Port in all official matters, unless otherwise provided for by the Board, provisions of these By-Laws, or by ~~Laws~~ Law.

~~14. The Executive Director shall perform such other services, and assume such other responsibilities and duties as the Board may require from time to time.~~

~~15.~~  
14. The Executive Director shall have and is hereby delegated the authority to approve for and on behalf of the Board subleases of all or portions of Port property pursuant to the terms of respective Port leases, license and concession agreements, or other Port occupancy agreements ("Leases"). The Executive Director is also delegated the authority to approve for and on behalf of the Board any assignment or transfer of Leases, provided that the original party to the Lease (assignor), or a party wholly owned or controlled by the assignor, remains liable under the Lease. Any approval of an assignment given under this Section shall be deemed by the Board to have the same force and effect as an approval by resolution or ordinance of the Board. In addition, the Executive Director is delegated the authority to approve security deposit amounts less than the minimum standard provided in the Port's ~~administrative policies (i.e. APs~~ "Below Standard Security Deposits") (which, as of the date of these bylaws, By-Laws, is based on the customer's credit rating and shall generally be equal to three months'

~~rent of average monthly billings or payments due under the agreement)~~ for Short-Term-Rental Agreements (as defined in Section 6 above); provided that the Executive Director shall make a written finding that it is in the benefit of the Port to require such lesser amount and that such lesser amount is reasonable in light of the proposed benefit to the Port. Any approval, waiver, or modification given under this Section ~~15~~ shall be deemed by ~~this~~the Board to have the same force and effect as an approval by resolution or ordinance of thisthe Board.

~~16~~15. Except as otherwise may be required by the Charter, other applicable Law, or resolution or ordinance of the Board, the Executive Director shall be and he or she is hereby authorized to negotiate and execute for and on behalf of the Board, indemnification agreements regarding removal of underground petroleum or similar tanks with Port tenants; provided, however, that each of said agreements shall be upon a form prepared and approved by the Port Attorney and shall not be effective unless and until signed by the Port Attorney.

~~17. 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.~~

~~18~~16. For the purpose of continued operation of the Port during the Executive Director's absence or disability, ~~or for the more efficient operation of the Port,~~ the Executive Director shallmay designate in writing one or more acting, assistant, or deputy Executive Directors or Department Directors who shall~~to~~ act pursuant to his or her authority to the extent so specified in writing and perform the necessary duties of the Executive Director during his or her absence or disability. When the Executive Director is unable to so designate in writing in his or her absence or disability, the Board may designate by resolution one or more acting, assistant, or deputy Executive Directors or Department Directors to act with the authority of the Executive Director to the extent so specified by resolution.

~~19~~17. The Executive Director shall have the authority to sign, execute, or otherwise approve on behalf of the Board, documents required by, or responsive to, ~~general storm water regulations pursuant to the Federal Clean Water Act or similar State law, including permits, and such general related to the Municipal Separate Storm Sewer System, industrial activity, construction activity, or individual permit~~the Port of Oakland's Storm Water Ordinance (No. 4311, ~~as may be issued for municipal separate storm sewer systems,~~



~~as such regulations or permits it may be amended, modified or reissued from time to time, or superseded).~~

