



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

NOVEMBER 8, 2022 MINUTES

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

## ANNOUNCEMENTS AND ROLL CALL

**The following were present:**

**Board Members:** Skip Novakovich, President (via telephone)  
Kenneth Hohenberg, Vice President (via telephone)  
Thomas Moak, Secretary (via telephone)

**Staff Members:** Tim Arntzen, Chief Executive Officer (via telephone)  
Tana Bader Inglima, Deputy Chief Executive Officer (via telephone)  
Larry Peterson, Director of Planning (via telephone)  
Amber Hanchette, Director of Real Estate and Operations (via telephone)  
Nick Kooiker, Chief Finance Officer (via telephone)  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant (via telephone)

## PLEDGE OF ALLEGIANCE

Commissioner Novakovich led the Pledge of Allegiance.

## APPROVAL OF THE AGENDA

***MOTION:*** Commissioner Hohenberg moved to approve the Agenda as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

## PUBLIC COMMENT

No comments were made.

## CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated November 2, 2022**  
Direct Deposit and E-Payments totaling \$120,101.53
- B. Approval of Warrant Register Dated November 8, 2022**  
Expense Fund Voucher Number 104257 through 104288 for a grand total of \$129,666.08
- C. Approval of Regular Commission Meeting Minutes October 25, 2022**
- D. Approval to Surplus Property; Resolution 2022-31**
- E. Approval to Amend Port Commission Rules of Policy and Procedure; Resolution 2022-35**
- F. Approval of CEO's Goals and Objectives; Resolution 2022-36**

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**MOTION:** *Commissioner Hohenberg moved to approve the Consent Agenda as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

*Commissioner Novakovich recessed the Regular Meeting at 2:04 p.m. and declared an Open Public Hearing for discussion regarding 2023-2024 Budget and the 2023 Levy Certification.*

## PUBLIC HEARINGS

### A. 2023-2024 Budget Adoption: Resolution 2022-32

Mr. Kooiker presented Resolution 2022-32, adoption of the 2023-2024 Budget.

## PUBLIC COMMENTS

No comments were made.

**MOTION:** *Commissioner Hohenberg moved to approve Resolution 2022-32 adopting the Port of Kennewick's 2023 and 2024 Budget as presented; and the board further ratifies and approves all action by Port officers and employees in furtherance hereof; Commissioner Moak seconded.*

### **Discussion:**

*Commissioner Hohenberg stated this is his first time going through the budget process and the Commission has been provided a lot of information since July and he has had some discussions with Mr. Arntzen since June. Commissioner Hohenberg appreciates the process and staff's time in answering questions. Commissioner Hohenberg feels the Port is on the right path forward, over the next two-year budget cycle. He thanked staff for all the great work and insuring that the Commission had full understanding and vetting before we got to this point.*

*Commissioner Moak stated the Commission has discussed the budget very thoroughly and indicated that the budget is a living document. This is a two-year budget, and the Commission has opportunities throughout, as circumstances change, as the economy changes, management's concerns with inflation and what that will do to our budget, and whether our inflation works or doesn't work over the next two years will change a lot of things or could potentially change a lot of things with the budget. We know that we have to be flexible, but it does give us a good base to start our year and we have a lot of things that we want to do with that budget and he hopes we can accomplish those projects in the next two years.*

*Commissioner Novakovich agrees with Commissioners Hohenberg and Moak and stated Mr. Kooiker and his team did a great job, and the process went smoothly. Commissioner Novakovich liked the way Mr. Kooiker led the Commission through the process, which was presented several times and answered questions so that we were able to arrive at this today. Thank you, Mr. Kooiker and team, for doing a wonderful job.*

***With no further discussion, motion carried unanimously. All in favor 3:0.***

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***B. Levy Certification; Resolution 2022-33***

***C. Increase in Tax Capacity; Resolution 2022-34***

Mr. Kooiker presented Resolution 2022-33 certifying the Port's Levy Certification, which allows the Port to collect taxes in 2023 and Resolution 2022-34 allows the Port to take the 1% statutory increase.

## **PUBLIC COMMENTS**

No comments were made.

***MOTION:*** *Commissioner Hohenberg moved to approve Resolution 2022-33, certifying the Port of Kennewick's tax levy for 2023 collections and Resolution 2022-34 increasing the Port of Kennewick's tax levy capacity in 2023; Commissioner Moak seconded.*

***Discussion:***

*Commissioner Hohenberg reaffirmed that as things continue to build out and the levy rate continues to go down, all of us that are fortunate enough to live in the Port district, we get real value out of our tax dollars and we see that throughout the district, not just what some of the big projects we have going on in Kennewick right now, but throughout Richland, West Richland, and Benton City. Commissioner Hohenberg is happy to support both of these Resolutions.*

*Commissioner Moak stated there is substantial need in the Port of Kennewick for these revenues and for the 1%. Very clearly, we can't deal with the economic development that we want to do totally with the dollars we have available; and as Commissioner Hohenberg mentioned, how little we are getting off our tax levy, which is our major source of revenue for the Port. Other ports have a lot of other leased property and other earned income outside of the property tax levy. We are heavily dependent on the property tax, and he thinks there is substantial need for the 1% increase in the levy. Commissioner Moak appreciates the work Mr. Kooiker has done in preparing all of the documents.*

***With no further discussion, motion carried unanimously. All in favor 3:0.***

***Commissioner Novakovich closed the Public Hearing at 2:15 p.m. regarding the 2023-2024 Budget and 2023 Levy Certification and reconvened the Regular Commission Meeting.***

## **NEW BUSINESS**

***A. Bid Award: Columbia Gardens Public Restroom (Double J Excavation)***

Ms. Hanchette presented Resolution 2022-37, approving a contract with Double J Excavation for the construction of the public restroom facility in Columbia Gardens.

Commission and staff discussion commenced regarding location and design of the public restroom facility.

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***MOTION:*** *Commissioner Hohenberg moved to approve Resolution 2022-37, approving a contract with Double J Excavating for construction of a public restroom facility in Columbia Gardens and further authorize the Chief Executive Officer to execute all documents and agreements; and that all action by port officers and employees in furtherance hereof is ratified and approved; Commissioner Moak seconded.*

## **PUBLIC COMMENT**

No comments were made.

