



**COMMISSION
AGENDA MEMORANDUM**

Item No. 6a

ACTION ITEM

Date of Meeting December 19, 2017

DATE: December 15, 2017

TO: Dave Soike, Interim Executive Director

FROM: Paul J. White, Commission Clerk

SUBJECT: Rewrite of commission bylaws, Resolution No. 3742, Second Reading

ACTION REQUESTED

Request Second Reading and Final Passage of Resolution No. 3742: A resolution of the Port Commission of the Port of Seattle adopting bylaws governing the organization and transaction of business of the Port of Seattle Commission and repealing Resolutions No. 3611, 3672, 3673, 3689, 3690, 3733, and all other resolutions dealing with the same subject matter.

EXECUTIVE SUMMARY

Since the establishment of the Port of Seattle in 1911, the port commission's bylaws have changed very gradually. Despite major changes to the port's lines of business, including changes and growth that occasioned the hiring of the first general manager in the 1930s, the addition of an airport in the 1940s, and the advent of containerization and the increase in the number of port commissioner positions from three to five in the 1960s, the bylaws retained consistent structure and content throughout this time. Recently the commission has undertaken work to better define its role and that of the port's executive director and to create a reliable apparatus for effective policy development. Adoption of the Century Agenda and subsequent long-range planning efforts reflect that work. In response to renewed focus on policy development, clarity, and transparency, staff has performed a thorough review of the commission's bylaws to determine whether they provide an effective framework for transacting commission business as it is understood and experienced in 2017 and to make appropriate recommendations.

JUSTIFICATION

Staff review of the current bylaws began with the basic premise that the robust policy-making efforts wanted by the port commission include appropriate vetting of topics with subject-matter experts, public engagement, and deliberation of topics with complex social and economic implications. In order for such an apparatus to perform effectively, the rules for transacting commission business – the bylaws – require a corresponding level of detail and structure.

Meeting Date: December 19, 2017

DETAILS

After reviewing the current bylaws and comparing them to similar authorities for legislative and non-legislative bodies, staff recommends reorganizing and re-establishing the bylaws based on key thematic principles. The existing bylaws leave much to assumption and informal understanding. However, there is a general sense that the commission requires a robust policy-making apparatus in order to craft port policy that can balance complex social and economic implications. Such an apparatus would inevitably be undermined by the lack of clarity and structure in the existing bylaws. The effect would be accelerated by any difference of opinion among commissioners. New rules that are sufficiently explicit are needed to avoid institutional misunderstandings and unintended consequences.

The main themes around which the proposed new bylaws text is structured are described below.

Clarity and Transparency

Considerable new content and rewording of existing principles are intended to make commission decisions more obvious and less ambiguous or subject to interpretation. Stronger language about action by motion, requirements that amendments and substantive motions be written down, new provisions within the duties of officers, procedures applicable to adjourned and continued meetings, and committee record-keeping provisions are all examples of new measures proposed for clarity and transparency.

Proposed text that especially reflects the theme of improved clarity and greater transparency includes the following:

- (1) Article 3, particularly Sections 5, 6, 7, and 8
- (2) Article 4, Sections 1, 2, and 3
- (3) Article 4, Sections 6 and 7
- (4) Article 5, Sections 2 and 8
- (5) Article 6 (most of this article is based on clarity and transparency matters)

Specific examples of clarity or transparency measures in the new text include the following:

- (1) Greater emphasis on the need for action by a quorum [Article 2, Section 2, and Article 4, Section 2], the need for articulated motions [Article 6, Section 2(b)], and the need for written amendments and motions [Article 6, Sections 5 and 7, respectively] are all in the service of increased clarity.
- (2) An updated version of the actual text of the commissioners' annual transparency pledge is provided [Article 2, Section 4].
- (3) Officers' roles have been redrafted with a view toward clarity, especially by inclusion of numerous activities of the commission clerk that bear directly on other bylaw provisions [Article 3, especially Section 8].
- (4) Public engagement sessions at times and locations appropriate to the identified target audience are called for twice annually [Article 4, Section 6(e)].