~~20.~~ 18. When acting pursuant to authority or responsibilities delegated or assigned to him or her pursuant to this Article IX or pursuant to the "Land Use and Development Code for the Oakland Airport Business Park" (as the "permit hearing officer"), the Executive Director ~~(or his or her designee(s))~~ shall ~~be~~ have the authority to act as the designated and deemed the decision maker for the purposes of with respect to CEQA on all projects for which the Port is the lead agency. As the decision maker with respect to such delegated action, the Executive Director or his or her designee(s) shall have the authority to adopt and certify Environmental Impact Reports and to approve Mitigated Negative Declarations and Negative Declarations. Consideration of such environmental review documents for approval shall be conducted at noticed public hearings, if and when required by CEQA, chaired by the Executive Director or his or her designee(s). The Executive Director or his or her designee(s) shall take expert testimony (including that of Port staff) and public testimony, consider the issues and concerns presented by the public, and consider the environmental review documents. Any decision to issue, adopt, or approve the CEQA ~~document~~ documents shall be announced in a Notice of Decision. Absent an administrative appeal, the decision announced in the Notice of Decision shall become final fifteen (15) calendar days after issuance of the Notice of Decision. Any person ~~excepting to such decision~~ may appeal such decision to the Board by filing a written notice of appeal directed to the Secretary of the Board. The written notice shall set forth the specific grounds of the appeal, and the appellant shall pay the associated administrative appeal fee ~~as established in the Port's Engineering Division Master Fee Schedule pursuant to Port Ordinance No. 4065, as it may be amended from time to time.~~ Such administrative appeal shall be filed within fourteen (14) calendar days after issuance of the Notice of Decision. Any failure to timely file an administrative appeal shall be a complete bar to judicial review. Review by the Board of any administrative appeal filed shall be limited to those issues specifically raised in the administrative appeal. The decision by the Board to affirm or to overturn the decision of the Executive Director or his or his designee(s) shall be final. Judicial review of the final decision of the Board shall be limited to those issues raised on administrative appeal.

19. The Executive Director shall have the authority and, ~~subject to the written approval of the Port Attorney as to the form and legality of the delegation, may to~~ delegate to one or more Port employees the authority, to sign and accept on behalf of the ~~Board~~Port regulatory permits and approvals, including the conditions and other requirements contained in such permits and approvals, which are routine, standard, and/or ministerial in nature, and which are approved in writing as to form and legality by the Port Attorney, including the following:

a. Routine, standard, and/or ministerial permits or approvals, ~~such as a permit~~ issued by the San Francisco Bay Conservation and Development Commission, the San Francisco Bay Regional Water Quality Control Board, or the United States Army Corps of Engineers for maintenance dredging or for repair of existing structures, including the routine, standard, and/or ministerial conditions and other requirements included in such permits or approvals;

b. Routine, standard, and/or ministerial permits or approvals which a federal, state, or other public governing commission, board, or instrumentality has by regulation authorized be issued administratively by its appointed executive director, executive office, or other comparable or lower-level staff, including the routine, standard and/or ministerial conditions and other requirements included in such permits or approvals;

c. Ministerial permits and approvals, such as a City building permit, including the routine, standard, and/or ministerial conditions and other requirements included in such permits and approvals; and

d. Other routine, standard, and/or ministerial permits or approvals, including the conditions of approval, payment of permitting and oversight fees (including execution of oversight fee agreements with regulatory agencies), and other requirements included in such permits and approvals, the acceptance of which on behalf of the Board will not, in the reasonable determination of the Executive Director, obligate the Port to the expenditure of more than the expenditure contemplated in the approved budget for the project.

~~22~~20. The Executive Director shall have the authority to execute, subject to the written approval of the Port Attorney as to form and legality, all covenants to restrict use of property or similar deed restrictions with environmental regulatory agencies concerning Port property.

~~23~~21. The Executive Director shall have the authority to file grant applications and accept grant funding awards, subject to the written approval of the Port Attorney as to form and legality, so long as such application and acceptance does not commit the Port to a definite course of action beyond any course of action already approved by the Board.

~~24~~ 22. The Executive Director shall have the authority to enter into agreements that further the Port's interests consistent with the its Tidelands Trust obligations, if any, including agreements that grant the Port access to third party property provided that: (a) the term of the agreement is no longer than one (1) year; (b) the agreement has been approved as to form and legality by the Port Attorney; and (c) there is no monetary consideration to be paid by the Port.

23. The Executive Director shall have the authority to enter into Side Letter Agreements ("SLAs")/Letters of Understanding ("LOUs") with Port employee unions provided that the SLAs/LOUs are consistent with the Port Attorney's settlement authority as set forth in these By-Laws and are approved as to form and legality by the Port Attorney.

