

PORT ORDINANCE NO. 4555

ORDINANCE SUSPENDING INDEFINITELY PORTIONS OF: 1) THE BY-LAWS AND ADMINISTRATIVE RULES OF THE BOARD OF PORT COMMISSIONERS; 2) THE RULES FOR PUBLIC PARTICIPATION AT MEETINGS OF THE BOARD OF PORT COMMISSIONERS AND STANDING COMMITTEES; AND 3) THE RULES AND REQUIREMENTS FOR NOTICING, AGENDIZING, AND POSTING OF BOARD OF PORT COMMISSIONERS MEETINGS, ASSURING PUBLIC ACCESS AND PARTICIPATION AND PROVIDING CURE AND CORRECTION OF NON-COMPLIANCE WITH OPEN MEETING LAWS, ALL IN RESPONSE TO THE COVID-19 PANDEMIC.

**WHEREAS**, the Board of Port Commissioners ("Board") has reviewed and evaluated Port of Oakland ("Port") staff's recommendations as set forth and described in Agenda Report Item No. 5.3 dated March 26, 2020 ("Agenda Report") and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, the Board has adopted rules for the conduct of, and the public's participation in, Board meetings through the following documents: 1) the By-Laws and Administrative Rules of the Board of Port Commissioners adopted through Port Ordinance No. 4552 ("By-Laws"); 2) the Rules for Public Participation at Meetings of the Board of Port Commissioners and Standing Committees adopted through Port Ordinance No. 4127 ("Public Participation Ordinance"); and 3) the Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance With Open Meeting Laws adopted through Port Ordinance No. 4265 ("Port Sunshine Ordinance"); and

**WHEREAS**, the By-Laws and the Public Participation Ordinance provide that regular meetings of the Board shall be held in the Board Room, 2<sup>nd</sup> floor of the Port building located at 530 Water Street in the City of Oakland ("Port Building") and the By-Laws further provide that public notice of any alternate meeting location be posted in the lobby of the Port Building; and

**WHEREAS**, the Port Sunshine Ordinance requires that the Port post an agenda for a regular meeting no later than ten (10) days prior to the meeting date and for a special meeting no later than forty-eight (48) hours prior to the time set for the meeting; and

**WHEREAS**, the Public Participation Ordinance provides that a person wishing to address the Board should appear in person at the Board meeting and submit a speaker card within twenty-four (24) hours for mail and fax receipt, three (3) hours for electronic submission and prior to commencement of the meeting for in-person card submission; and

**WHEREAS**, the recent and ongoing spread of the Coronavirus Disease 2019 ("COVID-19") is a pandemic posing an imminent and serious threat to health and safety of the public, including those of the Port and its employees, customers, tenants, contractors, and other stakeholders; and

**WHEREAS**, on January 30, 2020, the World Health Organization declared the COVID-19 outbreak a Public Health Emergency of International Concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States; and

**WHEREAS**, on March 4, 2020, the Governor of the State of California proclaimed a State of Emergency in response to the threat posed by the COVID-19 virus and issued various executive orders in response to such threat; and

**WHEREAS**, on March 12, 2020, the Governor issued an executive order with steps to control the spread of the virus and reduce and minimize the risk of infection. The March 12, 2020, order allowed for teleconference or electronic public meetings and suspended requirements that each teleconference or electronic location be listed on the agenda and made available to the public; and

**WHEREAS**, on March 13, 2020, the President of the United States proclaimed a National Emergency Concerning the COVID-19 Outbreak; and

**WHEREAS**, on March 16, 2020, the Health Officer of the County of Alameda, in conjunction with the Health Officers of five neighboring counties and the City of Berkeley, issued a series of "Shelter-in-Place" Orders prohibiting covered individuals from traveling and prohibiting all public and private gatherings of persons outside of their residences, unless such gathering was for an essential activity and, in that case, only when social distancing requirements are established; and

**WHEREAS**, on March 17, 2020, the Governor issued another executive order further modifying provisions of the Brown Act for meetings of legislative bodies (the "Executive Order"). The Executive Order expressly allows government agencies to make the meeting accessible electronically or telephonically to all members of the public that want to attend or address the agency, without need for a physical meeting location. In addition, the Executive Order suspends the "in-jurisdiction" quorum requirement which allows for all members of the legislative body to participate via teleconference; and

**WHEREAS**, the Port needs to suspend or amend the above-referenced portions of the By-Laws, the Port Sunshine Ordinance, and the Public Participation Ordinance to align and comply with the State and County orders and to allow for public participation in Board meetings during the COVID-19 pandemic; and

**WHEREAS**, in acting upon the matters contained herein, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis,

findings, and conditions set forth in the Agenda Report and in related materials and in testimony received; and now, therefore,

**BE IT ORDAINED** by the Board of Port Commissioners of the City of Oakland as follows:

**Section 1.** The Board hereby suspends the following provisions indefinitely to allow for the conduct of Board meetings during the COVID-19 pandemic:

- A) By-Laws Section III(1): Provision requiring that Board meetings take place in the Port Building;
- B) Public Participation Ordinance Section V(B): Provision requiring that Board meetings take place in the Port Building;
- C) By-Laws Section III(3): Provision requiring that the Port post alternate meeting locations;
- D) Port Sunshine Ordinance Section IV: Provision requiring that the Port special meeting agendas seventy-two (72) hours prior to the time of the meeting;
- E) Port Sunshine Ordinance Section V: Provision requiring that the Port post regular meeting agendas ten (10) days prior to the date of the meeting; and
- F) Port Sunshine Ordinance Section VI: Provisions requiring that supplements to agendas be posted seventy-two (72) hours prior to a regular meeting or twenty-four (24) hours prior to a regular meeting.

**Section 2.** The Board hereby indefinitely amends Section IV of the Public Participation Ordinance and specifically authorizes and allows for email or other electronic submissions of public comment on agenda items, as those procedures may be established to facilitate virtual meeting procedures and the opportunity to submit public comments.

**Section 3.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

**Section 4.** The Board determines and finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines

because it can be seen with certainty that the proposed actions will not have a significant effect on the environment and therefore is not a "project" under CEQA.

**Section 5.** This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code §9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, March 26, 2020. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Colbruno, Lee, Leslie, Martinez, Story and President Butner - 7. Noes: 0.

Daria Edgerly

Secretary of the Board