

MAY 29, 2018

CLOSED SESSION - REPORTED OUT FINAL DECISION

Date of Meeting: *Tuesday, May 29, 2018*

Anticipated Litigation

NAME OF ACTION:

Oakland Bulk & Oversized Terminal, LLC v. City of Oakland
United States District Court Case No. C16-7014-VC

This matter is listed as **Item No. 1(a)** on the Closed Session Agenda.

The City Council, on the recommendation of City Attorney, Barbara J. Parker, voted unanimously to appeal the May 23 federal district court judgment enjoining the City from enforcing its 2016 law banning the handling and storage of coal at the proposed bulk goods terminal at the former Oakland Army Base.

FACTS/ISSUES:

Pursuant to the City's police powers, the City Council enacted the ordinance to prevent substantially dangerous health and safety conditions in and around the proposed terminal in West Oakland. On December 7, 2016, Plaintiff filed a complaint in the federal district court claiming that the City's coal ban (1) violated the Commerce Clause of the US Constitution, (2) was preempted by several federal laws, the Interstate Commerce Commission Act, the 1984 Shipping Act and the Hazardous Materials Transportation Act, and (3) breached the development agreement.

Present:

Motion Made by: Councilmember Kalb

Motion Seconded by: Councilmember Kaplan

AYES: Brooks, Campbell-Washington, Gallo, Gibson McElhaney, Guillén, Kalb, Kaplan and President Reid = 7

NOES: Brooks, Campbell-Washington, Gallo, Gibson McElhaney, Guillén, Kalb, Kaplan and President Reid =

ABSENT: ~~Brooks, Campbell-Washington, Gallo, Gibson McElhaney, Guillén, Kalb, Kaplan and President Reid = 1~~

ABSTENTIONS: Brooks, Campbell-Washington, Gallo, Gibson McElhaney, Guillén, Kalb, Kaplan and President Reid =