## ***Discussion:***

*Commissioner Hohenberg applauded staff and stated this is going to be a great addition for the food vendors, wineries, and patrons that visit Columbia Gardens. Commissioner Hohenberg couldn't be more excited that we are finally to this point, and he thinks one of the challenges for any elected official, is everybody wants projects done yesterday, instead of having go through processes. Commissioner Hohenberg is glad to see that we are at this point and thanked everyone involved.*

***With no further discussion, motion carried unanimously. All in favor 3:0.***

## **REPORTS, COMMENTS AND DISCUSSION ITEMS**

### ***A. DPZ Update***

Mr. Peterson shared DPZ Co Design's fall newsletter, which featured Vista Field. Mr. Peterson pointed out that Vista Field was placed above the King of England's project in Wales.

### ***B. Greenbrier Surety Bond Options***

Ms. Hanchette stated Greenbrier, a Port tenant, recently requested permission to construct a tent structure. The project helps Greenbrier grow their workforce and repair more rail cars. The ground lease requires a surety bond for any improvements or additions valued over \$15,000. Taud Hume, the Port's legal counsel for real estate and planning items, will address the specifics of the surety bond.

Mr. Hume outlined the aspects of his memo regarding surety bonds (Exhibit A) and Greenbrier has requested to limit the value of the bond to \$1,250,000 instead of the required \$2,500,000.

Commissioner Moak asked for a staff recommendation regarding the limit of the surety bond.

Mr. Arntzen, Ms. Hanchette, and Mr. Hume will meet with Greenbrier to reach a tentative agreement on the amount and then come back to the Commission at the next meeting. Mr. Arntzen proposed reducing the bond, but not waiving it entirely. Mr. Arntzen would like the attorneys to negotiate the amount and bring it back to the Commission for approval.

Commissioner Hohenberg stated there is risk in everything we do and would like to see staff bring back something that works for both entities.

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Commissioner Novakovich agrees with Mr. Arntzen's comments, and we need to be cognizant of what our mission is and fostering economic development.

### ***C. State Auditor's Office 2020 Financial Review***

Mr. Kooiker reported the State Auditor's Office reviewed our 2020 financial statement audit by Clifton Larson Allen and certified and accepted the audit. Mr. Kooiker stated this is the Port's 26<sup>th</sup> year of clean audits. Additionally, Mr. Kooiker was recently notified that because the Port's revenues have increased, our accountability audit will be yearly instead of every other year.

Commissioner Hohenberg stated this is an exceptional job by staff and it is nice to get a clean report.

Commissioner Moak stated the longevity of clean reports stands well for the finance team and everyone else that is part of the process.

Commissioner Novakovich is very proud of this and stated 26 years of clean audits is quite a record. It goes to show how well the Port is managed and it is a wonderful attribute that contributes to the skills of our staff and the work they do.

### ***D. November 22, 2022 and December 27, 2022 Commission Meetings***

Ms. Scott stated in the past, the Commission cancels the last Meetings in November and December; however, this year, staff is proposing a brief Commission Meeting on November 22, 2022, which consists of the Consent Agenda, the CEO Evaluation and any other necessary items. This would give the Port team more time to process end-of-the-year tasks.

Commissioner Novakovich suggested the Commission hold the regular November 22, 2022 Commission Meeting with a very brief agenda that consists of the Consent Agenda and the CEO Evaluation. Additionally, we would cancel the December 27, 2022 Commission Meeting.

*It is the Consensus of the Commission to hold the regular Commission Meeting on November 22, 2022 with a very brief agenda and cancel the December 27, 2022 Commission Meeting.*

### ***E. Chief Executive Officer Annual Performance Review***

Mr. Kooiker reported that the CEO's performance review has been completed and is ready for Commission consideration; however, Ms. Lake is unavailable today and stated it will be presented at the November 22, 2022 Commission Meeting.

### ***F. Continuation of Local Emergency Declaration of Authority***

Mr. Arntzen stated on June 1, 2022, the Port began holding hybrid Meetings to meet the newly revised Open Public Meetings Act. Mr. Arntzen stated the Washington state's declaration of emergency has been lifted as of October 31, 2022 and outlined Resolution 2022-38, which refreshes the Declaration of Local Emergency and leaves in place the CEO's current delegation of authority. Under that authority, the CEO would continue to manage local conditions and Port

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Commission meetings would also continue to be held under the hybrid model by which the Port currently operates (Exhibit B).

Commission Hohenberg supports this Resolution and inquired when the federal state of emergency is over, if someone is traveling or unable to attend a physical Meeting, will the Port ensure that staff or Commission is still able to remote in if the need arises.

Mr. Arntzen stated the Port continues to take a cautious approach and will continue to update the Commission and the public on the ever changing mandates.

Commission Moak stated in the updated Commission Rules of Policy and Procedure allows for Commissioners to access a Meeting remotely, irrespective of the emergency mandate.

***MOTION: Commissioner Moak moved to approve Resolution 2022-38 which works with and will continue the local emergency declared by the Commission in Resolution 2020-06; Commissioner Hohenberg seconded.***

## **PUBLIC COMMENT**

No comments were made.

***With no further discussion, motion carried unanimously. All in favor 3:0.***

***G. Commissioner Meetings (formal and informal meetings with groups or individuals)***  
Commissioners reported on their respective committee meetings.

## ***H. Non-Scheduled Items***

Ms. Bader Inglima shared photos of the new Department of Transportation signage on Highway 395 for Muret Gaston Winery and Gordon Estate Winery and the US Army Corps of Engineer's warranty work on the 1135 Shoreline Restoration project on Clover Island.

Ms. Hanchette gave a wind damage report.

Mr. Arntzen congratulated the Commission on passing the 2023-2024 Budget. Mr. Arntzen stated we started the Budget discussions early and he believes it worked out well.

Mr. Arntzen wanted to personally thank the Commission for their support of him on the Covid protocols and stated it is a hot topic. It is a balancing act in keeping the Commission and staff safe and being accessible to the public.

Commissioner Hohenberg stated there are a lot of good things going on and thanked everyone.

## **PUBLIC COMMENTS**

No comments were made.

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## COMMISSION COMMENTS

No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:13 p.m.

