

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4127

**AN ORDINANCE APPROVING AND ADOPTING RULES
FOR PUBLIC PARTICIPATION AT MEETINGS OF THE
BOARD OF PORT COMMISSIONERS AND STANDING
COMMITTEES.**

WHEREAS the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Item O-2 ("Agenda Report") dated June 22, 2010 and related agenda materials, including the Rules and the Annotated Rules attached thereto, has received the expert testimony of Port staff, and has provided opportunities for public comment before, during and after its noticed Administration Committee public meeting of May 25, 2010 and its Board meeting of June 22, 2010;

WHEREAS the Port of Oakland is a specialized public agency with specific enterprise functions and its Board and Committee meetings are open to the public; the Port does not currently have any formally adopted policies or procedures regulating public participation in such meetings; and the lack of clarity and certainty regarding public participation has led to confusion and inefficiencies in transacting the business of the Port;

WHEREAS adoption of the formal RULES FOR PUBLIC PARTICIPATION AT MEETINGS OF THE BOARD OF PORT COMMISSIONERS AND STANDING COMMITTEES attached to the Agenda Report will establish an appropriate level of safety, decorum, and efficiency in the Board Room for Port stakeholders and other members of the public attending and/or addressing the Board or its Standing Committees; the ability of all interested persons properly attending public meetings to safely, civilly, and efficiently participate in the affairs of the Port and to view the Board Commissioners in the performance of their duties is of paramount importance to the Board; and the Board has a compelling interest in the efficient transaction of business at the Port free from delay, distraction, and disruption by members of the public; and,

THEREFORE BE IT ORDAINED 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;

BE IT FURTHER ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

1. The Board hereby approves and adopts the Rules for Public Participation at Meetings of the Board of Port Commissioners and Standing Committees, as set forth in the Agenda Report;

2. The Board adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, in the Rules, in the Annotated Rules, and in other related agenda materials and in testimony received in so doing;

3. If any section, subsection, sentence, clause, or phrase of the Rules, or the application thereof to any person or circumstance, is for any reason held to be invalid the remainder of the Rules and the application of such Rules to other persons or circumstances shall not be affected thereby.

The Board of Port Commissioners, Oakland, California, June 22, 2010. Passed to print for one day by the following vote: Ayes: Commissioners Gonzales, Gordon, Head, Lighty, and President Uno - 5. Excused: Commissioners Calloway & Katzoff - 2. Noes: 0.

John T. Betterton
Secretary of the Board

Adopted at a special meeting held June 29, 2010
by the following vote:

Ayes: Commissioners Calloway, Gonzales, Head, Katzoff,
and President Uno - 5
Abstained: Commissioner Gordon - 1
Excused: Michael Lighty - 1
Noes: 0



President.

Attest: 

Secretary.

Approved as to form and legality:



Port Attorney

Adopted by Board Ordinance No. 4127 (June 29, 2010)



PORT OF OAKLAND

Rules for Public Participation at Meetings of the Board of Port Commissioners and Standing Committees

I. PURPOSE

The purpose of these Rules is to establish an appropriate level of safety, decorum, and efficiency in the Board Room for Port of Oakland stakeholders and other members of the public attending and/or addressing the Board of Port Commissioners (the "Board") or its Standing Committees, if any, at meetings held at the Port of Oakland (the "Port"). The ability of all interested persons properly attending public meetings to safely, civilly, and efficiently participate in the affairs of the Port and to view the Board Commissioners in the performance of their duties is of paramount importance to the Board. The Board also has a compelling interest in the efficient transaction of business at the Port free from delay, distraction, and disruption by members of the public. Toward that end, the following rules have been promulgated to facilitate the conduct of public meetings in an open, orderly, and efficient manner and in an environment safe for all persons in attendance. They are also intended to promote open meetings that welcome debate of business and public policy issues being discussed by the Board and Standing Committees in an atmosphere of fairness, courtesy, civility, and respect for differing points of view.