24. The Executive Director shall have the authority to enter into agreements with other public entities for the purpose of: (a) sharing information; (b) defining or clarifying jurisdictional boundaries; and (c) coordinating emergency-response type situations (including exercises/drills) provided that: (i) the agreements do not provide for any monetary consideration and it is customary that no monetary consideration would be provided; and (ii) the agreements are in writing and are approved as to form and legality by the Port Attorney.

25. The Executive Director shall designate in each Department reporting to him or her a custodian of records who shall keep, organize, and destroy (according to Board-adopted records retention ~~policy~~policies and ~~schedules~~schedules) official public records produced and necessary to be kept in the course of business of that Department, including, but not limited to, (a) administrative regulations of a temporary nature, (b) official schedules of rates, dockages, wharfage, tolls, and charges for all public-owned docks, piers, wharves, slips, and other facilities, (c) contracts for services and supplies, (d) ~~Short-Term Rental Agreements~~, (e) grant documents, and (f) ~~and~~ regulatory proceedings; but excluding any records to be kept by (x) the

Board Secretary (Article VIII, Section 5), (y) the Port Attorney (Article X, Section 14), and (z) the Auditor~~Chief~~  
Audit Officer (Article XI, Section 5).

~~25~~26. The Executive Director shall provide assistance to other Direct-Reporting Officers and their designees in order to enhance the effectiveness, efficiency, and economy of Port operations consistent with Board policies and direction.

27. The Executive Director shall perform such other services, and assume such other responsibilities and duties, as the Board may require from time to time.

#### ARTICLE X.

##### Port Attorney.

1. The Board shall appoint the Port Attorney by resolution. The Port Attorney shall be the attorney and legal advisor ~~to the Port acting by and through~~ the Board. The Port Attorney shall give legal advice to the Board, its officers and employees on official matters within its jurisdiction consistent with Board directions and policies, and shall be in charge of the legal affairs of the Port and have custody and supervision of the law files, books, records, briefs, and other papers of the Port Attorney's office.

2. The Port Attorney shall defend, ~~and~~ ~~(, subject to direction from the Board),~~ prosecute or compromise all actions at law or in equity and special proceedings for or against the City ~~or~~, the Port, the Board, or any of their officers or employees for actions within their scope of employment, pertaining to matters within the jurisdiction of the Board ~~(collectively, the "Port Entities")~~.

3. The Port Attorney shall keep on file or electronically in the Port Attorney's office all written opinions given by the Port Attorney to the Board or otherwise in the Port Attorney's official capacity, as well as the briefs, pleadings, and transcripts used in cases where the Port Attorney appears (according to Board-adopted records retention ~~policy~~policies and ~~schedules~~schedules).

4. The Port Attorney shall, without undue delay, pass upon the form and legality of contracts, ordinances, resolutions, and other documents and proceedings of the Port, when required by Law or directed by the Board, and shall prepare the forms of contracts, ordinances, resolutions, and other documents to be acted upon by the Board.

5. The Port Attorney shall personally, or through ~~acting, assistant~~Acting, Assistant, or deputyDeputy Port Attorneys, (a) attend the meetings of the Board, (b) be regularly available to consult with committees of the Board, if any, (c) attend meetings, and consult with the Executive Director—, (d) unless otherwise directed by the Board, be provided copies of all agendas, reports, minutes, and other correspondence to be used for discussion, consideration, or action at a meeting of the Board, (e) upon request, provide legal services on official matters within the Board's jurisdiction to the Executive Director and Port staff, and (f) subject to the other provisions of these By-Laws, keep the Executive Director advised on all legal matters. Consistent with the Port Attorney's responsibility as attorney and legal advisor to the ~~Board~~Port, the Port Attorney shall, in the performance of the Port Attorney's duties, (i) administer the office of the Port Attorney subject to review and direction by the Board, (ii) at all times carry out and implement the policies established by the Board and by Law, and (iii) render such services as may be required of the Port Attorney by the Board and by the Executive Director to carry out the policies and directions of the Board. The Port Attorney shall accept appointments to committees or other assignments of, or related to, associations of which the Port is a member or with which it is affiliated only after approval by the Board.