### ***APPROVED:***

### **PORT of KENNEWICK BOARD of COMMISSIONERS**

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*Skip Novakovich*

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*Skip Novakovich, President*

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*Kenneth Hohenberg*

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*Kenneth Hohenberg, Vice President*

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**Thomas Moak**

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*Thomas Moak, Secretary*

# ***PORT OF KENNEWICK***

## **RESOLUTION 2022-31**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE PORT CHIEF EXECUTIVE OFFICER TO SELL AND CONVEY SURPLUS PROPERTY***

**WHEREAS**, the Board of Commissioners of the Port of Kennewick met this 8th day of November, 2022, a quorum of the Commissioners being present; and

**WHEREAS**, from time to time it is necessary to surplus items no longer needed for Port District purposes; and

**WHEREAS**, Washington State Auditor's Office (SAO) updated their best practices for internal controls over small and attractive assets which recommends tracking assets with a value of \$300 or more. Port of Kennewick's prior procedures including tracking all small and attractive assets regardless of value. Due to cost benefit, the Port of Kennewick will follow the SAO guidance and stop tracking assets with a value less than \$300; and

**WHEREAS**, RCW 53.08.090 provides that the Port Commissioners may authorize the Port Chief Executive Officer to sell and convey property; and

**WHEREAS**, prior to each such disposition of Port property, the Port Chief Executive Officer is directed to present to the Commission an itemized list of the property and to make written certification that the listed property is no longer needed for Port District purposes.

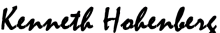
**NOW, THEREFORE, BE IT RESOLVED** the Port of Kennewick Commissioners authorize the Chief Executive Officer to surplus Port property no longer needed for Port purposes as attached in "Exhibit A" and the small and attractive assets under \$300 value removed from the inventory tracking list are attached in "Exhibit B".

**ADOPTED** by the Board of Commissioners of Port of Kennewick this 8th day of November 2022.


#### ***PORT of KENNEWICK BOARD of COMMISSIONERS***

By:   
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SKIP NOVAKOVICH, President

By:   
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KENNETH HOHENBERG, Vice President

By:   
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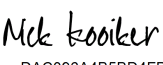
THOMAS MOAK, Secretary



**RESOLUTION 2022-31**  
**“Exhibit A”**

Asset	Property Description	Date in Service	Cost	Book Value	Disposal Reason
230	Sprinkler Timer Remote Control	7/9/2018	\$ 460.28	\$ -	Stolen
235	Dual Monitor Arms	3/13/2018	\$ 428.97	\$ -	Broken
262	Utility Trailer - Garbage Pick Up	8/1/2020	\$ 325.79	\$ -	Stolen
266	HP Laptop	12/1/2020	\$ 1,840.71	\$ -	Broken
277	Signs - VFDF A	7/15/1995	\$ 1,225.69	\$ -	Replaced
313	Doors - VFDF A	3/31/1997	\$ 4,774.05	\$ 1,700.79	Replaced
319	Signs - VFDF B	4/30/1997	\$ 396.36	\$ -	Replaced
336	Blinds - VFDF A	8/31/1997	\$ 298.08	\$ -	Replaced
365	Sign for Building - VFDF A	3/10/1998	\$ 4,062.96	\$ 1,540.63	Replaced
428	Frame Overhead Door - VFDF A	8/25/1998	\$ 7,858.38	\$ 3,077.85	Replaced
495	Restroom Improvements - VFDF A	12/15/1998	\$ 593.01	\$ 21.75	Replaced
502	Frame Door - VFDF A	12/29/1998	\$ 1,652.10	\$ 66.18	Replaced
513	Water Heater & Faucet - VFDF A	1/12/1999	\$ 810.00	\$ -	Replaced
550	Storage Room Shelving - VFDF A	7/13/1999	\$ 905.58	\$ -	Replaced
574	Sign - VFDF A	10/12/1999	\$ 117.72	\$ 8.21	Replaced
632	HVAC 5-Ton Condensing Unit - VFDF A	6/27/2000	\$ 2,068.21	\$ 206.79	Replaced
718	HP Designjet 800PS Plotter	2/21/2003	\$ 7,619.99	\$ -	Broken
736	HVAC Lennox HS29 - VFDF A	5/31/2003	\$ 2,409.68	\$ -	Replaced
771	Lennox Air Conditioner - VFDF A	5/6/2004	\$ 2,057.70	\$ -	Replaced
772	Lennox Air Conditioner - VFDF A	10/25/2004	\$ 2,978.25	\$ -	Replaced
800	Furniture - Airport	4/1/2005	\$ 5,834.71	\$ -	Broken
890	Furniture - Airport	3/31/2006	\$ 1,822.69	\$ -	Broken
941	Compressor TXV - Oak Street Building A	12/31/2007	\$ 1,910.95	\$ -	Replaced
1047	Compressor - Oak Street Building A	6/30/2009	\$ 2,109.68	\$ -	Replaced
1064	Asset Replacement Program - Oak Street Building A	8/31/2010	\$ 6,600.00	\$ -	Outdated
1154	Baracuda Network Back up	4/30/2013	\$ 20,589.87	\$ -	Outdated
1173	Optiplex Mini Tower	8/31/2013	\$ 1,167.91	\$ -	Outdated
1213	Server Software Licenses	6/24/2015	\$ 7,853.12	\$ -	Expired License
1215	Cisco Wireless Access & 5 yr Software License	7/14/2015	\$ 2,409.61	\$ -	Expired License
1229	Autocad Software	10/1/2015	\$ 5,062.56	\$ -	Expired License
1232	Microsoft Surface Pro	9/1/2016	\$ 2,126.30	\$ -	Outdated
1233	Microsoft Surface Pro	9/1/2016	\$ 2,118.68	\$ -	Outdated
1253	SQL Server & License for Laserfiche	7/1/2017	\$ 3,921.12	\$ -	Moved to Cloud After Ransomware
1254	Power Monitor - Marina	3/1/2017	\$ 1,598.81	\$ -	Broken
1260	Laserfiche Storage - Hard Drive	12/31/2018	\$ 1,198.90	\$ -	Replaced
1261	Laserfiche 3 year Virus Sophos Software	12/31/2018	\$ 1,699.70	\$ -	Expired License
1266	Blinds - Nick's Office	6/30/2018	\$ 2,267.50	\$ 809.82	Water Damage
1275	Barracuda Server & Email Archive	2/13/2019	\$ 10,864.56	\$ 2,353.99	Moved to Cloud After Ransomware

CFO/Auditor Certification:

