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**Title:** RESOLUTION AMENDING  
 A) BOARD OF PORT COMMISSIONERS POLICY NO. 035 - POWERS AND FUNCTIONS OF THE PORT AUDITOR AMENDED TO ESTABLISH REQUEST FOR PROPOSAL REQUIREMENTS.  
 B) BOARD OF PORT COMMISSIONERS POLICY NO. 630 - FRAUD PREVENTION POLICY AMENDED TO UPDATE THE LANGUAGE TO BE IN-LINE WITH THE CURRENT ORGANIZATIONAL STRUCTURE AND REPORTING AVENUES.  
 C) BOARD OF PORT COMMISSIONERS POLICY NO. 776 - PORT AUDIT OVERSIGHT COMMITTEE POLICY AMENDED TO ESTABLISH TERM LIMITS FOR THE THREE PUBLIC MEMBERS AND RESIDENCY REQUIREMENT.

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Date	Ver.	Action By	Action	Result
10/12/2021	1	Board of Port Commissioners	adopted	

**DATE:** October 12, 2021

**SUBJECT:**

**RESOLUTION AMENDING**

- A) BOARD OF PORT COMMISSIONERS POLICY NO. 035 - POWERS AND FUNCTIONS OF THE PORT AUDITOR AMENDED TO ESTABLISH REQUEST FOR PROPOSAL REQUIREMENTS.
- B) BOARD OF PORT COMMISSIONERS POLICY NO. 630 - FRAUD PREVENTION POLICY AMENDED TO UPDATE THE LANGUAGE TO BE IN-LINE WITH THE CURRENT ORGANIZATIONAL STRUCTURE AND REPORTING AVENUES.
- C) BOARD OF PORT COMMISSIONERS POLICY NO. 776 - PORT AUDIT OVERSIGHT COMMITTEE POLICY AMENDED TO ESTABLISH TERM LIMITS FOR THE THREE PUBLIC MEMBERS AND RESIDENCY REQUIREMENT.

**EXECUTIVE SUMMARY:**

The Audit Oversight Committee’s work plan for the current year included a review of Board of Port Commissioners (BPC) Policy No. 035, Powers and Functions of the Port Auditor. The policy defines the purpose, authority, and responsibility of the District’s Port Auditor function. The policy was approved by the Board in December 2013 and last amended in January 2020. During the June 2021 AOC, the Port Auditor presented best practices related to the external audit organizations and the

Request for Proposal (RFP) process. The current policy with suggested revisions has been reviewed by the Audit Oversight Committee (AOC) and is now ready for Board review and approval.

Additionally, per the AOC's charter, the Committee is required to establish procedures for the receipt, retention, and treatment of complaints received by the District regarding accounting, internal controls, or auditing matters, and for the confidential! anonymous submission by District employees of concerns regarding questionable accounting or auditing matters. Currently, BPC Policy No. 630 Fraud Prevention Policy (Policy) provides reporting channels to those who have knowledge of suspected fraudulent and unethical activities at the Port.

In a general review of BPC Policy's managed by the Office of the Port Auditor (OPA), it was found that BPC Policy No. 630 had not been updated since July 2010, which was prior to the creation of the Office of the Port Auditor. Since that time, there have been other organizational changes and the policy needed to be revised to reflect those changes.

Finally, in a continual effort to enhance the effectiveness and independence of the District's Audit Committee, the Committee at its meeting on March 16, 2021 and June 8, 2021 discussed its structure and ability to effectively fulfill its oversight responsibilities including the qualifications, independence, and performance of the District's Port Auditor and external auditors. Staff presented best practices for effective public-sector audit committees as authored by the American Institute of CPAs (AICPA), the Institute of Internal Auditors (IIA), and the Government Finance Officers Association (GFOA). Benchmarking results were also shared that compared the Committee with other public-sector audit committees within and outside the San Diego region (e.g., City of San Diego, Port of Oakland). Lastly, staff provided a recommendation for the Committee's consideration to improve the Committee's effectiveness and enhance its independence.

As a result, the Committee further discussed the recommendation and suggested it be presented to the BPC for review and approval. The recommendations were presented to the Board on June 16, 2021. This agenda seeks to establish term limits of public members of the AOC.

On September 21, 2021, the Committee was informed about the proposed revisions to each of the Policies. The Committee has reviewed the recommended changes and the revised policies are now ready for Board approval.

### **RECOMMENDATION:**

Adopt a resolution amending:

- A. BPC Policy No. 035, Powers and Functions of the Port Auditor, to establish request for proposal requirements; and
- B. BPC Policy No. 630 - Fraud Prevention Policy, to update the language to be in-line with the current organizational structure and reporting avenues; and
- C. BPC Policy No. 776 - Port Audit Oversight Committee Policy, establishing term limits for the three public members and residency requirement.