6. The Port Attorney shall regularly report to the Board orally or in writing on all matters of a legal nature affecting operations of the Port, together with the Port Attorney's opinion as to the origin or cause, present status, and future disposition of the matter, including claims or actions against the Port and the Port Attorney's recommendations with respect to actions of a legal nature which in the Port Attorney's judgment the Board should initiate.

7. The Port Attorney shall have the sole authority to file suit, to prosecute to judgment, and to settle any such civil and criminal actions in law, in equity, or in special proceedings concerning the Port Entities where the principal amount in dispute is \$50100,000 or less. Where the principal amount exceeds such amount, the Port Attorney shall obtain Board approval by motion or resolution prior to filing or settling such an action. Where urgency requires immediate filing and prosecution, the Port Attorney shall proceed with such filing and prosecution and seek Board ratification by motion or resolution after filing of suit. The Port Attorney shall also have the sole authority to file and amend proofs of claim and otherwise act in bankruptcy

proceedings, so long as such actions are reasonable in light of the proposed benefit to the Port and are done in consultation with the relevant Port division or department.

8. The Port Attorney shall have the sole authority to defend the ~~Board~~Port Entities against claims, actions in law and/or in equity, and special proceedings. The Port Attorney shall have authority to settle actions brought against the Port Entities where the settlement amount to be paid by the Port is \$~~50~~100,000 or less. Where the settlement amount (i) is to be paid directly by the Port (as opposed to by a third party such as an insurer or tenant on behalf of the Port), and (ii) exceeds such amount, the Port Attorney shall obtain Board approval by motion or resolution prior to settling such an action.

9. The Port Attorney shall have the sole authority to retain special legal counsel, legal experts~~and,~~ technical experts, legal assistants, or research services in accordance with the provisions of the Purchasing Ordinance and subject only to the contract amount limitations of the Port Attorney's delegated authority to enter into professional services contracts under the Purchasing Ordinance, ~~as it may be amended from time to time.~~

10. The Port Attorney shall have authority to enter into contracts with attorneys for collection services with respect to delinquent accounts ~~in the sum of \$150,000 or less~~ and to direct the filing of suit by any such ~~agency attorney~~ in conjunction with the provision of such collection services, provided, however, that: (a) compensation for such services shall be on a contingent fee basis, not to exceed 45% of funds actually collected from each respective account placed with any such agency attorney; and (b) the total amount to be paid to the collection attorney does not exceed \$150,000 for each respective account.

11. The Port Attorney shall have the sole authority to enter into tolling agreements, for and on behalf of the ~~Board~~Port Entities, that preserve all substantive and procedural rights and all claims, obligations, causes of action, and defenses including, without limitation, defenses based on statutes of limitation ~~that the Board and the countersigning party(ies) possess as of the effective date of the agreements.~~

12. The Port Attorney shall have ~~—~~authority to enter into non-disclosure agreements and joint or mutual interest confidentiality agreements and joint~~—~~ prosecution or defense agreements, for and on behalf of the ~~Board—Port Entities~~ with countersigning third parties to enable the

sharing of information, communications, and materials that may otherwise be subject to a claim of proprietary confidentiality, attorney-client privilege, or work product protection, without waiving any applicable confidentiality or privilege the ~~Board~~Port Entities possess with respect to such information, communications, and materials when the Port Attorney determines that it is in the Port's interest to share such information, communications, and materials with the countersigning third parties or their attorneys.

