

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 9C
Date of Meeting February 6, 2024

DATE: January 30, 2024

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: NWSA Internal Governance Work Group

Project Manager: Dana Henderson, General Counsel

SUBJECT: First Amended Code of Governance and Conduct for Commissioners

A. ACTION REQUESTED

Request Managing Members adopt Resolution No. 2024-03 (superseding 2022-02) and the associated First Amended Code of Governance and Conduct for Commissioners.

B. SYNOPSIS

The Internal Governance Work Group (IGWG) reviewed the Code of Governance and Conduct for Commissioners before the first reading held in January, 2024 and recommends the attached Resolution No. 2024-03 Adopting the First Amended Code of Governance and Conduct for Commissioners.

Changes recommended by Commissioners since the first reading are discussed on page 2 of this memo.

C. BACKGROUND

In December of 2023, the IGWG reviewed the Code of Governance and Conduct for Commissioners (Code) and made recommendations for revision of same at a first reading of Resolution 2024-03 at the January, 2024 Managing Members' meeting. After first reading, commissioner amendments have been submitted and all proposed amendments were reviewed and vetted by counsel as reflected in the redlined draft First Amended Code of Governance and Conduct for Commissioners (First Amended Code) attached to this memo. The amendments are recommended to help define expectations for commissioner conduct and to refine the process for

handling any such issues. The IGWG recommends the First Amended Code for adoption by the NWSA Managing Members.

The proposed First Amended Code adds: respect and anti-bias to the NWSA's core values for Commissioners; additional guidance on handling dissent; specificity that Commissioners will bring any concerns regarding staff performance privately to the CEO; and clarity that Commissioners will make every reasonable effort to ensure that representations to each other and the public are accurate and factual and will correct inaccuracies. The First Amended Code would make the repeat or intentional provision of inaccurate information a violation. The First Amended Code reiterates the commitment to Commissioners' constitutionally-protected free speech rights.

Proposed procedural revisions include an edit to specify that any Conduct Committee should meet within 10 days of receipt of a complaint, and makes clear that any complaint alleging discrimination, harassment or other illegal workplace conduct may not be withdrawn. The draft First Amended Code also specifies that the Conduct Committee is empowered to resolve a complaint by engaging in corrective training or action or by means of a discussion or counsel. The First Amended Code states that no person will be retaliated against for making a complaint or participating in the Conduct Committee's efforts to evaluate or respond to a complaint.

Proposed changes from the first reading on this item include:

- Removing the previously-proposed section I.B that stated that if a commissioner is speaking publicly re: NWSA or other commissioners, including in various forms of media, the commissioner should provide as much prior notice as is practicable to other commissioners and NWSA CEO (with copy), and instead, this provision has been placed in the proposed Fifth Amended Bylaws, also on for second reading at the February 6, 2024 Managing Members' Meeting.
- Revisions to make clear that in the event of a complaint alleging illegal harassment or illegal discrimination, the Conduct Committee shall refer that complaint for outside third-party investigation, and making revisions to related sections of the Code accordingly.

D. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** Do not revise the Code of Conduct and Governance which would mean that some best practices and recommendations of counsel are not codified.
- **Recommended Action:** Adopt the proposed First Amended Code of Governance and Conduct for Commissioners as amended from the first reading and in substantially the same form as presented.

E. ATTACHMENTS TO THIS REQUEST

- Proposed Resolution No. 2024-03 and draft of proposed revisions to comprise the First Amended Code of Governance and Conduct for Commissioners (in both redline and clean version).

F. PREVIOUS ACTIONS OR BRIEFINGS

- First Reading of Resolution No 2024-03 First Amended Code of Governance and Conduct for Commissioners
- Internal Governance Work Group, meeting on December 15, 2023.
- Managing Members' adoption of Resolution 2022-02, Adopting the Code of Governance and Conduct for Commissioners, August 2, 2022 (after a first reading on July 6, 2022).
- Internal Governance Work Group, meeting on June 7, 2022.