Meeting Date: December 19, 2017

- (5) Procedural steps related to adjournments, notice waivers, and executive session requirements are more fully documented in the proposed text [Article 4, Sections 6, 7, and 8].
- (6) Requirements for documenting committee structures and procedures are provided [Article 5, Sections 2 and 8].
- (7) For the first time, a parliamentary authority (*Robert's Rule of Order*) is explicitly adopted [Article 6, Section 1].
- (8) Criteria for determining objectively when to employ a resolution as the vehicle for commission actions are iterated [Article 6, Section 6].

Collegiality

Various misunderstandings have developed over the years surrounding the roles of commission officers and the authority of individuals over commission processes. An example is the assumption that because the commission president is responsible for formation of the agenda, the president continues to exercise individual control over the order and disposition of agenda items during the meeting. In fact, the agenda is only modified in this way by consent of the commissioners present. The proposed new text elevates in several places the theme that commissioners are independently elected office holders who take action as a commission only when they act in concert through the appropriate vote. Good parliamentary order and the stated preference of commissioners is that the collective decision-making of the commission as a body be one of consultation, deliberation, and mutual respect.

Proposed text that especially reflects the theme of elevated collegiality includes the following:

- (1) Article 2, Sections 1, 2, and 7
- (2) Article 3, Section 1
- (3) Article 3, Section 5, particularly Sections 5(d), 5(e), 5(f), and 5(g)
- (4) Article 4, Sections 3, 4(b), 5(d), 5(j), and 6(d)
- (5) Article 5, Section 3

Specific examples where commissioner collegiality is elevated in the new text include the following:

- (1) There is language addressing how the individual interests of commissioners relate to the decisions of the commission taken collectively [Article 2, Section 2].
- (2) Commissioner consultation on hiring and firing decisions is included [Article 3, Section 5(d)].
- (3) Rules for remote meeting participation are careful to count remotely participating commissioners for purpose of quorum and the preserve their eligibility to vote on matters on the agenda [Article 4, Section 3(b)].
- (4) Specific procedures are given for a quorum of commissioners on their own to call special meetings or cancel regular meetings [Article 4, Sections 6(d) and 4(b), respectively].
- (5) Commissioners will begin the practice of approving the president's proposed agenda at the start of every regular and some special meetings [Article 4, Section 5(d)].

Meeting Date: December 19, 2017

- (6) The right of absent commissioners to predictability about when final actions will be taken is reinforced [Article 4, Section 5(j)].

Adequate Process

A port commission engaged in robust policy-making processes must have corresponding structures in place to appropriately vet policy and engage interested parties. The bylaws should reflect the application of the rules that align the policy-making apparatus with the port commission's regular deliberations. This tends to add structure to the bylaws, by virtue of formalizing and standardizing activities that might otherwise be left to general consensus. Without adequately formal processes, the policy-making work of the commission runs the risk of being undermined by assumptions and misunderstandings.

Proposed text that especially reflects the theme of greater process definition includes the following:

- (1) More information on the nature of and procedure for recusal is provided [Article 2, Section 5(b)].
- (2) The order of succession for commission officers has been simplified [Article 3, Section 4].
- (3) The specific succession of the vice president to the office of president is described as first adopted in August of 2017 [Article 3, Section 6].
- (4) Duties of the commission clerk that provide for greater scope of policy-related records, coordination with the executive director's office on policy alignment, and the service of parliamentary consultant are provided [Article 3, Section 8].
- (5) New text addresses how matters are referred to or removed from committees and what happens to items removed from the consent calendar or laid on the table [Article 4, Section 5].
- (6) Provision is made for intentional public engagement by the commission [Article 4, Section 6(e)].
- (7) Additional content reinforces rules corresponding to a dynamic committee process for vetting policy matters [Article 5, throughout].
- (8) Recognizable provisions for order and decorum during commission meetings have been documented explicitly [Article 6, Sections 10 and 11].
- (9) A triennial cycle of bylaws review is proposed [Article 7].

Other updates present in the proposed text provide for better alignment with statutory requirements or describe aspects of the port commission as a board that would typically be included in any set of bylaws but may have been overlooked in the past.

AMENDMENTS

Attached to this memorandum are 17 amendments based on content arising out of meetings with individual commissioners before and after first reading of the resolution on December 5. Many of these were discussed during public session on December 12.

Meeting Date: December 19, 2017

Amendment 1

This amendment is strictly technical in nature. It makes several grammatical or structural improvements throughout the bylaws aimed at a clearer, more concise text.

