

PORT ORDINANCE NO. 4557

**ORDINANCE AMENDING AND RESTATING THE CODE OF CONDUCT
FOR MEMBERS OF THE BOARD OF PORT COMMISSIONERS
("BOARD") IN PORT OF OAKLAND RESOLUTION NO. 01397
TO ADDRESS SOCIAL MEDIA AND BOARD MEETING CONDUCT
ISSUES.**

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 5.1, dated April 23, 2020 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, on October 2, 2001, the Board adopted Resolution No. 01397 approving a Code of Conduct for Members of the Board of Port Commissioners ("Code of Conduct"); and

WHEREAS, on March 26, 2020, the Board considered an Information Report on proposed amendments to the Code of Conduct and provided feedback; now, therefore

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

Section 1. In acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, in related agenda materials, and in testimony received.

Section 2. The Board hereby finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15378(b), which states that projects do not include "continuing administrative or maintenance activities" or "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment." The proposed approval constitutes such activities, with no potential for direct or indirect physical change in the environment, and therefore is not a project under CEQA.

Section 3. The Board hereby amends and restates the Code of Conduct as set forth in the attachment to this ordinance, as further described in the Agenda Report.

Section 4. This ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

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, April 23, 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

Code of Conduct for Members of the Board of Port Commissioners

Commissioners conduct themselves professionally, responsibly, ethically, and lawfully to enhance the honor and reputation of the Port of Oakland. Commissioners are committed to the proper use of their authority and to decorum consistent with maintaining the integrity and discipline of Board leadership.

1. **Conflict of Interest:** Commissioners disclose all known or potential conflicts of interest that could influence or appear to influence their judgment on Port matters.
2. **Loyalty:** Commissioners assist one another in every practicable way, and conduct themselves loyally and respectfully towards the Port and fellow Board members.
3. **Independence:** No Commissioner derives any financial gain from confidential information acquired in the course of his or her Board appointment.
4. **Diligence:** Commissioners maintain the highest standards of integrity and objectivity in exercising their authority to approve contracts, select consultants, and determine other expenditures of Port resources.
5. **Confidentiality:** Commissioners protect confidential information that comes to them in the course of their Board activities, and do not communicate such information to a third party without the prior approval of the Board.
6. **Fiscal Prudence:** Commissioners are fiscally prudent in practice and in appearance with respect to their use of public (Port) funds for travel and other business expenses.
7. **Respect for Role of Management:** No Commissioner seeks to exercise individual authority over the organization except as explicitly set forth in Board bylaws and policies.

Commissioners do not serve on staff committees, do not intervene in internal staff issues, disputes, or negotiations, and do not seek to unduly influence staff hiring or termination decisions that are the responsibility of the Executive Director.

Although Commissioners express differences of opinion on Port issues at the Board level, no individual Commissioner directs his or her differences of opinion to staff in a manner that could create dissension or polarization in the organization or undermine a decision of the Board.

8. **Board Authority is Corporate:** Commissioners, in their interactions with the public, press, and other entities, recognize that as individuals they have authority to speak for the Board or the Port only as specifically authorized by the Board.

The President of the Board may remove any item from the agenda, but may do so only at the meeting at which the item is scheduled to be considered. Any Commissioner may seek by motion to override such removal, which will restore the item to the agenda upon a majority vote to do so.

9. **Personal Conduct:** No Commissioner causes or allows any practice, activity, or decision that is imprudent or is in violation of commonly accepted business or professional ethics.

Commissioners do not permit the use of their names or Port affiliation to be associated with any person or firm, who is suspected of or known to be engaged in fraudulent or dishonest activity.

10. **Protocol:** Commissioners are sensitive to cultural, ethnic, and other social, economic, and political issues and protocols in their activities, both domestically and abroad.

11. **Conduct During Board Meetings:** During a public meeting, Commissioners refrain from separate communications with any other person regarding the substance of any public meeting item, including, without limitation, electronic communications or private interpersonal communications with another Commissioner or staff.

During any quasi-judicial hearing, such as when hearing a formal appeal to the Board, Commissioners do not communicate on any topic with any other person in any medium and instead devote their full attention to the hearing.

12. **Social Media Policy:**

- Commissioners properly use their personal social media, which is any digital platform that allows a Commissioner to create and share information with other users or audiences.
- Commissioners acknowledge that their personal social media may be considered a public record subject to public disclosure under applicable law when it concerns Port matters.
- Commissioners value each other's First Amendment rights to use their personal social media and understand such use may include communicating on matters relating to the Port. This Code is intended to balance those First Amendment rights with the need to comply with other laws and ensure the effective performance of Commissioners' duties.
- Commissioners understand their communications among Commissioners through social media may be subject to open meeting laws, and therefore Commissioners refrain from responding to each other's social media.
- Commissioners refrain from communicating on personal social media regarding any quasi-judicial matters before the Board if doing so could reasonably be construed as evidence of bias, prejudgment, or personal interest.
- If Commissioners use their personal social media to communicate on any matter under consideration by the Board or reasonably anticipated to come before the Board, and/or establish an account identifying themselves as a "Commissioner", they notify in writing on such social media that their use expresses their personal opinions and not those of

the Port, and direct users to the Port's publicly available information, including the Port's website, for further details.

- Commissioners understand and use privacy settings to manage their personal social media accounts.
- If Commissioners use publicly accessible personal social media to communicate regarding Port business, they may be creating a limited public forum subject to First Amendment speech protections. Therefore, Commissioners do not deny access to their personal social media to any individual based in whole or in part on that individual's content or viewpoint, including disagreement with the Commissioners' viewpoints. Commissioners may remove content from their personal social media only to the extent such content is profane, harassing, abusive, or discriminatory; constitute solicitations or advertisements for non-Port commercial activity; advocates illegal activity or violates intellectual property rights; discloses confidential information protected by law; promote or oppose any current political campaign, candidate, or ballot measure; or is clearly off-topic.
- Commissioners refrain from using any Port-owned or issued devices to use or maintain their private social media accounts.