II. SAFETY

The Port has been designated as a "High Security Area" and strives to ensure the safety of its employees, visitors and the public while on Port premises and facilities. The Port Headquarters, at 530 Water Street, is subject to the requirements of the

Customs-Trade Partnership Against Terrorism Initiative and the Port is committed to ensuring the integrity of its security practices.

A. Access to the Port Headquarters Building

All non-badged visitors to the Port Headquarters building shall sign in at the Lobby Security desk, present photo identification and obtain a visitor's pass. The visitor's pass must be worn on the front of the torso and must be visible at all times, while in the building. All visitors to the Port Headquarters building are required to remain in Public Areas at all times. Public Areas are: 1) the ground floor lobby, 2) the Exhibit Room, and 3) the Board Room on the second floor and the adjacent entry corridor, restrooms and elevator lobby. Visitors are not allowed in secure Port-controlled areas such as staff office areas, conference rooms and other work areas, unless accompanied, at all times, by a Port employee and for a specific invited business purpose.

B. Access to the Board Room

Visitors to the Port Headquarters building who desire to attend meetings of the Board or Standing Committees in the Board Room shall not be required to register their names or to otherwise provide any other information to enter into the Board room. Pursuant to the Port's Policies and Procedures for Building Access, Use and Security for 530 Water Street, non-badged public meeting attendees must display a visitor's pass. However, where a public meeting attendee wishes to maintain his or her anonymity, he or she will not be required to write his or her name on the visitor's pass and such pass may remain blank.

Public meeting attendees shall be required to leave the Port Headquarters building within 10 minutes after the public meeting is adjourned and must exit the building from the ground floor lobby.

C. Prohibited Objects

All persons entering the Board Room, except badged Commissioners and Port staff, are subject to a search of their person and possessions for weapons (as defined in the California Penal Code) and other potentially dangerous, disruptive, or destructive objects as reasonably determined by law enforcement officials and security personnel. Persons found in possession of such items prior to admission to the meeting will not be permitted to enter the Board Room. Port staff is authorized to remove individuals from the Board Room if a threat exists or is reasonably perceived to exist. Prohibited objects include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting or puncturing tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol or other spray containers; tools; glass containers; paint, and large backpacks and suitcases that are incapable of being opened for examination.

D. Capacity of the Board Room

Whenever the Presiding Officer anticipates that the number of persons attending a Board or Standing Committee meeting may exceed the legal capacity of the Board Room, an alternate room within the Port Headquarters building (over-flow room), equipped with live audio and/or video of the meeting, will be opened to the public. Opportunities to address the Board or Standing Committee will be made equally available to members of the public in both rooms.

III. SUBMITTAL OF WRITTEN MATERIALS

Interested parties are encouraged to submit written material on any agenda matter in advance of the meeting. This provides the Board and Port staff with notice of issues of concerns and allows for the careful consideration of such issues in advance of Board action. To allow for distribution to the Commissioners, staff, and the public, twenty-five copies of all material should be submitted. Material submitted at least

ten days prior to the meeting may be included as part of the agenda packet; material submitted later will be distributed at or prior to the meeting. To ensure that material is distributed to Commissioners prior to the meeting, it should be delivered to the Secretary of the Board no later than 3 business days before the meeting. Material may be e-mailed to Commissioners at: Board@portoakland.com.

IV. SPEAKING BEFORE THE BOARD AND STANDING COMMITTEES

While the Board invites public participation in the business of the Port, meetings of the Board and Standing Committees are not traditional public forums where speakers have a right to speak freely on any topic of interest to the speaker. Meetings of the Board and Standing Committees are highly regulated limited public forums and are strictly limited to topics directly concerning the business of the Port and may be further limited to the specific jurisdiction of its Standing Committees or the individual agenda topics noticed for public review. Further, the Board and Standing Committees have a compelling interest in promoting efficiency, decorum, and civility in conducting the business of the Port free from delay, distraction, and disruption by members of the public.