RESOLUTION NO. 2024-03

A Resolution of The Northwest Seaport Alliance Managing Members Amending its Code of Governance and Conduct for Commissioners

WHEREAS, on August 2, 2022, by Resolution 2022-02, to promote and strengthen the faith and confidence of the people of King and Pierce Counties in their Commissioners, and to assist the Commissioners of both Managing Members in the performance of their public duties, the Managing Members of The Northwest Seaport Alliance (NWSA), adopted a Code of Governance and Conduct for Commissioners (the Code); and

WHEREAS, on December 15, 2023, the IGWG conducted a review of the NWSA's adopted Code and recommended certain revisions to the Code to further clarify expectations in Commissioner standards and procedures for addressing alleged violations of the Code and that the recommendations be brought to the full Managing Members for consideration; and

WHEREAS, on January 3, 2024, a First Reading of this proposed Resolution 2024-03 and the associated First Amended Code of Governance and Conduct for Commissioners was introduced to the full Managing Members during open public session; and

WHEREAS, based on input from the January 3, 2024 First Reading, Commissioners have made additional proposed revisions to the First Amended Code of Conduct for Commissioners, as attached, which have been reviewed and legally vetted by counsel; and

WHEREAS, the Managing Members desire to amend the Code of Governance and Conduct as set forth in Exhibit A attached hereto.

NOW, THEREFORE, BE IT RESOLVED: this Resolution 2024-03 and the associated First Amended Code of Conduct for Commissioners attached hereto, are hereby adopted, superseding Resolution 2022-02.

ADOPTED by the Managing Members of The Northwest Seaport Alliance at a regular meeting held on the ____ day of _____ 2024 and signed by its Co-Chairs and attested by its Co-Secretaries in authentication of its passage.

_____, Co-Chair
The Northwest Seaport Alliance

_____, Co-Chair
The Northwest Seaport Alliance

ATTEST:

_____, Co-Secretary
The Northwest Seaport Alliance

_____, Co-Secretary
The Northwest Seaport Alliance

DRAFT

NORTHWEST SEAPORT ALLIANCE
FIRST AMENDED CODE OF GOVERNANCE AND CONDUCT FOR COMMISSIONERS

PREAMBLE

It is assumed and expected that a Commissioner will act in accordance with applicable federal, state, and local laws, and will strive to avoid even the appearance of impropriety in the conduct of his/her/their office. This Code of Governance and Conduct ("Code") does not replace these established legal standards.

Ultimately, conduct is a matter of honesty, common sense, and judgment. Neither this nor any other code can be an adequate substitute for those attributes.

Commissioners are elected officials entrusted with public confidence, and ultimately questions involving a Commissioner's behavior are a matter to be judged by the electorate. Our intent is to establish a sustainable model of appropriate behaviors to build public trust, confidence, and credibility and maintain and enhance the Northwest Seaport Alliance's (NWSA) effectiveness.

I. Standards of Conduct and Governance

A. The NWSA Managing Members are committed to the NWSA core values of: integrity and transparency; excellence; adaptability; stewardship; teamwork and partnership; health and safety; respect; and anti-bias as well as diversity, equity and inclusion.

B. The Managing Members recognize the right of every Commissioner to free speech contained within the United States and Washington State Constitutions. We encourage the dissemination of a variety of opinions and ideas for discussion in a lawful manner, and we acknowledge the individual right of free speech is balanced by slander and libel laws, as well as respect for the integrity of the NWSA and professional courtesy to other Commissioners. If a Commissioner intends to speak publicly about the NWSA or other Commissioners, including through communications with the media or authoring/co-authoring articles, press releases, or opinion pieces, that Commissioner should provide as much prior notice as is practicable to the other Commissioners and the NWSA CEO, including by providing a copy of any such writings before publication.

Commented [jmc1]: Commissioner suggestion to delete this language and instead add into proposed 5th Amended Bylaws Art.I, Sec. 3 (E)).

C. We will serve the interests of all the citizens of Pierce and King Counties and the interests of the entire NWSA organization. We recognize these responsibilities to the whole to be greater than any individual interest.

