



## MEMORANDUM

April 9, 2021

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. John Burton  
Hon. Gail Gilman  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of a revised Mutual Termination Policy. (Resolution 21-15); Request approval of delegation to Port staff to offer additional leasing incentives including discount lease rates and rent abatement for tenant improvements for office, maritime office, and shed space for new leases, and share of subleasing revenues. (Resolution 21-16); and Informational update on tenant relief programs.

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolutions Nos. 21-15 and 21-16

### **EXECUTIVE SUMMARY**

Over the last 12 months, Port staff have engaged in a number of dialogues with the Port Commission regarding tenant relief policies and programs intended to assist tenants in remaining operational in the face of the economic dislocation and public health restrictions brought on by the COVID-19 pandemic. On February 23, 2021, staff presented the Port Commission an informational item related to management of the Port's portfolio during COVID-19.

Port staff anticipates substantially completing implementation of all rent relief programs by the end of May. It is important now for the Port to focus its efforts toward addressing two other key strategies in managing severe budget impacts: (1) efficiently addressing situations where tenants are unable to resume operations in a manner sufficient to pay rent and (2) identifying opportunities to increase revenues by filling vacancies and maintaining and extending relationships with key tenants.

Building on the staff report discussed at the February 23<sup>rd</sup> Port Commission meeting, this memorandum recommends: (a) increasing the rent threshold in the Port's mutual termination policy, (b) adding flexibility for specific lease rate terms, and, if requested by a tenant, changes to the subleasing regarding subtenant rent provisions; and (c) establishing additional reporting to the Port Commission on leasing, maritime cargo, lease terminations, sales data, and accounts receivables and Port's financial position. This staff report concludes by noting potential future related policy matters including an uncollectible balance write off policy and potential recommendations related to percentage rent tenants. Staff recommends approval of the attached resolution. This staff report includes the following:

- I. Strategic Plan Alignment
- II. Background
- III. Proposed Actions and Reporting
- IV. Potential Future Actions on Portfolio Management
- V. Staff Recommendation

## **I. STRATEGIC PLAN ALIGNMENT**

A successful portfolio management strategy will support two Strategic Plan objectives (2019-2023 Strategic Plan):

Productivity: Attract and retain tenants that build an economically viable Port  
Stability: Maintain the Port's financial strength by maximizing the value of Port property and increasing revenue.

## **II. BACKGROUND**

### **COVID-19 Rent Relief Program Update**

The February 2021 staff memorandum contained updates on rent relief and rent repayment. The link to the full memorandum is below and, in brief, it stated<sup>1</sup>:

- Port had received applications for rent relief programs from 72 tenant (103 unique agreements)
- Port and about 20 tenants representing nearly 40,000 square feet of space entered mutual termination agreements under existing delegated authority<sup>2</sup>
- Tenants who had deferred rent in 2020, repaid about \$729,000

As of March 26, 2021:

- Port received applications for rent relief programs from 132 tenants (203 unique agreements), representing approximately \$13.45 million in rent to be forgiven.
  - Note that staff accepted applications via online entry through February 28<sup>th</sup>. Since February 28<sup>th</sup>, a few tenants contacted their property managers noting technical or other difficulties completing the application and staff

---

<sup>1</sup> See memorandum for Port Commission's February 23, 2021 meeting here: [https://sfport.com/sites/default/files/Commission/Documents/Item%2011B%20Portfolio%20Management\\_final.pdf](https://sfport.com/sites/default/files/Commission/Documents/Item%2011B%20Portfolio%20Management_final.pdf)

<sup>2</sup> Note this does not include tenants that chose not to renew a lease that expired during this period.

agreed to review these applications. Thus far, only one tenant has submitted an application after the February 28 deadline.

- Port staff and tenants have completed 12 agreements and another 10 are out for signature
- Staff has terminated a total of 15 month-to-month agreements and entered into early terminations for an additional five agreements under Resolution 09-04 due to financial impacts from COVID.