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Nick Kooiker

11/2/2022

Date

*RESOLUTION 2022-31*  
*“Exhibit B”*

Assets Under \$300 Removed Off Attractive Asset Tracking List

\*All Below Assets Have a Book Value of \$0

Asset #	Property Description	Date in Service	Cost
5	6ft ladder	4/18/02	\$ 118
16	Key Box - Tel Key	9/15/88	\$ 138
35	4' Fiberglass Step Ladder	10/12/2004	\$ 42
49	Door Closers-Restroom Clover Island	5/15/1979	\$ 127.76
82	Restroom Improvements Clover Island	5/15/1983	\$ 64.18
108	DeWalt Cordless drill combo set	7/8/2011	\$ 270
109	Prim 20-20 game camera	3/30/2012	\$ 159
110	Prim 20-20 game camera	3/30/2012	\$ 159
116	Pro Webcam C910	1/18/2012	\$ 76
126	16" Cutoff Saw	3/6/2012	\$ 76
140	Booster Pac SOR ES2500	1/6/2012	\$ 190
152	Bosch Jig Saw	7/4/1905	Under \$300
153	Stanley Toolbox	1/6/2012	Under \$300
154	6' Ladder	1/6/2012	Under \$300
157	Wheelbarrow (4)	1/6/2012	Under \$300
158	6' Folding Table (2)	1/6/2012	Under \$300
159	Printer Stand	1/6/2012	Under \$300
165	Werner Extension Ladder 16'	1/6/2012	Under \$300
168	Husqvarna Hedge Trimmer	7/2/2013	\$ 244
170	Whistler Inspection Camera	1/23/2013	\$ 107
172	US General Tool Cart	7/1/2013	\$ 141
176	Slide Base Used Chair	6/11/2014	\$ 64
177	Slide Base Used Chair	6/11/2014	\$ 64
178	Slide Base Used Chair	6/11/2014	\$ 64
179	Slide Base Used Chair	6/11/2014	\$ 64
180	Slide Base Used Chair	6/11/2014	\$ 27
181	Slide Base Used Chair	6/11/2014	\$ 27
184	Dewalt Drill Set - 18 volt Cordless Combo s	3/24/2015	\$ 161
187	Dremel Multi-Max Oscillating Tool	3/26/2015	\$ 140
188	Parts Washer	11/26/2013	\$ 141
189	Porter Cable Compressor	10/28/2014	\$ 194
190	HP Printer - Desk Jet 2542	11/18/2014	\$ 75
194	Stainless work island	3/24/2015	\$ 273

*RESOLUTION 2022-31*  
*"Exhibit B" Continued*

Assets Under \$300 Removed Off Attractive Asset Tracking List

\*All Below Assets Have a Book Value of \$0

Asset #	Property Description	Date in Service	Cost
195	Stainless work island	3/24/2015	\$ 273
197	28' Aluminum Extension Ladder	10/11/2016	\$ 292
200	Dremel Grinder 12V	2/18/2016	\$ 108
202	Tester Multimeter	2/29/2016	\$ 113
203	Dewalt 18V Compact Drill	6/7/2016	\$ 151
206	Dremel 120V Saw Kit	5/11/2016	\$ 140
208	Cement Mixer	6/14/2016	\$ 239
209	6" Dual Action Polisher	6/20/2016	\$ 74
210	Booster Pac SOR ES5000	6/7/2016	\$ 173
211	Battery Tender	6/27/2016	\$ 205
213	Game Camera Primos 16MP Pro	9/18/2017	\$ 141
215	Multimeter - T5-600	6/6/2017	\$ 130
216	20" Aluminum Extension Ladder	4/18/2017	\$ 162
221	Bernzomatic Torch Kit	2/7/2019	\$ 98
222	DW Flexvolt 60V Grinder	1/9/2019	\$ 292
223	Dewalt Cordless Drill 4 tool combo	3/1/2019	\$ 270
224	2 gallon sprayer	4/5/2019	\$ 76
225	12' Step Ladder	8/2/2019	\$ 292
227	Bench Grinder 8"	12/28/2018	\$ 206
237	Dual Monitor Arms	6/11/2018	\$ 313
256	LED Task Light	4/1/2020	\$ 310

CFO/Auditor Certification:

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*Nick Kooiker*

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Nick Kooiker

11/2/2022

Date

## PORT OF KENNEWICK

### RESOLUTION NO. 2022-32

#### A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PORT OF KENNEWICK ADOPTING THE 2023 & 2024 BUDGET


**WHEREAS**, the Board of Commissioners of Port of Kennewick met at a regular meeting on October 25, 2022, a quorum of the Commission being present; and


**WHEREAS**, Port of Kennewick has properly given notice of the public hearing held on October 25, 2022 to consider Port of Kennewick's Budget for the 2023 and 2024 calendar years, pursuant to RCW 84.55.120; and


**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Port of Kennewick after a public hearing, and after duly considering all relevant evidence and testimony presented, has adopted the attached budget for Port of Kennewick for the year 2023 and 2024.

**ADOPTED** by the Board of Commissioners of Port of Kennewick at its regular meeting on November 8, 2022.

#### PORT OF KENNEWICK BOARD OF COMMISSIONERS

By:   
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SKIP NOVAKOVICH, President

By:   
89F77EAC8921416...  
KEN HOHENBERG, Vice President

By:   
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THOMAS MOAK, Secretary



# Port of Kennewick

## 2023/24 PRELIMINARY BUDGET

*Fostering Jobs*

*Building Infrastructure*

*Enhancing Quality of Life*



# Mission & Goals

**The Port of Kennewick's mission is to provide and support sound economic growth opportunities that create jobs and/or improve the quality of life of the port district citizens.**

## **Economic Development and Job Creation Goals:**

- Provide the public with high quality projects and services within a healthy work environment.
- Evaluate economic development opportunities based on results to be derived district-wide versus project-specific or jurisdiction-specific.
- Encourage transparency, open competition and equal project consideration, fostering a reputation for fairness with the local business community.
- Seek to fund projects with available resources.
- Support intergovernmental cooperation by partnering with entities which demonstrate support.

## **These above goals will be accomplished through the following projects:**

- Vista Field Redevelopment
- Kennewick's Historic Waterfront District
  - Columbia Drive Redevelopment
  - Clover Island Miscellaneous Projects
  - Clover Island 1135 Shoreline Restoration



## Financial, Operational, and Budget Philosophy:

- The Port is maintaining its goal of a balanced budget.
- The Port is fiscally sound and is ensuring its available resources do not exceed expenditures.
- The Port's budget allows funding for additional staff in order to facilitate budgeted capital projects while promoting fiscal responsibility.
- The Port will continue to report Return on Investment as appropriate and share audited financial reports with the public.