D. We will build and maintain the trust amongst ourselves and between the public and the Managing Members to ensure an environment conducive to effective governance by:

1. Conducting the NWSA's business with social and fiduciary responsibility that fosters and maintains public trust.
2. Being honest and transparent with the public in all our actions, recognizing that effective governance does require confidentiality in some matters.
3. Setting the highest standard of personal and organizational ethics.

4. Conducting our public meetings and hearings in a respectful and open manner and insisting that others at the meeting act in the same manner. [In support of this, we recognize and expect that:](#)

a. Commissioners may have differing perspectives and may interpret data differently.

b. While disagreement is expected, statements of dissent should be made respectfully and succinctly. It is not appropriate to [make personal attacks or challenge another Commissioner's credibility simply because they have a differing perspective.](#)

~~a-c.~~ Commissioners should only speak for themselves and should not infer or state that other Commissioners are in agreement or disagreement with a particular opinion unless such agreement or disagreement has been explicitly indicated. [It is the role of the Co-Chairs to speak on behalf of the NWSA, consistent with the positions or votes taken by the Managing Members.](#)

~~4-5.~~ Focusing on governance, policy, and direction setting as opposed to day- to-day management.

~~5-6.~~ Focusing on issues rather than personalities and insisting that others at our meetings do the same.

~~6-7.~~ Communicating honestly in all written and interpersonal interactions, never intentionally misleading or misinforming the public or each other.

~~7-8.~~ Seeking to understand and appreciate each other's perspective and find commonality of purpose.

~~8-9.~~ Acknowledging that the decisions made by a majority of the Managing Members represent the NWSA's policy or position.

~~9-10.~~ Recognizing that Commissioners may express their view of the vote on an issue while underscoring that the decision of Managing Members has been made and will move forward.

~~10-11.~~ Coming prepared to meetings, reading materials in advance and, where possible, engaging staff with questions prior to the meetings.

~~11-12.~~ Making every reasonable effort to protect the integrity and promote the positive image of the NWSA, the [hH](#)omeports of Tacoma and Seattle, the Managing Members, and the Commissioners.

~~12-13.~~ Annually reviewing our performance as Managing Members in achieving the goals described herein.

E. We will not attempt to exercise individual authority over the organization. We recognize that this undermines the effectiveness of the Managing Members and the NWSA. We note that the Managing Members have hired a Chief Executive Officer to manage the day-to-

Commented [HD2]: These changes based on recommendation of outside consultant evaluating MM board dynamics

day business of the NWSA and that the CEO is accountable to the Managing Members. In support of this:

- ~~4.~~
- ~~2.1.~~ We will not attempt to assume personal responsibility for managing or resolving operational problems or complaints.;
- ~~3.2.~~ We will not personally direct any part of the operational organization.;
- ~~4.3.~~ We will not personally, without Managing Members' direction, seek to represent the interest of the NWSA to our customers, tenants or other governments.;
- ~~5.4.~~ We recognize that it is important for individual Commissioners to be able to obtain information and review NWSA records; however, we will follow the established process to obtain that information or review the records, as set forth in the Bylaws of the NWSA Managing Members.;
- ~~6.5.~~ We will not individually publicly express negative judgments about a particular staff member, recognizing that those opinions are best expressed individually with the CEO or, if appropriate, discussed amongst ourselves as the Managing Members determine.;
- ~~6.~~ We will preserve public records under our control and promptly refer any request for access to NWSA records to the NWSA General Counsel.;
- ~~7.~~ We will treat NWSA employees with dignity, respect, and professional courtesy, including by:
 - ~~a.~~ refraining from making public statements questioning the honesty or competency of NWSA employees; and
 - ~~b.~~ raising concerns or questions regarding specific employee performance privately to the NWSA CEO; and; and
- ~~8.~~ We will provide periodic and appropriate evaluations of the CEO, per the terms of their employment contract.