### **Scale of Portfolio Problem**

Moving forward, the unfortunate reality is that a number of businesses will need to either minimize or vacate leasehold premises as their revenues fail to rebound. The Port's accounts-receivable ledger totaled \$20.7 million in outstanding rent at the end of 2020 (and has grown to nearly \$23 million through February). At the end of 2019, the same metric was \$3.5 million. There are approximately 178 tenants who do not qualify for rent forgiveness programs and have not resumed normal rent payments or enrolled in the rent repayment program.

Though the total outstanding balance will be significantly reduced as we process rent forgiveness lease amendments and repayment plans, the Port and our tenants are facing an incredible challenge in determining when to remain in leaseholds and work to dig out of this economic hole, and when to pursue lease terminations either on a mutual voluntary basis or through eviction actions.

### **III. PROPOSED ACTIONS AND REPORTING**

During the February 23<sup>rd</sup> Port Commission meeting, staff discussed the below **Table 1** which summarizes:

1. existing policies adopted and now in implementation (Rent Relief and Repayment Plans);
2. existing tools Port staff will ramp up to meet this anticipated challenge; and
3. expanded policies and new policies for Port Commission consideration which staff believe will ease the workload and allow staff to efficiently manage the portfolio through this economic crisis.

Note that Port staff's guiding principle for these management tools is to support Port tenants during this crisis while also protecting the Port's solvency.

During the February 23<sup>rd</sup> meeting, Port Commissioners expressed support for expansion of delegated tools so long as that expansion is accompanied by appropriate, additional reporting to ensure transparency and accountability – See further discussion below.

**Table 1. Summary of Portfolio Management**  
*Implemented Policies and New Strategies*

	<b>Description</b>	<b>Changes to Program or Policy</b>	<b>Implementation</b>
Policies Currently Underway	Rent Deferral and Opt-In Rent Deferral	No changes, program ran from March 2020 to December 31, 2020	Resolutions 20-18 , 20-27,and 20-30
	Rent Relief for Maritime, LBE, Percentage Rent, and Civic Impact Tenants	No changes proposed at this time, program is being administered.	Resolutions 20-41 and 20-55 & Ordinance number 244-20
	Repayment Plans	No changes proposed at this time, program is being administered.	Resolution 20-56
	LBE Loan Program; Shared Spaces licenses	No changes proposed at this time, program is being administered.	Resolutions 20-33, 20-55, and staff authority
Use Existing Staff Authority	Collections: Contacts and Processing	Port staff to put greater efforts into contacting tenants who have neither applied for a program nor contacted staff to settle invoices.	Staff authority
	Delegated Authority for Settlements	No changes, Port staff will continue to use the existing settlement authority to settle disputes below \$25,000 and will bring settlements above that threshold for Port Commission consideration.	Resolution 10-01
Potential New Policies	Delegated Authority for Mutual Lease Terminations	Approve attached resolution increasing Mutual Lease Termination policy delegated authority.	Approve attached resolution
	Delegated Authority for Uncollectible Balances	Port staff propose returning to the Commission with an Uncollectible Balances policy.	Potential Uncollectible Balances policy
	Strategic Leasing Tactics	Approve attached resolution expanding leasing tools to retain existing tenants, fill vacated spaces, and generate revenues with new leasing tactics.	Approve attached resolution

**Proposed Actions**

To work through the portfolio challenges and to retain and attract tenants to vacant space, Port staff recommend approval of the below delegations to staff.

### **1. Mutual Terminations and Partial Terminations**

In 2009 during an economic downturn, the Port Commission adopted Resolution 09-04 which delegates mutual lease termination authority to the Executive Director for certain distressed leases and licenses. As a policy matter, the Port Commission determined that mutual termination could be preferable to the expenditure of Port staff and City Attorney resources to recover Port property and delinquent rent through bankruptcy proceedings for certain leaseholds. The Mutual Termination Policy delegates to Port staff the authority to terminate leases or licenses (where Port does not otherwise have the unilateral right to terminate) with fewer than 5 years of term remaining and with monthly lease payments of \$10,000 or less, provided that:

1. Port staff has independently verified the tenant's financial condition;
2. Port staff has inspected the subject property, made a record of the condition of the property and documented any unfulfilled tenant obligations for maintenance, repair, tenant improvements, removal of personal property and/or restoration of the premises; and
3. The Port Executive Director determines in her sole discretion that early termination in exchange for payment or other consideration made by the tenant is in the Port's best interests.