## 2023/24 PRELIMINARY BUDGET\*

Total Revenues	\$ 17,703,661
Total Expenses (less capital and promotional hosting)	\$ 12,903,089
<b>Profit (Loss)</b>	<b>\$ 4,800,571</b>
Capital Expenses	\$ 10,062,025
Promotional Hosting Expenses	\$ 24,125
Beginning Cash on Hand	\$ 9,755,248
Reserve Fund	\$ 2,500,000
Unrestricted Fund Balance	\$ 1,969,670
<b>Ending Cash on Hand</b>	<b>\$ 4,469,670</b>

\*The 2023 & 2024 Preliminary Budget PowerPoint Presentation is integral to the Port of Kennewick's preliminary budget document.

\*For questions regarding this report, contact the Port's Chief Financial Officer, Nick Kooiker at 509-586-1186

# PORT OF KENNEWICK

## RESOLUTION NO. 2022-33

### A RESOLUTION OF THE BOARD OF COMMISSIONERS FOR THE PORT OF KENNEWICK CERTIFYING THE PORT'S 2023 LEVY

**WHEREAS**, the Board of Commissioners of the Port of Kennewick met and considered its budget for the calendar year 2023 and 2024 at a regular meeting on October 25, 2022, a quorum of the Commission being present; and

**WHEREAS**, a legal notice of public hearing on the Preliminary Budget of Port of Kennewick for the calendar year of 2023 and 2024 was published in accordance with RCW 53.35.020, RCW 53.35.045 and RCW 84.52.020; and

**WHEREAS**, the Port's actual levy amount from 2022 year was \$4,685,767; and

**WHEREAS**, the population of the Port is more than 10,000; and

**WHEREAS**, the Board of Commissioners of Port of Kennewick after hearing and after duly considering all relevant evidence and testimony presented, determined that the Port of Kennewick requires a regular levy for the 2023 tax year in the amount of \$5,400,000, which includes an increase in property tax revenue from the previous year, amounts resulting from the addition of new construction, improvements to property, any increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of the district and in its best interest.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners of the Port of Kennewick substantiate that an increase in the regular property tax levy is hereby authorized for the levy to be collected in 2023 tax year. The dollar amount of the increase over the actual levy amount from the previous year shall be approximately \$50,000, which is a one-percent increase from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, any increase in the value of state assessed property, any annexations that have occurred and refunds made.

**BE IT FURTHER RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby direct the Chief Financial Officer/Auditor to certify a copy of this resolution and forward the same to the Clerk of the Board of the County Commissioners in accordance with RCW 84.52.020.

**APPROVED** and dated by the Commissioners of the Port of Kennewick at a Regular Meeting on November 8, 2022.

#### PORT of KENNEWICK BOARD of COMMISSIONERS

DocuSigned by:

By:

*Skip Novakovich*

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SKIP NOVAKOVICH, President

DocuSigned by:

By:

*Kenneth Hohenberg*

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KENNETH HOHENBERG, Vice President

DocuSigned by:

By:

**Thomas Moak**

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THOMAS MOAK, Secretary



## CERTIFICATION OF TAX LEVY

### STATE OF WASHINGTON County of Benton

In accordance with RCW 84.52.020, I, **Nick Kooiker**, CFO/Auditor for Port of Kennewick, do hereby certify to the Benton County legislative authority that the Commissioners of said district request that the following levy amounts be collected in 2023 as provided in the district's budget, which was adopted following a public hearing held on November 8, 2022. I hereby request the Board of County Commissioners of Benton County, Washington, to make said regular levy of the Kennewick Port District, as set forth below, and that said regular levy is for operation, maintenance, land acquisition, construction, and the levy is to be distributed as follows:

Expense (General) Fund	\$5,390,000
Administration Refund Fund	\$10,000

<b><i>Total Regular Levy</i></b>	<b><i>\$5,400,000</i></b>
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<i>Population Certification:</i>	<i>Above 10,000</i>
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*If the above certification is more than the Assessor's levy calculations, the Assessor's Office is directed to reduce the Expense (General) Fund amount to the actual Assessor's levy calculation.*

**CERTIFIED** this 8<sup>th</sup> day of November, 2022.

***CERTIFIED BY:***

**PORT of KENNEWICK  
CFO/AUDITOR**

DocuSigned by:

*Nick Kooiker*

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Nick Kooiker

# PORT OF KENNEWICK

## RESOLUTION NO. 2022-34

### A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING AN INCREASE IN TAX LEVY CAPACITY PURSUANT TO RCW 84.55.120 AND WAC 458-19-005

**WHEREAS**, a public hearing was held by the Board of Commissioners for the Port of Kennewick regarding the 2023 and 2024 budget; and

**WHEREAS**, pursuant to RCW 84.55.120 and WAC 458-19-005, the rate of inflation (IPD rate) for 2023 is 6.457% and the limit factor for property taxes for 2023 is 101%; and

**WHEREAS**, the Port of Kennewick's levy amount from the previous year was \$4,685,767; and

**WHEREAS**, the Port has set its increase in tax levy capacity for the 2023 and 2024 budget at one percent (1%) and finds there is substantial need to set the levy limit at one hundred and one percent (101%); and


**WHEREAS**, the Board of Commissioners of the Port of Kennewick Taxing District, after hearing and after duly considering all relevant evidence and testimony presented, finds there is a substantial need to set the levy limit at one hundred one percent (101%), in order to discharge the expected expenses and obligations of the district and in its best interest; and


**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the Port of Kennewick Taxing District that an increase in the regular property tax levy, in addition to the increase resulting from the addition of new construction and improvements to property and any increase in levy value of state assessed property, is hereby authorized for the 2023 levy in the amount of approximately \$50,000 which is a one (1%) percentage increase from the previous year.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick at a Special Meeting held this 8<sup>th</sup> day of November 2022; and duly signed by its proper officers in the authentication of its passage on said date.

#### *PORT of KENNEWICK BOARD of COMMISSIONERS*

By:   
DocuSigned by:  
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SKIP NOVAKOVICH, President

By:   
DocuSigned by:  
89F77EAC8921416...  
KENNETH HOHENBERG, Vice President

By:   
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THOMAS MOAK, Secretary

# PORT OF KENNEWICK

## Resolution No. 2022-35

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AMENDING THE PORT COMMISSION RULES OF POLICY AND PROCEDURE***

**WHEREAS**, the Port of Kennewick Commission adopted Resolution 2011-05 on February 22, 2011 establishing a formal policy and procedures document to address the specific roles, expectations of conduct, knowledge, disclosures, prohibitions, legal requirements, and accountability of the elected officials who are responsible for the current operation and future direction of the Port of Kennewick; and

**WHEREAS**, the Commission approved several updates to the Rules of Policy and Procedure via Resolution No. 2016-01, Resolution No. 2017-16, Resolution No. 2019-24, and Resolution No. 2022-19; and Resolution No. 2022-23; and

**WHEREAS**, the Commission has determined that further updates to Section 6.14 of the Rules of Policy and Procedure are warranted based on the need for greater clarity.