~~E.F. In our communications with each other and the public, including on-line or with the media, we will make every reasonable effort to ensure that our representations are accurate and factual. -When appropriate and feasible, Commissioners should attempt to correct any inaccuracies which may occur. -Commissioners are strongly encouraged to consult with staff as appropriate.- The repeat or intentional providing of blatantly inaccurate information, whether for political gain or otherwise, is a violation of this Code.~~

II. Violations and Enforcement

The Managing Members and each of ~~its~~their Commissioners are committed to faithful compliance with the provisions of this Code. We recognize that the failure to deal with deliberate

or continuing violations of this Code risks the loss of public confidence in the NWSA and in the Managing Members' ability to govern effectively. Therefore, the Managing Members establish the following procedures to address and respond to alleged violation(s) of this Code:

1A. Complaints of a Commissioner's willful and/or continuing violation of this Code shall be directed by the complainant in writing, to the Co-Chairs of the Managing Members, or, if the complaint is against or brought by one Co-Chair, to the non-subject Co-Chair, or if the complaint is against or brought by both Co-Chairs, to the Vice Chairs. If a complaint is submitted to any NWSA or hHomeport staff member (including Human Resources, Risk Management, or Legal staff), the complaint will be referred to the Co-Chairs Conduct Committee (as outlined in subsection 2B below) for handling in accord with this Code. Complaint(s) should only be made by a party directly impacted by the alleged violation of this Code. Once a complaint is made, whether and how it shall be handled, including whether it should be dismissed, is within the discretion of the Conduct Committee (as outlined in subsection 3 below) and not the person who has brought the complaint.

2B. Within ten (10) business days after ~~Following~~ receipt of a written complaint, the Co-Chairs shall convene as a Conduct Committee to review the allegations. If the complaint is against or brought by a Co-Chair, that corresponding hHomeport's Vice-Chair(s) shall be appointed to the Conduct Committee. If the complaint is against or brought by both Co-Chairs, the Vice Chairs shall comprise and convene as a Conduct Committee. Once a complaint is made, whether and how it shall be handled, including whether it should be dismissed, is within the discretion of the Conduct Committee (as outlined in subsection 3C below) and not the person who has brought the complaint. A complaint may only be withdrawn by the complainant without further action by the Conduct Committee if the complaint does not include allegations of discrimination, harassment, or other conduct prohibited by local, state, or federal law in the workplace, and may only be withdrawn up until the initial meeting of the Conduct Committee.

Commented [HD3]: Change is recommended to keep Conduct Committee to a timeliness standard, and this also tracks recent revisions to PoT's code

3C. The Conduct Committee may seek the contracted assistance of a third-party with specialized expertise (such as expertise in workplace conduct, ethics, investigations, or employment law) to act as an advisor to the Conduct Committee and/or the Managing Members. The Conduct Committee shall cause a third-party investigation to occur of any complaint alleging illegal discrimination or illegal harassment. The Conduct Committee shall seek assistance of NWSA counsel and/or outside counsel to assist in determining whether a complaint alleges illegal discrimination or illegal harassment. The Conduct Committee is responsible for communicating the outcome of any assessment, review, or investigation of a complaint to the complainant.

Commented [HD4]: Change tracks recent revisions to PoT's Code

43D. After Subject to the requirements of subsection II.C and subsection II.E, after review of the complaint, the Conduct Committee has the option to may:

1. ~~(a)~~ dismiss the complaint as without merit or without potential merit and shall inform the complainant of such conclusion; or
2. resolve a merited or potentially merited complaint through the use of corrective training or action, counsel, discussion, or other similar means; or

3. ~~(e)~~ report to the Managing Members as to:

a. ~~(1)~~ a merited or potentially merited complaint that has been resolved or otherwise does not rise to the level of needing further investigation or action; or

a. —

b. ~~(2)~~ a merited or potentially merited complaint not involving allegations of illegal discrimination or illegal harassment where the Conduct Committee's recommendation is that further outside independent review or investigation of the complaint occur; ~~or~~

c. recommendations regarding appropriate action or follow-up after completion of a third-party investigation of a complaint involving allegations of illegal discrimination or illegal harassment.

E. In accordance with the Open Public Meetings Act, the Managing Members may receive and evaluate complaints or charges brought against a public officer in executive session but must take any final action at an open public meeting. Except in the instance of complaints involving illegal discrimination or illegal harassment which are addressed in subsection II.C herein, the Managing Members may, in their ~~sole~~ discretion, direct NWSA General Counsel and/or the CEO to retain an outside investigator to investigate the complaint and report to the Managing Members for review. The findings of any third-party investigation conducted under this Code shall be reported to the Managing Members.