A. Scope of Public Comment

Members of the public may express their views orally at meetings of the Board and Standing Committees on either 1) specific agendized matters of business or 2) at the Open Forum portion of the meeting. Public oral communications at Board and Standing Committee meetings should not be a substitute for any item that can be handled during the normal working hours of the Port through its staff. The primary purpose of oral communications is to allow members of the public the opportunity to formally communicate with the Board and its Standing Committees as a whole, for matters that *cannot* be handled during the regular working hours of the Port through its staff.

1. Agendized Matters of Business. Comment from the public on agendized matters of business will be taken prior to the Board or Standing Committee taking action

on such matter. Speakers on agendized matters of business shall limit their comments to the specific agendized matter of business before the Board or Standing Committee. At the discretion of the Presiding Officer, the Board may choose not to take public comment on any agendized matter that has already been considered by a Standing Committee where all interested members of the public were afforded the opportunity to address the Committee on the matter, unless the matter has been substantially changed since the Committee heard the matter, as determined by the Board.

2. Open Forum at Board Meetings. Time will be allotted at every meeting for Open Forum. During Open Forum at Board meetings, members of the public may express their views regarding matters within the jurisdiction of the Port and otherwise not on the noticed agenda. Speakers at Open Forum at Board meetings shall limit their comments to matters relating to the business of the Port. Every agenda shall contain an Open Forum, prior to adjournment of the meeting.

3. Open Forum at Standing Committee Meetings. During Open Forum at Standing Committee meetings, members of the public may express their views regarding matters within the jurisdiction of the subject Standing Committee and otherwise not on the noticed agenda. Speakers at Open Forum at Standing Committee meetings shall limit their comments to matters relating to the business of the subject Standing Committee. Every agenda shall contain an Open Forum, prior to adjournment of the meeting.

B. Speaker Cards

A person wishing to address the Board or Standing Committee on an agendized matter shall complete and submit a separate Speaker Card to the Secretary of the Board (or his or her designee) for each agenda matter on which he/she wishes to speak prior to the commencement of the Open Session component of the meeting. A person wishing to address the Board or Standing Committee in Open Forum shall complete and submit a Speaker's Card anytime prior to the start of Open Forum.

To enable the efficient and businesslike conduct of meetings, interested public speakers are strongly encouraged to fill out and submit Speaker Cards prior to commencement of meetings. Speaker Cards may be submitted ahead of time by mail, facsimile, email, and by way of the Port's website. To be considered, Speaker Cards submitted by mail and facsimile should be received by the Secretary of the Board at least 24 hours before the commencement of the meeting. Speaker Cards may be submitted electronically up and until three hours prior to the scheduled start of the meeting. Speakers should bring a printed proof of their submittal, and present it to the Secretary upon their arrival at the meeting.

C. Time Limits

Each person timely submitting a Speaker Card shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. Ordinarily, each speaker may speak for up to two minutes, but the Presiding Officer has the discretion to limit or extend the time. In limiting time, the Presiding Officer may take into account relevant factors including, but not limited to, the complexity of the matter, the level of interest in the matter, the total number of public speakers on all matters and the length of the agenda. The Presiding Officer shall announce publicly all reasons justifying any reduction in time allotted to public speakers.

D. Multiple Speaker Cards

Where a speaker timely submits Speaker Cards on more than one agenda item (not including Open Forum), the Presiding Officer may require the speaker to address all issues at one time. The speaker will be given an appropriate allocation of time, not to exceed a total of six minutes.

E. Ceding Time

Speakers who have timely submitted a Speaker Card may cede their time to another speaker by identifying the person on the Speaker Card filed with the Secretary of the Board. A speaker who has ceded time must be present when the

designated speaker who reserved his or her time is called to the podium or else the designated speaker's time will not be extended. Regardless of the amount of time ceded to a designated speaker, the designated speaker's time may not be extended to more than a maximum total of six minutes, unless the Presiding Officer determines that a different time limit is appropriate.