**NOW, THEREFORE; BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves amending Section 6.14 of Port Commission Rules of Policy and Procedure as attached.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 8th day of November 2022.

### ***PORT of KENNEWICK BOARD of COMMISSIONERS***

By: DocuSigned by:  
*Skip Novakovich*  
0E53A30E1C8E442...  
SKIP NOVAKOVICH, President

By: DocuSigned by:  
*Kenneth Hohenberg*  
89F77EAC8921416...  
KENNETH HOHENBERG, Vice President

By: DocuSigned by:  
*Thomas Moak*  
A35176A2D2CD413...  
THOMAS MOAK, Secretary

6.14 Public Comment. Public comment shall be permitted at Commission meetings in accordance with these Rules and as required by RCW 42.30.240, as it now exists or as may be amended in the future. Comments shall be received at the beginning of each meeting, and at the end of each meeting, as identified on the agenda. ~~The Commission President, at his discretion, may offer an opportunity for additional public comments on any agenda item which requires Commission action, excluding the Consent Agenda.~~ Either the President or staff may read the following guidelines into the record. The public comment required under this section may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting. When the Port receives written testimony intended for and accepted by the Commission, this testimony must be distributed to the full Commission. The deadline for the submission of written testimony is not less than 24 hours prior to the meeting at which Commission action will be taken. Upon the request of any individual who will have difficulty attending a Commission meeting by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult, the Commission shall, when feasible, provide an opportunity for that individual to provide oral comment at the meeting remotely if oral comment from other members of the public will be accepted at the meeting.

6.14.1 Speakers attending in person shall move to the lectern and shall comment only after being recognized by the Presiding Officer. ~~At the conclusion of in-person public comments, the Presiding Officer will request comments from members of the public participating remotely.~~

6.14.2 Speakers shall state their names and ~~addresses~~ city of residence prior to addressing the Commission;

6.14.3 The President may allocate available time among individuals wishing to comment. Generally, the time shall be 3 minutes for each speaker;

6.14.4 Groups are encouraged to express their views through a single spokesperson rather than individually;

6.14.5 Speakers shall limit themselves to matters regarding the issue of concern;

6.14.6 Speakers shall not repeat remarks or points of view made by prior speakers;

6.14.7 The Presiding Officer may overrule impertinent, redundant or disruptive comments; Applause or other interruptions are discouraged;

6.14.8 All remarks should be directed to the Presiding Officer; and

6.14.9 Individuals should not expect the Commission, staff, consultants, other speakers or any other person, to respond to their comments. Instead, the Commission may direct the matter to staff for comment at a future meeting or for Commission consideration at a future meeting.

## ***PORT OF KENNEWICK***

### ***Resolution No. 2022-36***

#### ***A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS FORMALIZING COMPLETION OF GOALS #1, #2 & #7 OF CEO'S 2021/22 GOALS AND OBJECTIVES***

**WHEREAS**, the Commission approved goals and objectives for the Port CEO, attached as Exhibit "A" and last modified on March 8, 2022; and

**WHEREAS**, the COVID "back to work" plan was presented to the Commission on May 24, 2022, thus completing Goal #1 of the CEO's 2021/22 Goals and Objectives; and

**WHEREAS**, a Vista Field Hangar lean renovation analysis was presented to the Commission on July 26, 2022, thus completing Goal #2 of the CEO's 2021/22 Goals and Objectives; and

**WHEREAS**, a maintenance facility needs and alternatives report was presented to the Commission on July 26, 2022, thus completing Goal #7 of the CEO's 2021/22 Goals and Objectives; and

**WHEREAS**, the Commission desires to formally accept as complete Goals #1, #2, and #7 of the CEO's 2021/22 Goals and Objectives related to these items.


**NOW, THEREFORE, BE IT HEREBY RESOLVED** the Board of Commissioners of the Port of Kennewick hereby accepts as complete Goals #1, #2, and #7 of the CEO's 2021/22 Goals and Objectives.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick this 8th day of November 2022.

#### ***PORT of KENNEWICK BOARD of COMMISSIONERS***

By:   
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SKIP NOVAKOVICH, *President*

By:   
89F77EAC8921416...  
KENNETH HOHENBERG, *Vice President*

By:   
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THOMAS MOAK, *Secretary*

Resolution 2022-36  
Exhibit "A"

EXHIBIT A		CEO 2021/22 Goals & Objectives (including update on 2019/20 ongoing goals)			
DATE:		November 8, 2022			
GOAL & OBJECTIVE		TACTICAL STEPS	ACTION	STATUS (checkmark = Completed)	COMMENTS
2019/2020 Goals and Objectives Carryover					
	2019/20 GOAL	Sell one parcel or obtain one ground lease (does not include Arts Center Task Force).	Considered complete when presented to Commission.	50% complete	The Port now has lots to sell, and are advertising to sell lots. Have one letter of intent received, but no offers to purchase have been presented to commission.
Vista Field	2				
2021/2022 Goals and Objectives					
	2021/22 GOAL	Prepare "Back to Work" plan for Port staff in relation to the COVID-19 pandemic.	Considered complete when presented to Commission.	100% Complete	Presented to Commission on 5/24/22.
Port Administration	1				
	2021/22 GOAL	Develop a Vista Hangar analysis to include lean renovation options (with RCCF partnership funds) and viability/potential for selling on a ground lease.	Considered complete when presented to Commission.	100% Complete	Presented to Commission on 7/26/22.
Vista Field	2				
	2021/22 GOAL	Implement the identified Duffy's Pond tenant-improvements and algae mitigation plan.	Considered complete when presented to Commission.	50% Complete	Standing bar installed on tasting room patios. Food truck plaza fencing was bid (pulled project due to escalating material costs whereby bidders wouldn't hold pricing with material cost tripling). City permits finalized for restroom. Working with Palencia regarding design of demonstration vineyard. All algae mitigation prep work required by Port is complete. Chemical application is dependent upon City schedule.
Kennewick Waterfront	5				
	2021/22 GOAL	Prepare a report which evaluates maintenance facility needs and possible alternatives.	Considered complete when presented to Commission.	100% Complete	Presented to Commission on 7/26/22.
Districtwide	7				

***PORT OF KENNEWICK  
Resolution No. 2022-37***

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF  
KENNEWICK ACCEPTING AND AWARDING A CONSTRUCTION CONTRACT FOR A  
PUBLIC RESTROOM IN THE COLUMBIA GARDENS WINE & ARTISAN VILLAGE***

**WHEREAS**, a request for bids to construct a public restroom facility in the Columbia Gardens Wine & Artisan Village on Columbia Drive was properly advertised with approved plans and specifications being made available to five (5) contractors on the Port's small works roster; and

**WHEREAS**, the staff and the project architect have certified that the low bidder for the project is Double J Excavating in the amount of \$205,000.00, plus applicable tax, which includes construction of facility and site improvements.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby accept the bid from Double J Excavating Inc. for the construction of a public restroom in the Columbia Gardens Wine & Artisan Village as the low bidder in the amount of \$205,000.00, plus applicable tax, and hereby awards the construction contract to said low bidder.