13. Subject to Article XII of these By-Laws, the Port Attorney shall have the authority to appoint one or more ~~assistant port attorneys, deputy port attorneys~~Assistant Port Attorneys, Deputy Port Attorneys, legal assistants ~~and~~, legal secretaries ~~-, legal clerk(s) clerks,~~ and legal/public records specialist(s) specialists (collectively, "Legal Assistants") to assist in the performance of duties of the Port Attorney and may designate and instruct any such ~~assistant~~Assistant or ~~deputy attorneys~~Deputy Port Attorneys to act or perform the duties of the Port Attorney in case of the Port Attorney's absence or disability. The Port Attorney shall prescribe and supervise the duties of and have the authority to assign, evaluate, reassign, release, and discipline (including, but not limited to, suspension, dismissal, and termination) any such Legal Assistants appointed by the Port Attorney provided the exercise of such power shall be subject to Article XII of these By-Laws and any applicable Laws and employment agreements, including, but not limited to, collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.

14. The Port Attorney shall be the custodian of all contracts evidencing the acquisition of real property by purchase, condemnation, or otherwise, or the granting of any lease longer than one (1) year, and all general rules and regulations of the Board, excepting administrative regulations of a temporary nature.

15. The Port Attorney shall provide assistance to other Direct-Reporting Officers and their designees in order to enhance the effectiveness, efficiency, and economy of Port operations consistent with Board policies and direction.

#### ARTICLE XI.

~~Auditor-~~  
Chief Audit Officer.

1. The Board shall appoint the ~~Auditor~~Chief Audit Officer by resolution. The ~~Auditor~~Chief Audit Officer shall conduct surveys, reviews, and audits of Port operations as the ~~Auditor~~Chief Audit Officer deems to be in the best interest of the ~~Board~~Port and the public, subject to direction and approval by the Board, or as directed by the Board. For these purposes, the ~~Auditor's~~Chief Audit Officer's surveys, reviews, and audits may include, but not be limited to:

a. Reviewing and appraising the effectiveness, adequacy, and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the Port organization;

b. Evaluating the Port's internal controls to ensure that the Port's assets and resources are adequately safeguarded from fraud, waste, and mismanagement;

c. Ascertaining compliance with the Board's resolutions and policies and the Executive Director's instructions and directives, as well as applicable ~~State and Federal laws~~Law and regulations;

~~d. Providing assistance to Port staff to enhance the effectiveness, efficiency and economy of their operations;~~

de. Conducting investigations of Whistleblower Complaints consistent with applicable Law and Port policies;

e. Responding to requests for audit and reviews; ~~and~~

f. Auditing the records of Port vendors and tenants to ensure compliance with applicable agreements, ordinances, resolutions, and other related Laws and policies; and

g. Reporting to the Board as appropriate or as directed by the Board, as part of a deliberative process, on recommendations for corrective actions or for taking action to adopt new policies.

2. The ~~Auditor~~Chief Audit Officer shall conduct any other audits and report to the Board, as directed by the Board.

3. Subject to Article XII of these By-Laws, the AuditorChief Audit Officer shall have the authority to



appoint one or more assistant or senior auditors and other staff auditors to assist in the performance of duties of the ~~Auditor~~Chief Audit Officer and may designate and instruct any such assistant to act or perform the duties of the ~~Auditor~~Chief Audit Officer in case of the ~~Auditor's~~Chief Audit Officer's absence or disability. The ~~Auditor~~Chief Audit Officer shall prescribe and supervise the duties of and have the authority to assign, evaluate, reassign, release, and discipline (including, but not limited to, suspension, dismissal, and termination) any such employees appointed by the ~~Auditor~~Chief Audit Officer provided the exercise of such power shall be subject to Article XII of these By-Laws and any applicable Laws and employment agreements, including, but not limited to, collective bargaining agreements, Port of Oakland Personnel Rules and Procedures, and/or salary and compensation schedules adopted by the Board by Ordinance.

4. The ~~Auditor~~Chief Audit Officer shall consult the Port Attorney relating to any questions of law that may arise in an audit's findings or recommendations; provided that the Port Attorney has no conflict of interest in the audit's findings or recommendations and provided that the content of any audit, audit findings, or audit recommendations shall remain within the professional discretion and reflect the professional opinion of the ~~Auditor~~Chief Audit Officer.

