

## AUDIT COMMITTEE AGENDA REPORT

Motion: Approve Proposed Amendments by the Office of Audit Services (“OAS”) to Audit Policies AP16, AP18, AP19, and Article XI of the By-Laws and Administrative Rules of the Board of Port Commissioners (“Board”) with A Recommendation that the Board Approve and Authorize Such Amendments.

**MEETING DATE:** 10/15/2020

**SUBMITTED BY:** Arnel Atienza, Acting Chief Audit Officer

**APPROVED BY:** Arnel Atienza, Acting Chief Audit Officer

**ACTION TYPE:** Motion

### **EXECUTIVE SUMMARY:**

The requested action would require the Audit Committee, by motion, to approve the OAS’s proposed changes to several documents that provide guidance to the OAS:

- Administrative Policy 16 - Internal Review Protocol (“AP16”),
- Administrative Policy 18 - Whistleblower Protection Policy (“AP18”),
- Administrative Policy 19 - Whistleblower Hotline Policy (“AP19”), and
- Article XI of the Board By-Laws and Administrative Rules.

Further, the requested action would include a recommendation from the Audit Committee to the Board that the Board approve and authorize OAS’s proposed amendments at the Board’s next regularly scheduled meeting on November 5, 2020. The proposed changes are red-lined against the current versions of these documents and are attached to this Agenda Report.

### **BACKGROUND**

Policies and procedures are living documents that should adapt as business and operational needs change over time. It is therefore best practice to review these documents regularly to ensure that they are kept up to date and reflect current industry standards, legal requirements, and organizational needs. To this end, the OAS reviewed the following documents that provide guidance on its operations:

- AP16 - Internal Review Protocol
- AP18 - Whistleblower Protection Policy
- AP19 - Whistleblower Hotline Policy
- Article XI of the Board’s By-Laws and Administrative Rules

Upon review and close coordination with the Port Attorney's Office, the OAS has made several proposed amendments to each of the referenced documents that reflect current industry standards, legal requirements, and organizational needs and will benefit OAS operations.

## **DISCUSSION AND ANALYSIS**

### **AP16 - Internal Review Protocol**

AP16 was adopted by the Board under Port Resolution No. 03068 in March 2003. This document sets forth the policies and guidelines for a newly established function at that time called "internal reviews". This function performs internal reviews of Port divisions, departments, and functions to assess overall regulatory compliance, operational efficiency, and performance of personnel, and to implement corrective measures as warranted. Over time, this internal review function has now evolved into a fully functioning Internal Audit Section of the OAS.

AP16 has not been revised since its inception in 2003, and therefore it is almost completely outdated. In fact, it has been removed from the Port's Administrative Policy Catalog for several years as part of the overall Portwide policies clean-up in the mid-2010s. However, it was resurrected last year because of the absence of an official Board resolution rescinding this policy.

The OAS proposes that AP16 be rescinded.

### **AP18 - Whistleblower Protection Policy and AP19 – Whistleblower Hotline Policy**

AP18 and AP19 were adopted by the Board under Port Resolution No. 10-119 in September 2010 concurrent with the launch of the Port's Whistleblower Hotline Program.

- AP18 affirms the Port's policy to protect employees, who act as whistleblowers, from retaliation and sets forth guidelines for submitting and investigating whistleblower retaliation complaints, including repercussions for Port officers and employees who are found to have violated this policy.
- AP19 establishes the whistleblower hotline to provide a confidential and timely process for reporting fraud, waste, abuse, or any violations of work-related laws or regulations. This policy sets forth the guidelines for submitting whistleblower complaints, investigating the complaints, and reporting the results of the investigations.

Although both AP18 and AP19 have been reviewed periodically, no formal update has been made since their adoption in 2010. As part of this current update process, the OAS:

- checked for any changes to governing laws and regulations,
- benchmarked the Port's current practices with other jurisdictions,
- reviewed industry benchmarking from our third-party whistleblower hotline in-take provider,
- reviewed other relevant Port administrative policies, and
- checked for the consistency of policy level-type changes.

While these procedures did not disclose a need for substantive revisions, the following changes, as contained in the attached red-lined versions, are proposed primarily for housekeeping purposes and further clarification:

<b>Policy:</b>		<b>Proposed changes:</b>
<b>AP18</b>	Section I	Stylistic change to define the Port.
	Section II	Change to further clarify that a whistleblower is not limited to Port employees and officers but can be anyone including members of the general public.
	Section III	Changes to further clarify: <ul style="list-style-type: none"> <li>a) That certain provisions apply only to Port officers and employees.</li> <li>b) The role of the Office of Equal Opportunity in investigating whistleblower retaliation complaints.</li> <li>c) That the Port Attorney will receive a copy of the investigation report from the Chief Audit Officer ("CAO").</li> </ul>
<b>AP19</b>	Section I	Change to specifically include the words "fraud, waste, and abuse" in the reportable items to the Whistleblower Hotline.
	Section II	A few edits involving language clean-up for consistency and clarity.
	Section III	<ul style="list-style-type: none"> <li>a) A few edits involving language clean-up.</li> <li>b) Edits to delete unnecessary procedural steps that do not need to be included at the policy level.</li> <li>c) Language clean-up to further clarify the recipients of a new hotline report, and that the third-party hotline provider sends a notification and not a copy of a new report as it comes.</li> </ul>

The OAS recommends that the Committee approve the referenced changes to both AP18 and AP19.

## **Article XI of the Board By-Laws and Administrative Rules**

The By-Laws and Administrative Rules of the Board (“By-Laws”) have historically been the document by which the Board has codified the rules governing its operations including the assignment of its duties and delegation of its powers. Article XI of the By-Laws provides guidance on the authority, duties, and responsibilities of the CAO, a direct reporting officer to the Board.

The best practice guidance from the Institute of Internal Auditors recommends that an Internal Audit function have a charter that primarily sets forth guidance confirming an auditor’s independence and objectivity, authority and access to records, professionalism, responsibilities, and audit reports. Since the CAO authority and responsibilities are already addressed in the By-Laws, it is more efficient and simpler to make the following changes to Article XI of the By-Laws instead of creating a new separate audit charter document:

<b>Article XI, By-Laws:</b>	<b>Proposed changes:</b>
Section 1	Adds language to require that the CAO’s work be objectively conducted under the guidance of applicable professional standards.
Section 3	Adds this new Section to incorporate the CAO’s authority to access Port’s records during the conduct of surveys, reviews, and audits; and the corresponding responsibility to safeguard and keep the confidentiality of those records. This is a standard practice in the audit industry and has also been an ongoing practice at the Port.
Section 5	Adds the word “independently” to describe and affirm the discretion of the CAO’s professional opinions.

The OAS recommends that the Committee approve the referenced changes to Article XI of the By-Laws.

## **OPTIONS**

- Approve by Motion the OAS’s proposed changes to AP16, AP18, AP19, and Article XI of the Board’s By-Laws and recommend that the Board approve and authorize such changes at its next regularly scheduled meeting on November 5, 2020. This is the recommended action.

- Approve by Motion different changes to AP16, AP18, AP19 and Article XI of the Board's By-Laws and recommend that the Board approve and authorize such changes at its next regularly scheduled meeting on November 5, 2020.
- Do not approve the changes and leave the documents as they are.

### **RECOMMENDATION**

It is recommended that the Audit Committee approve by Motion the OAS's proposed changes to AP16, AP18, AP19, and the By-Laws and recommend that the Board approve and authorize such changes at its next regularly scheduled meeting on November 5, 2020.