



BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

RESOLUTION DETERMINING THAT CONDUCTING IN-
PERSON MEETINGS OF THE BOARD OF PORT
COMMISSIONERS WOULD PRESENT IMMINENT RISKS
TO ATTENDEES' HEALTH, AND ELECTING TO
CONTINUE CONDUCTING MEETINGS USING
TELECONFERENCING IN ACCORDANCE WITH
CALIFORNIA GOVERNMENT CODE SECTION
54953(e), A PROVISION OF AB-361.

WHEREAS, the Board of Port Commissioners ("Board") of the City of Oakland ("City") has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, the ongoing spread of SARS-CoV-2 and the resulting Coronavirus Disease ("COVID-19") is a pandemic posing an imminent and serious threat to health and safety of the public, 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by COVID-19 and issued various Executive Orders in response to such threat, and such declaration has not been lifted or rescinded; and

WHEREAS, on March 9, 2020, the City Administrator in his capacity as the Director of the Emergency Operations Center ("EOC"), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, on March 23, 2020, the Executive Director declared an emergency determining that the COVID-19 pandemic posed a threat to the health and safety of Port employees and the safe efficient operation of critical Port operations ("Executive Director's Declaration of Emergency"); and

WHEREAS, on March 26, 2020, the Board ratified the Executive Director's Declaration of Emergency and found that the COVID-19 pandemic constituted a condition of "extreme emergency" or "emergency" for the purposes of all Board-approved policies that affect Port operations, including, without limitation, the By-Laws, the Purchasing Ordinance, the Personnel Rules and Procedures of the Port of Oakland, the Employer-Employee Relations Ordinance, and the Rules and Regulations for Oakland International Airport ("Airport Rules and Regulations"), the Meyers-Milias-Brown Act ("MMBA"), and the Charter; and

WHEREAS, the Centers for Disease Control ("CDC") recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home; and

WHEREAS, Article 7 of the Charter of the City of Oakland ("Charter") vests in the Board the exclusive control and management of the Port Department including, among other things, the complete and exclusive power to: "sue and defend in the name of the City in all actions and proceedings wherein there is involved any matters within the jurisdiction of the Board" (706(1)), "have control and jurisdiction of...the 'Port Area'" (706(4)), "expend all funds necessary to the carrying out of the powers and duties [expressed in Article 7 of the Charter]" (706(26)), and "do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any provisions of [Article 7 of the Charter]" (706(30)); and

WHEREAS, holding in-person meetings may encourage community members to come to Port facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk;

WHEREAS, currently, the Port's facilities for public meetings do not have the technological capability for members of the public to attend via teleconference or remote at the same time that the Board and Port staff are physically located in the Board meeting room, which would restrict the ability of older individuals, individuals with COVID-19 symptoms, and unvaccinated individuals to fully participate in Board meetings, including offering public comment on items of interest to those individuals; and

WHEREAS, that 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, and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained herein and in testimony received, the Board finds and determines that:

- A. The requested action 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.
- B. Based on the findings above and consistent with federal, state, and local health guidance, it has been determined that conducting in-person meetings would pose imminent risks to the health of certain attendees who may not be able to fully participate in the Board meetings remotely if the Board and Port staff meet in person given the Port's current technological capability.
- C. The community's health and safety risks and the community's right to participate in local government are both critically important and the Port will balance these interests by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of California Assembly Bill 361 ("AB 361").

Section 2. This resolution 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. This resolution approves and authorizes the execution of a contract in accordance with the terms of this resolution. Unless and until a separate written contract is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective contract.

Section 3. This resolution shall be effective immediately upon adoption by the Board.

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