**BE IT HEREBY FURTHER RESOLVED** that the Chief Executive Officer (CEO) is authorized to enter into a contract between the Port of Kennewick and Double J Excavating Inc. for \$205,000.00 plus applicable tax for the construction of a public restroom facility in the Columbia Gardens Wine & Artisan Village and that the CEO is further authorized to proceed with all necessary procedures required to complete construction of the project.


**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 8th day of November, 2022.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:   
0E53A30E1C8E442...  
SKIP NOVAKOVICH, President

By:   
89F77EAC8921416...  
KENNETH HOHENBERG, Vice President

By:   
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THOMAS MOAK, Secretary

## ***PORT OF KENNEWICK***

### ***Resolution No. 2022-38***

#### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK EXTENDING THE LOCAL EMERGENCY DECLARATION & RELATED DELEGATION OF AUTHORITY & SETTING A REVIEW DATE**

**WHEREAS**, The Washington State mandate for remote public meetings and restrictions on holding in-person public meetings expired June 1, 2022. Upon expiration of the proclamation, the newly revised Open Public Meetings Act (“OPMA”) law applied.

**WHEREAS**, pursuant to the current OPMA, RCW 42.30.230, open public meetings must be held at a physical location where the public can attend, unless a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting with reasonable safety. While state law encourages agencies to offer a remote attendance option along with its in-person option (see RCW 42.30.030), they are no longer required to do so.

**WHEREAS**, on October 31, 2022, Washington state’s declaration of emergency lifted. However, local governments can still rely on their own declared state of emergency or a federal emergency declaration (such as the president’s emergency declaration) to hold a fully remote meeting if they state their reasoning why the local or federal emergency prevents them from meeting in person.

Another option for the Port of Kennewick is to refresh the Declaration of Local Emergency, which the Commission first declared in 2020, and to continue to conduct Port Commission meetings under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff attendance is via remote means.

**WHEREAS**, the Port Commission previously adopted Resolution 2020-06 which documented impacts of COVID 19 world-wide, nationwide and locally. Resolution 2020-06 was a declaration of a local emergency. The current Resolution 2020-06 continues in force until terminated by law or by further Resolution.

**WHEREAS**, Resolution 2020-06 also delegated to the Port Chief Executive Officer, among other things, the authority to “exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the District’s policies, and necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 39.04.280(3) for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works)”.

**WHEREAS**, although the Washington state Governor’s emergency orders ended October 31, 2022, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus. Though the Washington state emergency orders are ending, the Benton-Franklin Health District reminds us that throughout the Counties, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus.

**WHEREAS**, the Benton-Franklin Health District makes available the rates per 100,000 Population of Cases, Hospitalizations and Deaths due to COVID, and updates this information regularly. For Benton County the present 7-day case rate is 34.5; the 14-day case rate is 70; the 7-Day Hospitalization rate is 6.3 and the 7-Day Death Rate is 0.5.



**WHEREAS**, the Port has fared well under the current policies. The CEO is aware of no areas where Port business has suffered; and is aware of no citizen complaints due to the current policy. Port efficiency remains high, and in some cases, efficiency has increased pursuant to the remote work policy.

**WHEREAS**, what does not end on October 31, 2022 are the state Health Emergency Labor Standards Act (HELSA) requirements that remain in effect as long as there is a public health emergency declared by the President of the United States.<sup>1</sup>

**WHEREAS**, the current national presidential emergency declaration remains in effect through March 1, 2023.

**WHEREAS**, the federal emergency proclamation remains in effect and local emergency factors continue to necessitate this Resolution.

**NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:**

1. Proclamation of Emergency. Based on the above factors, the Port of Kennewick Commission reaffirms its Declaration of Local Emergency.
2. Current Delegation CEO Remains Unchanged. The Port of Kennewick Commission leaves in place the CEO's current delegation of authority as contains in Resolution 2020-06. Under that authority, the CEO would continue to manage local conditions and it is anticipated that Port Commission meetings would also continue to be held under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff attendance may be via remote means.
3. Commission Review in February 2023. The Port of Kennewick Commission will review the status of this Local Declaration in February 2023 to coincide with the current expiration date of the existing presidential emergency declaration (March 2023).

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 8<sup>th</sup> day of November, 2022.

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By: *Skip Novakovich*  
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SKIP NOVAKOVICH, *President*

DocuSigned by:  
By: *Kenneth Hohenberg*  
89F77EAC8921416...  
KENNETH HOHENBERG, *Vice President*

DocuSigned by:  
By: **Thomas Moak**  
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THOMAS MOAK, *Secretary*

<sup>1</sup> HELSA requirements include, among other things: Non-health care employers must notify staff and others at the workplace of a potential exposure to COVID-19 within one business day, and Employers are prohibited from discriminating against high-risk employees for seeking accommodations for COVID-19.



## Memorandum

**To:** Port of Kennewick;  
Tim Arntzen; Amber Hanchette

**From:** Taud A. Hume

**Re:** *Mechanics Liens on Public Property*

**Date:** November 3, 2022

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**Question:** Can a mechanics lien be filed against Port property?

**Short Answer:** No, mechanics liens cannot be filed against public property. Additionally, work conducted on behalf of a tenant under a lease on Port property will only expose the tenant's interests (e.g. the improvements themselves and not the real property) to a mechanics lien, which can be foreclosed upon pursuant to RCW 60.04.051.

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RCW 60.04.021 provides that "[A]ny person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner." However, attachment of a lien is limited "to the interest of the person who requests the labor or materials, or that person's agent." *Haselwood*, 137 Wash.App. at 882, 155 P.3d 952 (citing *W.T. Watts, Inc. v. Sherrer*, 89 Wash.2d 245, 248, 571 P.2d 203 (1977)). This concept was codified in RCW 60.04.051, which provides "[t]he lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished." The extent of a lien under RCW 60.04.051 is therefore based upon the interest of the person requesting the services and materials.