5. The ~~Auditor~~Chief Audit Officer shall be the custodian of surveys, reviews, and audits conducted by the ~~Auditor~~Office of Audit Services.

6. The ~~Auditor~~Chief Audit Officer shall provide assistance to other Direct-Reporting Officers, ~~and~~ their designees, ~~and~~ Port staff in order to enhance the effectiveness, efficiency, and economy of Port operations consistent with Board policies and direction.

## ARTICLE XII.

### Authorities and Organization.

1. The proceedings for and the delegations of the powers or duties of the Board shall be set forth in these By-Laws, except that the delegations of powers or duties for specific transactions or for purchasing of goods and services may be provided for in specific resolutions or ordinances. Each of the Direct-Reporting Officers shall cause to be carried out the duties assigned and exercise the powers delegated in these By-laws; provided that each of the Direct-Reporting Officers may exercise his or her delegated powers through his or her designee(s) designated in writing ~~or~~, by

regulation, or by published rules and ~~procedure~~procedures, except where any such authority is personal to the officer pursuant to the Charter, these By-Laws, or Law.

2. The Board reserves to itself the power and duty to appoint and hire the "Direct-Reporting Officers", ~~which,~~ who shall include ~~be~~ the Executive Director, the Port Attorney, the Secretary, and the Chief Audit Officer, ~~and the Auditor,~~ and to prescribe and fix their duties, authority, and compensation, and to release or discipline (including, but not limited to, suspension, dismissal, and termination) such Direct-Reporting Officers. Each Direct-Reporting Officer shall be directly answerable to the Board as a whole, and the Board shall provide all Board directions and inquiries regarding operations, policy or performance to the appropriate Direct-Reporting Officer.

3. The Executive Director may issue ~~Administrative Policies and Procedures~~APs which shall be consistent with these By-Laws, applicable Board policies, the Charter, and all ~~Laws~~Law. The Board hereby binds itself to such ~~Administrative Policies and Procedures~~APs to the extent necessary to: (a) comply with applicable ~~Laws~~Law, including, but not limited to, the Ralph M. Brown Act, the Political Reform Act (and other ~~Laws~~Law governing ethics of public officials), the California Public Records Act, and state and federal civil rights, employment and non-discrimination ~~Laws~~Law; (b) conform to the spending limits and approval procedures for travel and hosting expenditures; and (c) conform to accounting and records-keeping requirements for reimbursement of actual Board expenses necessary to carry out the business of the Board.

4. The President of the Board shall exercise the approval authority for any necessary pre-approval of travel or hosting expenditures by a Direct-Reporting Officer or a Board Commissioner (and the First Vice President in the case of approval for the President) pursuant to ~~Administrative Policies and Procedures~~APs governing travel and hosting expenditures; provided, however, that the Board may, by motion of the Board, override the approval or disapproval by the President (or the First Vice-President in the case of expenditures or expenses of the President). The Chief Financial Officer (or such successor officer) shall perform the administrative processing (including any approvals) of any expense reports for reimbursement submitted by a Direct-Reporting Officer or a Board Commissioner pursuant to the applicable ~~Administrative Policies and Procedures~~APs. Each Direct-Reporting Officer shall report to the President of the Board his or her planned absence from the Port (including any Port-related travel, personal leave of absence, vacation, or

personal leave) prior to the absence, and the Board may by motion disapprove of any such absence.