This Mutual Termination Policy allows staff to mutually terminate under the conditions above, even where a concession over \$25,000 is made. With approximately 178 tenants who have not applied to participate in rent forgiveness, and are out of lease compliance, Port staff anticipate a significant share of those tenants may seek to mutually terminate their lease. This existing policy does not allow leases approved by the Board of Supervisors to be terminated, absent approval by the Port Commission and Board of Supervisors.

Port staff recommend that:

1. in addition to the 3 steps listed above that staff are required to follow under the existing mutual termination policy, that two additional steps be added:
  4. Port staff has determined it is more economically viable to allow tenant to terminate and vacate the premises rather than pursue an unlawful detainer action.
  5. Tenant has provided documentation showing it is financially unable to continue to meet its lease obligation and continued occupancy will lead to an accrual of uncollectible rents.
2. the monthly lease payment threshold of \$10,000 per month to be increased to up to \$20,000 per month; and
3. Partial terminations be included in the policy.

An increase of authority to mutually terminate leases up to \$20,000 per month broadly reflects increases in the parameter rent schedule since 2009 (office rates have increased at a much faster rate while shed and land have increased at a slower rate), plus an additional increase (about 30%) to reflect the unprecedented economic conditions and associated need for flexible tools to deploy in different tenant situations. In addition, providing additional delegated authority for partial terminations where staff does not otherwise have such authority allows staff to work to retain tenants meeting criteria 1 through 3 above within their desired smaller leased footprints. A lease amendment to allow for partial termination would include new City ordinance requirements but would not include any other modified terms that would subject that amendment to Port Commission approval.

## **2. Strategic Leasing Tactics – Increased Flexibility for Lease Rates**

With market conditions still unstable, Port staff are focused on retaining tenants and strategizing for filling vacancies, as they arise. Based upon a review of market conditions by the Port's consulting team, Port staff recommend that the Port continue to use FY 2019/2020 parameter lease rates,<sup>3</sup> with the additional leasing incentives. Additional leasing incentives are warranted during this unstable market environment.<sup>4</sup> Consistent with these findings, Port staff recommend approval of these changes (detail provided in **Exhibit 1**; **Exhibit 2** provides parameter rates).

### Leasing Incentives for New Leases

Under the current FY2019/2020 delegations, Port staff has authority to offer lease rates at:

- 100% or higher of the adopted per square foot lease rate,
- Rent credits up to a per square foot dollar limit for paint and carpet, and
- Rent abatement up to *3 months* for a three-year lease to allow for space preparation.

If approved, the terms described below would revise these delegated authorities.

### Office Space

For leases at least three years:

- Allow new leases to ramp up at 70%, 80%, and then 100% of parameter lease rates (years 1, 2, and 3) or,

---

<sup>3</sup> Adopted by the Port Commission on July 9, 2019 and effective August 1, 2019 (see Port Commission Reso. 19- 24).

<sup>4</sup> See February 19, 2021 staff memorandum for additional market data: .

[https://sfport.com/sites/default/files/Commission/Documents/Item%2011B%20Portfolio%20Management\\_final.pdf](https://sfport.com/sites/default/files/Commission/Documents/Item%2011B%20Portfolio%20Management_final.pdf)

- If tenant constructs Port-approved tenant improvements, Port staff may offer rent abatement in a maximum amount equal to the cost of the improvement up to 7 *months* of the monthly rent due, applied over a 5 years lease term.<sup>5</sup>

#### Shed Space

For leases at least three years:

- Allow new leases to ramp up at 80%, 90%, and then 100% of parameter lease rates (years 1, 2, and 3) or,
- If tenant constructs Port approved infrastructure or improvements considered to be landlord's work, Port staff may offer rent abatement in a maximum amount equal to the cost of the improvement up to 6 *months* of the monthly rent due, applied over the first 5 years of the lease.