However, Washington courts have repeatedly held that public property cannot be subject to a mechanic's lien. *Hall & Olswang v. Aetna Cas. & Sur. Co.*, 161 Wash. 38, 47, 296 P. 162 (1931) ("The almost universally accepted rule is that general mechanics' and materialmen's lien

statutes, in the absence of express words therein subjecting public property to such liens, do not subject public property to such liens.”); *Hall & Olswang v. Aetna Cas. & Sur. Co.*, 161 Wash. 38, 47, 296 P. 162, 166 (1931); see *Hewson Constr., Inc. v. Reintree Corp.*, 101 Wash.2d 819, 828–29, 685 P.2d 1062 (1984); *3A Indus., Inc. v. Turner Constr. Co.*, 71 Wash.App. 407, 411, 869 P.2d 65 (1993). In part, this is based upon the general principle that where a person causes improvements to be made upon lands in which he/she holds less than fee simple title, only his/her interest in those lands can be subject to liens for labor performed or materials furnished for construction. *Baker v. Sinclair*, 22 Wash. 462, 61 P. 170 (1900).

But it is also important to note that RCW 60.04.051 provides:

If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien.

For example, in *Est. of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wash. 2d 489, 499–500, 210 P.3d 308, 313 (2009) lenders brought an action to foreclose on a deed of trust securing a loan for construction of ice arena on city-owned property. A subcontractor also filed claims alleging that its mechanics' lien was superior to all other claims, and further filed motion to remove its improvements. The Court, in distinguishing the interest in real property held by the tenant, held:

Under the concession agreement between the City and [Tenant], the City retained ownership of the underlying land, while [the Tenant] owned the Arena and any improvements on the land for the duration of the agreement. When the concession agreement terminated, the improvements on the land would revert to the City. [The Tenant] never owned the land underlying the Arena. The most [the Tenant] could own, during the agreement, was the improvements to the land. Under RCW 60.04.051 and the concession agreement, [the subcontractor's] lien could reach only the improvements on the property, not the underlying property.

Similarly, any tenant on Port property only has a tenancy interest in the real property owned by the Port. As such, no materialmen's liens could be created against the Port's property. However, liens could be filed against the improvements themselves and foreclosed upon under Washington law.

## AGENDA REPORT

**TO:** Port Commission

**FROM:** Tim Arntzen, CEO

**CC:** Port General Legal Counsel Carolyn Lake

**MEETING DATE:** November 8, 2022

**AGENDA ITEM:** Resolution 2022-38; Continuing Local Emergency Declaration.

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**I. REFERENCE(S):** Resolution 2020-06  
Resolution 2022-38

**II. FISCAL IMPACT:** None.

**III. DISCUSSION:**

The Washington State mandate for remote public meetings and restrictions on holding in-person public meetings expired June 1, 2022. Upon expiration of the proclamation, the newly revised Open Public Meetings Act (“OPMA”) law applied.

Pursuant to the current OPMA, RCW 42.30.230, open public meetings must be held at a physical location where the public can attend, unless a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting with reasonable safety. While state law encourages agencies to offer a remote attendance option along with its in-person option (see RCW 42.30.030), they are no longer required to do so.

On October 31, 2022, Washington state’s declaration of emergency lifted. However, local governments can still rely on their own declared state of emergency or a federal emergency declaration (such as the president’s emergency declaration) to hold a fully remote meeting if they detail their reasoning why the local or federal emergency prevents them from meeting in person.

Another option for the Port of Kennewick is refresh the Declaration of Local Emergency, which the Commission first declared in 2020, and to continue to conduct Port Commission meetings under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff may attend via remote means.

The Port Commission previously adopted Resolution 2020-06 which documented impacts of COVID 19 world-wide, nationwide and locally. Importantly, Resolution 2020-06 was a declaration of a local emergency. The current Resolution 2020-06 continues in force until terminated by law or by further Resolution.

That Resolution also delegated to the Port Chief Executive Officer, among other things, the authority to “exercise such emergency powers as may be lawful under applicable laws, regulations, ordinances, or the District’s policies, and necessary, including by way of example and not limitation: general port powers under Title 53, RCW, RCW 53.12.270 (Delegation of

powers to managing official), RCW 39.04.280(3) for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works)”).

Though the Washington state Governor’s emergency orders ended October 31, 2022, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus. Though the Washington state emergency orders are ending, the Benton-Franklin Health District reminds us that throughout the Counties, coronavirus remains a workplace hazard and employers must take precautions to prevent the spread of the virus.

Further, what does not end on October 31<sup>st</sup>, 2022 are the state Health Emergency Labor Standards Act (HELSEA) requirements that remain in effect as long as there is a public health emergency declared by the President of the United States.<sup>1</sup> The current presidential emergency declaration remains in effect through March 1, 2023

The Benton-Franklin Health District makes available the rates per 100,000 Population of Cases, Hospitalizations and Deaths due to COVID, and updates this information regularly. For Benton County the 7-day case rate is 34.5; the 14-day case rate is 70; the 7-Day Hospitalization rate is 6.3 and the 7-Day Death Rate is 0.5.

The Port has fared well under the current policies. The CEO is aware of no areas where Port business has suffered; and is aware of no citizen complaints due to the current policy. Port efficiency remains high, and in some cases, efficiency has increased pursuant to the remote work policy.

#### **IV. CEO RECOMMENDATION:**

The CEO recommends that the Port of Kennewick Commission refresh the Declaration of Local Emergency and leave in place the CEO’s current delegation of authority. Under that authority, the CEO would continue to manage local conditions and Port Commission meetings would also continue to be held under the hybrid model by which the Port currently operates. A physical location is provided for the public attendance, at their option, and Commission and staff attendance is via remote means. This status would remain in place through the fall and winter of 2022-23 and be revisited in February 2023 to coincide with the current expiration date of the existing presidential emergency (March 2023).

#### **V. ACTION REQUESTED OF COMMISSION:**

*I move approval of Resolution 2022-38 which works with and will continue the local emergency declared by the Commission in Resolution 2020-06.*

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<sup>1</sup> HELSEA requirements include, among other things: Non-health care employers must notify staff and others at the workplace of a potential exposure to COVID-19 within one business day, and Employers are prohibited from discriminating against high-risk employees for seeking accommodations for COVID-19.