F54. If, following an investigation, the Managing Members determine the alleged violation(s) of this Code are well-founded, and that the circumstances of the alleged violation(s) warrant enforcement action, the Managing Members may take appropriate action in public session. Appropriate action may include, but is not limited to, further Managing Members' discussion, a verbal warning, a written warning, a letter of concern and/or removal by the Managing Members from one or more leadership, work group, or committee positions to which the offending Commissioner has been appointed (such as removal from Co-Chair or Vice-Chair standing, and removal from representing the NWSA on local or community boards and committees). Notwithstanding this provision, in enforcing the terms of this Code, the Managing Members may not take any action based solely on a Commissioner's constitutionally protected free speech.

~~6. —~~

~~7. —~~ G. The Conduct Committee is responsible for communicating the outcome of any assessment, review, or investigation of a complaint to the complainant.

~~H.8. Commissioners will not retaliate against fellow commissioners, staff, or any member of the public for complaints made under this Code or for participation in or cooperation with the Conduct Committee or its efforts hereunder.~~

NORTHWEST SEAPORT ALLIANCE
FIRST AMENDED CODE OF GOVERNANCE AND CONDUCT FOR COMMISSIONERS

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 11. Coming prepared to meetings, reading materials in advance and, where possible, engaging staff with questions prior to the meetings.
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 13. Annually reviewing our performance as Managing Members in achieving the goals described herein.

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1. We will not attempt to assume personal responsibility for managing or resolving operational problems or complaints.

2. We will not personally direct any part of the operational organization.
3. We will not personally, without Managing Members' direction, seek to represent the interest of the NWSA to our customers, tenants or other governments.
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 - a. refraining from making public statements questioning the honesty or competency of NWSA employees; and
 - b. raising concerns or questions regarding specific employee performance privately to the NWSA CEO.
8. We will provide periodic and appropriate evaluations of the CEO, per the terms of their employment contract.

F. In our communications with each other and the public, including on-line or with the media, we will make every reasonable effort to ensure that our representations are accurate and factual. When appropriate and feasible, Commissioners should attempt to correct any inaccuracies which may occur. Commissioners are strongly encouraged to consult with staff as appropriate. The repeat or intentional providing of blatantly inaccurate information, whether for political gain or otherwise, is a violation of this Code.

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Legal staff), the complaint will be referred to the Conduct Committee (as outlined in subsection B below) for handling in accord with this Code. Complaint(s) should only be made by a party directly impacted by the alleged violation of this Code.

B. Within ten (10) business days after receipt of a written complaint, the Co-Chairs shall convene as a Conduct Committee to review the allegations. If the complaint is against or brought by a Co-Chair, that corresponding Homeport's Vice-Chair shall be appointed to the Conduct Committee. If the complaint is against or brought by both Co-Chairs, the Vice Chairs shall comprise and convene as a Conduct Committee. Once a complaint is made, whether and how it shall be handled, including whether it should be dismissed, is within the discretion of the Conduct Committee (as outlined in subsection C below) and not the person who has brought the complaint. A complaint may only be withdrawn by the complainant without further action by the Conduct Committee if the complaint does not include allegations of discrimination, harassment, or other conduct prohibited by local, state, or federal law in the workplace, and may only be withdrawn up until the initial meeting of the Conduct Committee.

C. The Conduct Committee may seek the contracted assistance of a third party with specialized expertise (such as expertise in workplace conduct, ethics, investigations, or employment law) to act as an advisor to the Conduct Committee and/or the Managing Members. The Conduct Committee shall cause a third-party investigation to occur of any complaint alleging illegal discrimination or illegal harassment. The Conduct Committee shall seek assistance of NWSA counsel and/or outside counsel to assist in determining whether a complaint alleges illegal discrimination or illegal harassment.