F. Decorum

The Board has a compelling interest in conducting the business of the Port in a professional, businesslike manner and meetings of the Board and Standing Committees must be conducted with decorum and civility. All persons attending Board or Standing Committee meetings are expected to behave in a civil manner at all times. All persons should be treated with courtesy and respect.

1. Persons Addressing the Board or Standing Committees. Each person who addresses the Board or Standing Committees shall do so in an orderly manner and shall not make personal, impertinent, slanderous or profane remarks regarding any member of the Board, Standing Committees, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any meeting shall be subject to enforcement action as set forth in Rule VI below.

All remarks shall be addressed to the Board or subject Standing Committee as a whole and not to any single member thereof, unless in response to a question from such member.

No question may be asked of a member of the Board or of a Standing Committee or of Port staff without permission of the Presiding Officer.

2. Members of the Audience. No person in the audience at a Board or Standing Committee meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impede the orderly conduct of any

meeting. Any person who conducts himself or herself in the aforementioned manner shall be subject to enforcement action as set forth in Rule VI below.

Signs, posters, banners and/or other display material shall not be displayed in the Board Room absent the approval of the Presiding Officer upon a finding that such materials will not be disruptive.

Each member of the audience must be seated. Standees are not permitted in the Board Room except for badged Port staff or authorized media representatives.

V. BOARD AND STANDING COMMITTEE MEETINGS

A. Regular and Special Meetings

The Board and Standing Committees (as such Committees may be established from time to time) shall hold regularly scheduled meetings ("Regular Meetings") at an established time and place suitable for their purposes. Other meetings scheduled for a time or place other than for Regular Meetings shall be designated "Special Meetings."

B. Location of Meetings

All meetings shall be held in the Port of Oakland Headquarters building at 530 Water Street, in the City of Oakland, unless the Board designates and notices another location.

C. Schedule for Regular Meetings

The Presiding Officer or a majority of the Board or Standing Committee shall establish a regular meeting schedule for Board and Standing Committee (if any) meetings. Such schedule shall be amended from time to time as deemed appropriate. The Secretary of the Board shall post and maintain a current schedule of all Board and Standing Committee (if any) meetings, including Special, canceled or continued Meetings. Such schedule shall be available on the Port's website (www.portofoakland.com).

D. Public Notice of Meetings

Public notice of Board and Standing Committee meetings are subject to the Ralph M. Brown Act (Government Code §54950 et seq.) (the "Brown Act"). Under the Brown Act, the Port is obligated to provide public notice of its Board and Standing Committee meeting agendas 72 hours before commencement of Regular Meetings and 24 hours before commencement of Special Meetings. Notwithstanding these requirements, where reasonably possible, the Port shall provide public notice of its Board and Standing Committee meeting agendas 10 days before commencement of Regular Meetings and 48 hours before commencement of Special Meetings.

Where public notice for any matter complies with the requirements of the Brown Act, such notice shall not be deemed defective for failure to comply with the additional public notice provided for in this Rule.

E. Recording/Photography

Members of the public or press attending a meeting of the Board or Standing Committee may record, photograph and broadcast the proceedings, unless such activities constitute a disruption of the proceedings. Flash photography is generally deemed to be disruptive.

F. Special Accommodations

The Port is committed to ensuring equal access to its programs, services, and benefits. To request non-English language interpreters or materials in alternate formats, please contact the Secretary of the Board at least five working days prior to the scheduled meeting date. Any person who desires a modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may submit a written request, electronic request, or telephone request [via the California Relay Service (telephone) for the hearing impaired at (800) 735-2922], to the Secretary of the Board at least five working days prior to the scheduled meeting date. Assistive listening devices are available at every Board and Standing Committee meeting. Please ask the Secretary of the Board for assistance.