5. Appointments to the following positions and places of employment by the designated Direct-Reporting Officer ("Appointing Authority") are subject to consultation with the Board relating to the prerequisite qualifications and process of recruitment and ratification by the Board prior to any appointee taking office, as well as the following conditions:

a. Positions subject to conditions of this ~~paragraph~~Section 5 include:

(i) Department heads appointed by the Executive Director. For the purposes of these By-Laws and Section 902(c) of the ~~City Charter~~, "Department heads" shall include any ~~assistant~~Assistant or ~~deputy executive director~~Deputy Executive Director, and the directors of the divisions or departments, including (if applicable) maritime, aviation, commercial real estate, finance and administration, engineering, social responsibility, communications, government affairs, information technology, environmental programs and planning, and human resources, or any other additional or replacement positions or places of employment designated as "department head" under the applicable resolution or ordinance of the Board-;

(ii) Any Assistant Port Attorney appointed by the Port Attorney-;

(iii) Any Assistant Secretary appointed by the Secretary-; and

(iv) Any Assistant Auditor appointed by the ~~Auditor~~Chief Audit Officer.

b. The Appointing Authority may not alter the existing at-will nature of the employment relationship between the Port and any employee appointed subject to this ~~paragraph~~Section 5.

c. It shall be the duty of the Appointing Authority, in exercising the power of appointments for positions subject to this ~~paragraph~~Section 5, to utilize any procedures established by the Board for appointment of at-will employees.

~~d. Each Appointing Authority shall report to the Board on all appointments and employee terminations for positions subject to this paragraph 5 at least on a quarterly basis.~~

de. Each Appointing Authority shall evaluate the performance of the employees he or she appointed

subject to this Section 5 and may set, increase, and/or advance salaries within existing grade or schedules (if any), including provision for ~~premium~~additional pay under ~~performance pay~~Board-approved programs, if any.

~~ef.~~ Each Appointing Authority may initiate and process the completion of desk audits of employees he or she appointed subject to this ~~paragraph~~Section 5 and take such actions consistent with applicable Port policy and the powers delegated to each Appointing Authority, or to recommend actions to the Board to the extent such powers have not been so delegated to the Appointing Authority, to effect salary adjustments as deemed appropriate by the Appointing Authority or Board as the case may be.

6. ~~Appointment~~Except as otherwise provided herein, appointment of employees, including promotions or redesignations of persons ~~to positions duly created or reclassified by the Board,~~ shall not be subject to prior approval by the Board ~~of the~~unless the proposed action will exceed the Board-approved staffing plan and budget providing for said places of employment. during the applicable fiscal year.

7. Unless otherwise provided for in these By-Laws, appointments or hiring of employees shall be made through employment and hiring procedures established by the Board. Except for positions and places of employment exempt under the Charter from the personnel system of the City or the competitive civil service, each place of employment shall be assigned a classification, and each appointment shall be made through the employment and hiring procedures provided for in the personnel rules and procedures.

8. ~~Appointments of employees to Port positions without Board ratification as provided in these By-Laws,~~ and other delegated personnel actions, including, but not limited to, suspensions, terminations, and leaves of absences, shall be reported to the Board on a quarterly basis by a report from the Executive Director, setting forth the effective date of each action taken, a description of the action, the names of personnel affected, and, with respect to appointments, the classification title and salary rate assignment.

#### ARTICLE XIII.

##### Office Hours.

1. The office hours for the executive and administrative offices of the Port shall be from 8:30 a.m. to 5:00 p.m. daily, Monday through Friday, and the number of

hours of work for each employee shall be as set forth in the respective resolutions covering the various positions.

2. The holidays recognized by the Board are those specified by general law of the State of California and, in addition thereto, or in lieu thereof, any holidays specified in Memoranda of Understanding with recognized employee organizations to which the Board is a party; provided that arrangements shall be made with a sufficient number of employees to keep the offices and operations of the Port open for public service, as required.

3. The Direct-Reporting Officers may in their discretion require their respective offices and divisions to be kept open at other hours and days upon notice to the officers and employees thereof, and the Direct-Reporting Officers may assign alternative hours, other than those office hours set forth in Article XIII, Section 1 above, to certain officers and employees as the interest of the Port require.

#### ARTICLE XIV.

##### Amendments.

1. These By-Laws may be amended from time to time by ordinance of the Board.

Revised: ~~December 1, 2016~~ \_\_\_\_\_

Port Ordinance No.: ~~4399~~ \_\_\_\_\_