D. Subject to the requirements of subsection II.C and subsection II.E, after review of the complaint, the Conduct Committee may:

1. dismiss the complaint as without merit or without potential merit and shall inform the complainant of such conclusion; or
2. resolve a merited or potentially merited complaint through the use of corrective training or action, counsel, discussion, or other similar means; or
3. report to the Managing Members as to:
 - a. a merited or potentially merited complaint that has been resolved or otherwise does not rise to the level of needing further investigation or action; or
 - b. a merited or potentially merited complaint not involving allegations of illegal discrimination or illegal harassment where the Conduct Committee's recommendation is that further outside independent review or investigation of the complaint occur; or
 - c. recommendations regarding appropriate action or follow up after completion of a third-party investigation of a complaint involving allegations of illegal discrimination or illegal harassment.

E. In accordance with the Open Public Meetings Act, the Managing Members may receive and evaluate complaints or charges brought against a public officer in executive session but must take any final action at an open public meeting. Except in the instance of complaints

involving illegal discrimination or illegal harassment which are addressed in subsection II.C herein, the Managing Members may, in their discretion, direct NWSA General Counsel and/or the CEO to retain an outside investigator to investigate the complaint and report to the Managing Members for review. The findings of any third-party investigation conducted under this Code shall be reported to the Managing Members.

F. If, following an investigation, the Managing Members determine the alleged violation(s) of this Code are well-founded, and that the circumstances of the alleged violation(s) warrant enforcement action, the Managing Members may take appropriate action in public session. Appropriate action may include, but is not limited to, further Managing Members' discussion, a verbal warning, a written warning, a letter of concern and/or removal by the Managing Members from one or more leadership, work group, or committee positions to which the offending Commissioner has been appointed (such as removal from Co-Chair or Vice-Chair standing, and removal from representing the NWSA on local or community boards and committees). Notwithstanding this provision, in enforcing the terms of this Code, the Managing Members may not take any action based solely on a Commissioner's constitutionally protected free speech.

G. The Conduct Committee is responsible for communicating the outcome of any assessment, review, or investigation of a complaint to the complainant.

H. Commissioners will not retaliate against fellow commissioners, staff, or any member of the public for complaints made under this Code or for participation in or cooperation with the Conduct Committee or its efforts hereunder.

Item No.: 9C
Meeting Date: February 6, 2024

Second Reading: Resolution No. 2024-03

First Amended Code of Governance and Conduct for Commissioners



THE NORTHWEST
SEAPORT ALLIANCE

SEATTLE + TACOMA

Recommendation of Internal Governance Work Group
Presentation by: Dana Henderson, General Counsel, and IGWG members

Action Requested

Request Managing Members adopt Resolution No.2024-03 (superseding 2022–02) and the associated First Amended Code of Governance and Conduct for Commissioners.



Background

- The Internal Governance Work Group (IGWG) recently reviewed the Code of Governance and Conduct for Commissioners in December, 2023.
- At first reading and between first and second readings, Commissioners offered and recommend revisions to the Code, which have been reviewed, wordsmithed and vetted by counsel.
- IGWG recommends the attached Resolution No. 2024-03 Adopting the First Amended Code of Governance and Conduct for Commissioners (as revised and attached).



Proposed Revisions – Differences from First Reading

- Removes former proposed Section I.B provision regarding advance notice to fellow commissioners and CEO when a Commissioner intends to speak publicly re: NWSA or other Commissioners, and moves that same language instead to the proposed 5th Amended Bylaws (also on the agenda today).
- Provides that the Conduct Committee must investigate complaints of illegal harassment and illegal discrimination by third party investigator, and amends a number of provisions to allow that to occur.

No other proposed amendments received.

Alternatives Considered

- **No Action Alternative:** Do not revise the Code of Governance and Conduct which would mean that some best practices and recommendations of IGWG and counsel are not codified.
- **Recommended Action:** Adopt the proposed First Amended Code of Governance and Conduct for Commissioners in substantially the same form as presented.
- **Note on Timing:** There is not a time pressure to adopt this now, but it is a best practice to have provisions in place before a complaint is filed or a need arises.



Action Requested

Request Managing Members adopt Resolution No. 2024-03 (superseding 2022–02) and the associated First Amended Code of Governance and Conduct for Commissioners.



Questions / Discussion