### **FISCAL IMPACT:**

This agenda has no fiscal impact.

## **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port with an innovative and motivated workforce.

## **DISCUSSION:**

### **A) BOARD OF PORT COMMISSIONERS POLICY NO. 035 - POWERS AND FUNCTIONS OF THE PORT AUDITOR**

BPC Policy No. 035 - Powers and Functions of the Port Auditor, was approved by the Board on December 10, 2013. The Policy describes the Port Auditor as a direct appointee of the Board that provides independent, objective assurance and consulting services. The Office of the Port Auditor governs itself by adherence to the Institute of Internal Auditors (IIA) International Professional Practices Framework (IPPF). The IPPF constitutes the fundamental requirements for the professional practice of internal auditing and the principles against which to evaluate the effectiveness of the Office of the Port Auditor's performance. BPC Policy No. 035 addresses the core values, general functions of the Port Auditor position and its office. Minor changes to the policy are recommended for clarification purposes (Attachment A, Powers and Functions of the Port Auditor - redlined).

During the June 16, 2021 Board of Port Commissioner meeting, the Port Auditor presented best practices to the Board related to including a requirement for a Request For Proposal process at the completion of the external audit organizations contract period for the annual Financial Statement and Single Audit. At the Audit Oversight Committee meeting on September 21, 2021, the Committee reviewed and provided input to suggested changes to the Policy. Those changes are now ready for Board review and approval. A version of BPC Policy No. 035 with all redlined, recommended changes incorporated is included as Attachment B (Powers and Functions of the Port Auditor - final).

Based on this research and to enhance the effectiveness and independence of the District's Audit Committee the Board is being asked to adopt a resolution to:

- I) Amend BPC No. 035 - Powers and Functions of the Port Auditor. The Policy addresses the authority/responsibility, structure, and specific duties of the Port Auditor. The Policy would be amended to establish Request for Proposal requirement prior to the completion of the external audit organizations contract period for the annual Financial Statement and Single Audit.

### **B) BOARD OF PORT COMMISSIONERS POLICY NO. 630 - FRAUD PREVENTION POLICY**

On January 9, 2017 the Board of Port Commissioners (Board) authorized the formation of an Audit Oversight Committee to be governed by an Audit Oversight Committee Charter (Charter). The Charter is on file at the District Clerk's Office as Document No. 65981. One of the provisions of the Charter requires the Committee to establish procedures for the receipt, retention, and treatment of complaints received by the District regarding accounting, internal controls, or auditing matters, and for the confidential, anonymous submission by District employees of concerns regarding questionable accounting or auditing matters. In addition, the procedures provide for the confidential,

anonymous submission by District employees of concerns regarding questionable accounting or auditing matters.

On July 11, 2006, the Board approved the adoption of BPC Policy No. 630 - Fraud Prevention Policy (Policy) as recommended by the Committee. The policy was revised in in September 2010, allowing the public access to the District's Fraud and Ethics Hotline. The current Policy provides the following channels to report any suspected misconduct:

- A. Any citizen who has knowledge of an occurrence of fraudulent activity by District Commissioners, Officers, Employees, Vendors, Customers and Others may report suspected misconduct directly to Customer Service (619) 686-6200. In addition, suspected misconduct may be reported to the Port's Fraud Prevention Ethics Hotline at (888) 203-8330 which is accessible through the Port's website or the EthicsPoint website. Alternatively, there is an email address and mailing address that is available for reports from a citizen.
  
- B. Any District Employee who has knowledge of an occurrence of fraud or has reason to suspect that a similar impropriety has occurred, may immediately report the circumstances using the standard chain of command, beginning with the immediate supervisor. However, if an Employee does not feel comfortable under the circumstances reporting possible fraudulent conduct through the chain of command, then he/she may report suspected misconduct directly to any of the following:
  - Fraud Prevention Hotline
  - Port Auditor, Office of the Port Auditor
  - Director, Human Resources
  - Ethics Officer, Office of the General Counsel

In a general review of Board of Port Commissioner Policy's managed by the Office of the Port Auditor, it was found that BPC Policy No. 630 - Fraud Prevention Policy had not been updated since July 2010, which was prior to the creation of the Office of the Port Auditor. Since that time, there have been other organizational changes and the policy needed to be revised to reflect those changes.

On September 21, 2021, the Committee was informed about the proposed revision to the Policy. The Committee has reviewed the recommended changes and the revised policy is now ready for Board approval.

