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MEMORANDUM

TO: MEMBERS, PORT COMMISSION
Honorable Willie Adams, President
Honorable Kimberly Brandon, Vice President
Honorable Leslie Katz
Honorable Eleni Kounalakis
Honorable Doreen Woo Ho

FROM: Eileen M. Malley
Port General Counsel 

DATE: March 14, 2016

RE: PORT DIRECTOR SELECTION PROCESS

In light of questions that have been asked or may arise in connection with the process for selecting the next Port Director, I have prepared the following summary of the requirements under the Charter and Administrative Code to assist you.

The Charter

The Port Director is the chief executive of the Commission and manages all the affairs and activities placed under the jurisdiction of the Commission (Charter §B3.581(h)). The Port Director serves at the Commission's pleasure. (*Id.*)

The Charter effectively requires that the Mayor and the Port Commission (the "Commission"), acting as a body, agree about who will be the Port Director. Charter Section B3.581(h) provides that the Port Commission has the "power to nominate for appointment a Port Director who shall be the chief executive of the Port Commission and who shall have the management of all the affairs and activities placed under the jurisdiction of the Commission. The Mayor shall appoint a Port Director." Accordingly, the Mayor may not appoint an individual whom the Commission has not first submitted through an action of the Commission acting as a body, and the Commission may not select a Port Director without the Mayor's approval in making the appointment.

The appointment process applicable to many City department heads provides that the commission submit to the Mayor at least three qualified applicants (Charter §4.102(5)). The Mayor may reject all recommended nominees and request that the commission provide additional nominees (Charter §4.102(5)). We have advised that a commission does not need to submit at least three qualified applicants where it understands the Mayor is willing to appoint an individual whom the commission wishes to submit to the Mayor, or where it believes that fewer than three applicants are ideally suited for the position.

The Selection Process

The process begins with the Commission, which has the sole authority to nominate candidates. The Charter provides that the Port Director shall possess the necessary administrative, executive, and technical qualifications necessary to enable him or her to perform

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the duties of the office (Charter §B3.581(h)). The Commission has authority to determine the qualifications it deems necessary for the Port Director consistent with the Charter standards.

Specific examples of Port Director qualifications that the Commission could consider include, but are not limited to, educational background and level of academic and professional achievement, prior management experience, number of years working in the real estate and/or maritime industry, familiarity with the public trust for commerce, navigation, and fisheries, and knowledge of the relationship between public enterprise agencies and their parent governmental entities.

The Commission may decide to form a search committee to screen qualified candidates and oversee the process. The Commission or a search committee may decide whether and how to use internal and outside resources to develop qualifications and to identify and evaluate potential candidates. The Commission may consult with, or request assistance from, the Department of Human Resources in connection with the process.

In some instances, City commissions have used an independent search firm specializing in the relevant industry or field, or in executive hiring, to assist the commissioners in developing appropriate qualifications for the department head, or overseeing the recruiting or hiring process. This approach is permissible but not required.

Before submitting any nomination to the Mayor, the Commission may make findings regarding why a particular candidate is qualified under the Charter for the position.

Public Meeting Laws

All Commission and committee meetings concerning the selection of the Port Director are subject to the Brown Act and the Sunshine Ordinance. As a general rule, the Commission must meet in open session to discuss and act on determining the overall selection process and determining minimum qualifications for the position. The Commission may meet in closed session to review resumes and background material for particular candidates, prepare interview questions, interview candidates, and deliberate and act on the nomination of one or more candidates.

If in closed session the Commission selects candidates to nominate to the Mayor, the Commission is not required to immediately announce the nominations, but if it does, it should not announce them by name or other identifier if the names have been treated confidentially. At the first Commission meeting after the Mayor announces the appointment of the new Port Director, the Commission must report in open session the closed session roll call vote for the Mayor's appointee and post written notice of that action by the next business day. The Commission is not required to disclose the identity of unsuccessful nominees (*Gillespie v. San Francisco Public Library Commission*, 67 Cal. App. 4th 1168, 1173-77 (1998)). Again, if the names of other candidates have been treated confidentially, it is generally appropriate that they not be disclosed. Please refer to the most recent City Attorney's "Good Government Guide – An Overview of the Laws Governing the Conduct of Public Officials," at pages 153-55, for a more in-depth discussion of these requirements. The Good Government Guide is available on the City Attorney's website (<http://www.sfcityattorney.org/good-government/good-government-guide>).

All closed session meetings of the Commission or a committee must be recorded (Administrative Code §67.8-1). All Commission and committee meetings, whether open or

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closed session, must be properly noticed by the Commission Secretary (Administrative Code §67.7, §67.7-1).

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The Commission is embarking on an important process. As issues arise, our office stands ready to provide legal advice to assist you. Please call me directly should you have any questions.

E.M.M.

cc: Micki Callahan