#### Selected Maritime Leases

For new maritime leases which include office, shed, and apron space access and/or use of submerged land with a term of at least 1 year:

- Allow Port staff to offer the office portion of a lease with all three of these use types to start at no less than 75% of the applicable FY 2019/2020 parameter office rate and then to increase each year at 3% per year.
- Shed and apron space access and/or use of submerged land would continue to be subject to the currently effective rates.

These key changes – rent reduction for new leases and rent abatement to recognize tenant's improvements – provide staff the opportunity to more competitively lease Port property. Offering the increase in rent abatement allows the Port to better compete with private landlords who are able to provide actual dollars to tenants to make improvements (through tenant improvement allowances).

Port's current tenant incentives structure allows up to 3 months rent abatement for a 3 year lease plus a limited rent credit for paint and carpet costs. Under current practices, Port Commission must approve rent credits for other types of work and the work must receive final permit certification, then the rent credit can be taken against rent due (often against percentage rent or against 50% of the base rent only). Staff is now proposing to allow additional rent abatement for improvements even before the improvements are complete (where staff reasonably believes the tenant has the financial wherewithal to complete the improvements).

---

<sup>5</sup> Note, as further described in Exhibit 1, tenant improvements eligible for rent abatement are those which improve the real property and have an expected life exceeding the terms of the lease. Note that staff selected a maximum of 7 months (for a 5-year lease) to the option financially similar to the "tiered rate option". The "tiered rate" option is equivalent to the tenant to 3-4 months of rent abatement, which could be combined with existing staff delegation to offer up to 3 months of rent abatement, equals the up to 7 months of rent abatement proposed. These two options put Port space with investment needs on more equal footing with more tenant-ready, Port space.

This change reduces the tenant’s capital outlay and rent burden, but also shifts the risk of the work not being done to Port. Staff believe this “risk shift” is limited, as the total number of months of potential rent abatement is capped, thus the risk that the work exceeds cost estimates is still the tenant’s risk. If a tenant chooses this option, as further described in Exhibit 1, the lease will include protections to address this risk which staff will need to enforce and include: (a) Port must approve the proposed improvements, estimated cost and life expectancy of the improvements; (b) Tenant must provide a verified summary of costs of tenant improvements upon completion of the improvements; and (c) should Tenant fail to construct the improvements, Port will have all the remedies available under the lease, including repayment of abated rent.

**Existing and New Leases: Excess Sublease Rent Split**

In addition to marketing vacant space to new tenants, Port staff has also been looking at additional ways to maximize revenues from existing leases. One such opportunity is to revise the “Excess Rent” provision of the Port’s standard lease. This provision generally requires 100% of all net sublease revenues in excess of a tenant’s rent obligation to Port’s to be conveyed by the tenant to the Port. In the current environment, feedback from several tenants as well as from Maven’s review and experience, indicates that tenants experiencing economic pressure may be interested in subleasing space but, with the Excess Rent provision in Port’s leases, Port tenants have no incentive to sublease for more than they are paying due to this provision.

Staff recommends Port Commission delegation to staff to deviate from the standard Excess Rent provision to amend leases, to allow a split of these excess funds subject to a cap of 50% on a pilot basis. This incentive may result in additional subleasing and an increase in revenues with limited Port staff effort. Any such amendment would be: at a tenant’s request for the sole purpose of revising this provision; only if a tenant is in good standing as defined by Port policy;<sup>6</sup> and only if Port staff has a reasonable expectation that the Port would recoup spending staff and attorney time to modify the lease due to the potential Excess Rent. All subleases would remain subject to Port’s approval as otherwise provided in the lease. A lease amendment to allow for a split of Excess Rent would include new City ordinance requirements but would not include any other modified terms that would subject that amendment to Port Commission approval.