The Board is being asked to adopt a resolution to:

- I) Amend BPC Policy No. 630 - Fraud Prevention Policy. The Policy establishes procedures for the receipt, retention, and treatment of complaints received by the District regarding accounting, internal controls, or auditing matters, and for the confidential, anonymous submission by District employees of concerns regarding questionable accounting or auditing matters. In addition, the procedures provide for the confidential, anonymous submission by District employees of concerns regarding questionable accounting or auditing matters. The amendment will update the language to be in-line with the current organizational structure and reporting avenues.

## **C) AMENDING BOARD OF PORT COMMISSIONERS POLICY NO. 776 - PORT AUDIT**

## OVERSIGHT COMMITTEE POLICY

In 2004 the Board of Port Commissioners (BPC) created the Audit Advisory Committee to assist the BPC in fulfilling its fiduciary oversight responsibilities under the guidelines of all BPC advisory committees, established in BPC Policy No. 018, and articulated in the Committee's Charter. On December 13, 2016 the Board approved BPC Policy Number 776 - Audit Oversight Committee Policy which disbanded the Audit Advisory Committee and established the Audit Oversight Committee (AOC) to better reflect the purpose of the committee.

The AOC is governed by BPC Policy Number 776 - Audit Oversight Committee Policy, which determines the makeup of the AOC. The AOC is composed of five members. Two members are from the Board. They are appointed by the Chair of the Board and one of the two will be appointed the Committee Chair. Historically, these three Committee members have been a part of the Board's Executive Committee (Vice-Chair and Secretary). The other three members of the AOC are members of the public who serve a staggered three-year term to ensure continuity. These public members provide expertise in areas under the purview of the AOC. The public members are appointed by the Board after review and recommendation from the screening committee. The public members serve staggered three-year terms. However, the policy does not establish term limits for public members. All members of the AOC have voting rights on the committee. All Committee members are expected to be independent of Port management.

At the April 2021 meeting, the Port Auditor submitted to the Board for approval a three-year re-appointment of one of the three public AOC members. The Board requested that the Port Auditor give a presentation discussing best practices for term limits for public committee members. The Port Auditor presented best practices to the Board during the June 16, 2021 meeting.

The AOC consists of five members: two Port of San Diego Port Commissioners and three public members.

The Port Auditor reviewed best practices outlined by the IIA and the Government Finance Officers Association. Both organizations recommend that committee members range between three and five members which the majority being independent from the organization. All members should have sufficient knowledge of audit, finance, IT, the law, risk, and controls. Both organizations agree that the terms should last three to four years and be staggered. Term limits, however, should be determined by the organization, allowing for new perspectives.

The Port Auditor benchmarked multiple agencies including the City of San Diego, SDCERS, the Port of Los Angeles and the Port of Seattle. Committee sizes ranged from two to eight members with term lengths between three and five years. All but the Port of Los Angeles had term limits which ranged between three and eight years.

Based on this research and to enhance the effectiveness and independence of the District's Audit Committee the Board is being asked to adopt a resolution to:

- II) Amend Board of Port Commissioners (BPC) Policy No. 776: The Port Audit Oversight Committee. The Policy addresses the authority/responsibility, structure, and specific duties of the Port Audit Oversight Committee (AOC) that will replace the existing Audit Advisory Committee. The Policy would be amended to establish term limits for the three public

members. The term limits would allow public members to serve a maximum of two, three-year terms before taking a break the equivalent of one term (three years). After that time, they can reapply to the AOC. The amendment would also include a requirement that public members reside in San Diego County unless otherwise approved by the Board.

**General Counsel’s Comments:**

The Office of the General Counsel has reviewed and approved this agenda, proposed policy amendments, and resolution, as presented, as to form and legality.

**Environmental Review:**

The proposed Board action, including without limitation, resolution amending three separate Office of the Port Auditor-related policies, does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

The proposed Board action complies with Section 35 of the Port Act, which allows the Board to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

**Diversity, Equity, and Inclusion Program:**

No direct DEI impact.

**PREPARED BY:**

Mark Yeilding  
Port Auditor, Office of the Port Auditor

**Attachment(s):**

- Attachment A: BPC Policy No. 035, Powers and functions of the Port Auditor - Redlined
- Attachment B: BPC Policy No. 035, Powers and Functions of the Port auditor - Final
- Attachment C: BPC Policy No. 630 - Fraud Prevention Policy - Redlined
- Attachment D: BPC Policy No. 630 - Fraud Prevention Policy - Final
- Attachment E: BPC Policy No. 776 - Port Audit Oversight Committee - Redlined
- Attachment F: BPC Policy No. 776 - Port Audit Oversight Committee - Final