Amendment 2

This amendment provides a mechanism to refer policy-oriented subject matter to a committee of the commission. It also provides a mechanism for the commission to remove matters from committees and deal with them directly as deemed appropriate. This provision makes it a requirement that resolutions or motions to establish or revise commission policy direction or governance matters be considered by an appropriate committee. Either the commission or the president may refer matters to a committee. The creation of committees is not directly tied to this provision, but it should be noted that new committees under the new bylaws as proposed can be constituted at any time.

Amendment 3

This amendment provides content relevant to a waiver of 24-hour notice as described in RCW 42.30.080. It answers the question of what happens when a commissioner has not waived notice and is not present when the special meeting convenes. It is technical and commonsense in nature.

Amendment 4

This amendment would encourage filing of amendments to actions on the commission agenda 24 hours prior to convening the meeting. It provides for adoption of filed amendments by a simple majority (three yes votes); whereas unfiled amendments would require a two-thirds vote for passage (four yes votes). The intention is to incentivize transparency by making intended amendments available to all commissioners and the public 24 hours before the meeting starts.

Amendment 5

This amendment restores a requirement for the electronic recording of commission executive sessions that was not preserved in the bylaws text at first reading. Annual monitoring by outside counsel is provided for, and there are exemptions from recording for sessions to discuss personnel matters.

Amendment 6

This amendment provides additional flexibility to the president when acting as commission spokesperson.

Meeting Date: December 19, 2017

Amendment 7

This amendment requires a reasonable effort by the president to consult with other commissioners before making public statements on behalf of the commission. It also limits the president's use of his or her title when making statements of individual opinion.

Amendment 8

This amendment seeks to clarify the commission president's role in oversight and review of the executive director, commission chief of staff, general counsel, and public affairs senior director. These are all positions with special reporting considerations. Additional text addresses the roles of the vice president and audit committee in the oversight and review of the internal audit director, who also has a dual-reporting relationship with the commission.

Amendment 9

This amendment updates statements in the object article of the bylaws. It more closely aligns with statutory language that defines port "powers" in various chapters of the RCW and with the mission and commitment statements of the Century Agenda.

Amendment 10

Similar to Amendment 9, this amendment inserts a reference to "port powers" in the article relevant to the commission's membership.

Amendment 11

This amendment acknowledges that commissioners are committed not only to the Code of Ethics for Port Commissioners, but also to the port's statement of values and the Code of Ethics and Workplace Conduct applicable to port staff.

Amendment 12

This amendment makes it clear that while comments made by individual commissioners are important in their context, such statements are not by themselves expressions of the will of the commission as a body.

Amendment 13

This amendment makes it clear that the ability of the presiding officer to clear a meeting room during a disturbance is contingent on the consent of the commission as a body.

Amendment 14

This amendment removes a prescriptive element of the charter for a committee of the commission to identify the committee's staff support.

Meeting Date: December 19, 2017

Amendment 15

This amendment removes several prescriptive elements of the process for consultation between commissioners and the president when assigning service on internal committees and external boards and commissions. Consultation is still called for, the assignment process would be complete by the end of January each year, and assignments can change throughout the year. The clerk becomes the record holder for the list of committee, board, and commission assignments.

Amendment 16

This amendment makes it a requirement that all commissioners serve on the audit committee prior to completion of their fourth year in office. It gives the commission discretion to conditionally waive audit committee service if the requirement would result in more than two commissioners serving on the committee at the same time.

Amendment 17

This amendment makes it clear that the rules for civil discourse apply to anyone participating in a meeting, whether commissioners, staff, or the public.

FINANCIAL IMPLICATIONS

The processes and structures documented within the revised bylaws are already contemplated in the work of commission staff and provided for in the staffing and budget of the Office of the Commission in 2018.

ATTACHMENTS TO THIS REQUEST

- (1) Draft Resolution No. 3742, including the full text of the bylaws in redline form as Exhibit A
- (2) Draft appendix to the bylaws
- (3) Potential amendments for commission consideration on Second Reading

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

December 12, 2017 – The Commission considered several amendments to the text as proposed on First Reading. No amendments were decided and no vote was taken on Second Reading and Final Passage at this time.

December 5, 2017 – The Commission passed the First Reading on Resolution No. 3742. It was proposed at that time that a series of amendments be considered prior to final adoption.