VI. ENFORCEMENT OF THESE RULES BY THE PORT

In addition to all other remedies available to the Port at law and equity, the Presiding Officer shall be charged with enforcing the provisions of these Rules, with the assistance of Port staff and security and law enforcement personnel.

A. Presiding Officer

The Presiding Officer at meetings of the Board shall be the President of the Board, or his or her designee. The Presiding Officer at meetings of Standing Committees shall be the Chair of such Committee, or his or her designee. The Presiding Officer is charged with maintaining order during meetings and for enforcing the provisions of these Rules including, but not limited to, violations of:

- The limitations on the scope of public comment set forth in Rule IV(A), above;
- The limitations on speaker time set forth in Rule IV(C), above; and,
- The decorum requirements set forth in Rule IV(F), above.

B. Warnings

The Presiding Officer shall request that a person who is breaching these Rules (a "Noncomplier") cease and desist from such conduct. In such a case, the Presiding Officer shall advise the Noncomplier that a failure to cease and desist will lead to his or her being barred from further audience before the Board or Standing Committee and his or her removal from the meeting.

C. Bar from Further Audience

If, after one or more warnings, the Noncomplier persists in breaching these Rules, the Presiding Officer shall request that the Noncomplier be orderly and silent and shall bar the Noncomplier from speaking for the remainder of the meeting. At such time, the Noncomplier's microphone shall be turned off.

D. Removal of Noncomplier

If, after being barred from further audience, the Noncomplier persists in disturbing the meeting, the Presiding Officer shall order the Noncomplier to leave the meeting. If the Noncomplier does not remove himself or herself, the Presiding Officer may order any law enforcement officer who is on duty at the meeting to remove the Noncomplier from the Board Room.

E. Resisting Removal

Any person who resists removal from the Board Room (or other area where a meeting is held) by a law enforcement officer shall be charged with a violation of this Rule. Any person who violates this Rule shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under these Rules shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment in the City or County Jail for a period not exceeding six months, or by both such fine and imprisonment.

F. Motion to Enforce

If the Presiding Officer fails to enforce these Rules, any member of the Board or subject Standing Committee may move to require him or her to do so, and an affirmative vote of a majority of the Board or subject Standing Committee shall require him or her to do so. If the Presiding Officer of the Board or subject Standing Committee fails to carry out the will of a majority of the Board or subject Standing Committee, the majority may designate another member of the Board or Standing Committee or Port staff to act as Presiding Officer for the limited purpose of enforcing any Rule which it wishes to enforce.

G. Vexatious Noncompliers

Any Noncomplier who has been barred from further audience at three separate meetings shall be deemed a Vexatious Noncomplier. A Vexatious Noncomplier seeking to speak at a Board or Standing Committee meeting shall be limited to one minute of speaker time at Open Forum for the twelve months following the date on which he or

she was deemed a Vexatious Noncomplier. A Vexatious Noncomplier who is barred from further audience at a subsequent Board or Standing Committee meeting during this twelve-month period shall be barred from attendance at any Board or Standing Committee meeting for twelve months from the date of such meeting.

VII. ENFORCEMENT OF THE OPEN MEETING LAWS BY THE PUBLIC

Where a member of the public alleges that the Port has failed to comply with the Brown Act, these Rules, or any other applicable laws that may regulate the noticing and conduct of Board and Standing Committee meetings or public access to the Port, including the Public Records Act (the "Open Meeting Laws"), such member of the public must comply with the cure and correction procedures set forth in these Rules. The Port Attorney shall be charged with investigating and responding to any such allegations.

A. Request for Cure and Correction Required

Any person alleging Port noncompliance with the Open Meeting Laws shall submit a written Request for Cure and Correction to the Secretary of the Board clearly describing the nature of the alleged noncompliance, including the facts and circumstances of the alleged noncompliance, any legal theories supporting the allegation, and the nature of the corrective action requested. Generalized concerns or conclusory arguments, unsupported by specific factual or legal arguments against the challenged actions, are not sufficient. Oral comments made to Port staff or at meetings shall not be accepted in lieu of a Request for Cure and Correction.

B. Timelines for Submitting the Request for Cure and Correction

When the alleged noncompliance was the failure to adequately provide notice on the agenda of an action taken in open session of a Board or Standing Committee meeting, the Request for Cure and Correction must be made within thirty (30) days of that action. In all other cases, the deadline is ninety (90) days from the time the action was taken.

C. Port Attorney Investigation and Response

Upon receipt of the Request for Cure and Correction, the Port Attorney shall investigate the alleged noncompliance and shall respond to the requestor within thirty (30) days of receipt by the Secretary of the Board. The Port Attorney's response shall indicate whether the Request was found to have merit. If the Request is found to be without merit, it shall be dismissed by the Port and the Port shall take no further action. If the Request is found to have merit, the Port Attorney shall indicate either that a cure or correction has been made, or that none will be made.

D. Vexatious Requestors

Any requestor who files three Requests for Cure and Correction found to be without merit by the Port Attorney, shall be deemed a "Vexatious Requestor." Further Requests submitted by a Vexatious Requestor shall be accompanied by a \$300.00 deposit. Should any Request submitted by the Vexatious Requestor be found to have merit by the Port Attorney, the \$300.00 shall be refunded to the Vexatious Requestor. Otherwise, deposits shall be nonrefundable.

E. 15-Day Litigation Limitations Period

Requestors submitting Requests for Cure and Correction are advised that any action to seek judicial review of the Port Attorney's response to a Request may be time barred under the Brown Act if such action is filed more than 15 days after the requestor's receipt of the Port Attorney's response.

F. Exhaustion of Administrative Remedies

The Port has a compelling interest in complying with the Open Meeting Laws. The Port is entitled to learn of any allegations of noncompliance with the Open Meeting Laws and shall be provided the opportunity to cure and correct any such noncompliance prior to institution of any other administrative action concerning the Port or the institution of litigation. For these reasons, the Request for Cure and Correction procedures set forth in these Rules have been established as the Port's one and only system for

receiving allegations of noncompliance with the Open Meeting Laws and for investigating and responding to such allegations. In any lawsuit alleging noncompliance with the Open Meeting Laws that may be filed against a Port action, the issues and evidence shall be limited to those raised in a timely Request for Cure and Correction. Failure to file a timely Request for Cure and Correction shall be an absolute bar to further administrative and judicial review of the alleged noncompliance with the Open Meeting Laws. Where, as here, administrative machinery exists for the resolution of Open Meeting Law complaints, the courts will not act until such administrative procedures are fully utilized and exhausted. The Port Attorney shall be granted substantial deference in reasonably interpreting these Rules. Litigants whose claims under these Rules are found to be without probable cause shall be required to reimburse the Port for its reasonable attorneys' fees and costs, including an amount attributable to Port Attorney time.

VIII. CONTACTING THE PORT

A. Secretary of the Board

Meeting attendees who have questions, suggestions, or concerns regarding any aspect of public meetings at the Port of Oakland, or who otherwise need to contact the Secretary of the Board, are invited to contact the Office of the Board Secretary as follows:

John Betterton	Daria Edgerly
Secretary of the Board	Asst. Secretary of the Board
510.627.1696 (w)	510.627.1337 (w)
510.599.1900 (c)	dedgerly@portoakland.com
jbetterton@portoakland.com	

B. Mailing List

Members of the public who would like to be on the distribution list for all Port agendas and meeting notices are invited to contact the Port by e-mail at:

board@portoakland.com or by mail at: Port of Oakland, 530 Water Street, Oakland, CA 94607.

C. Website

For meeting schedules, agendas & related material, minutes, etc., please visit the Port's website at: www.portoakland.com.