**Table 2** summarizes the request for action before the Port Commission.

**TABLE 2 – Port Commission Requested Actions Summary**

<b>Policy</b>	<b>Proposed Change</b>
Mutual Termination Policy	<ul style="list-style-type: none"> <li>• Increase threshold from \$10,000 to \$20,000</li> <li>• Allow for partial terminations (e.g. reduction of premises)</li> </ul>

<sup>6</sup> See Port Commission Resolution 09-49.



Policy	Proposed Change
New Office Leases	<ul style="list-style-type: none"> <li>• Allow ramp up at 70%, 80%, and then 100% of parameter lease rates; <i>or</i></li> <li>• If tenant constructs Port-approved tenant improvements, offer rent abatement in a maximum amount equal to the cost of the improvement up to <i>7 months</i> of the monthly rent due, applied over the first 5 years of the lease.</li> </ul>
New Shed Leases	<ul style="list-style-type: none"> <li>• Allow ramp up at 80%, 90%, and then 100% of parameter lease rates; <i>or</i></li> <li>• If tenant constructs Port approved tenant improvements considered to be landlord's work, offer rent abatement in a maximum amount equal to the cost of the improvement up to <i>6 months</i> of the monthly rent due, applied over the first 5 years of the lease.</li> </ul>
New Maritime Office Leases, if part of office-shed-apron/submerged	<ul style="list-style-type: none"> <li>• Offer office portion of lease with a minimum of three use types to start at no less than 75% of the applicable FY 2019/2020 parameter office rate; then 3% increase each year.</li> </ul>
Excess Sublease Rent Split	<ul style="list-style-type: none"> <li>• Allow split of these excess rent funds subject to a cap of 50% on a pilot basis</li> </ul>

**Proposed Reporting**

Port Commissioners expressed a desire for additional reporting on lease administration and tenant information during the February 23<sup>rd</sup> meeting. Port staff have reviewed our reporting systems capabilities and propose the following reports:

1. Monthly leasing report. Port staff mistakenly ceased producing this report during staff transitions in 2020 and have resumed this important reporting to the Commission beginning in February 2021.
2. Quarterly maritime cargo and cruise performance report.
3. Terminations. Port staff will submit lease termination reports on a monthly basis.
4. Accounts receivable & financial status reporting. Port Commissioners are again receiving detailed accounts receivable and financial status information.

Port staff also reviewed information we collect in order to enter a lease agreement, seeking to identify other information which may be of interest to the Commission and the Port's Race Equity goals. Unfortunately, the information we collect by lease agreement is specific to lease type. For example, the Port collects sales information (which would be useful in assessing the size of the business) for percentage rent tenants; however, these tenants are a small subset (less than 10%) of businesses at the Port. Note that one of the Race Equity Action Plan (REAP) items is to evaluate the feasibility of collecting race and ethnicity information for tenants. Staff will report back to the Port Commission on progress on this effort as we implement the REAP.

Port staff recommend that the Commission review the reporting listed above on an ongoing basis. These reports can be produced with existing staff and systems. Port staff welcomes the Port Commission's comments on the content, organization and detail of these reports on an ongoing basis.

#### **IV. POTENTIAL FUTURE ACTIONS ON PORTFOLIO MANAGEMENT**

Port staff continue to evaluate and may return with additional information on: an uncollectible balance policy and on the status of percentage rent tenants participating in the rent forgiveness program.

##### ***Potential Uncollectible Balances Policy***

In some cases, the Port's only path with a tenant is to recognize that a tenant has abandoned its leasehold or to unilaterally terminate the lease or license and either pursue rent owed through litigation or determine, through financial investigation, that the amount which may be recovered is less than the costs of pursuit. In these cases, the Port may choose to write off the outstanding balance.<sup>7</sup>

Unlike the other topics described above, the Port does not currently have a clear uncollectible balances policy. Under the current circumstances and the large accounts receivable balance, adoption of a prudent uncollectible balances policy – which requires investigation of tenant assets and likely ability to pay balances – will target staff resources to pursuing claims with a likelihood of success and clearing the Port's accounts of those unrecoverable, delinquent balances.

Under current policy, the City Attorney's Office (Charter §6.102) and the City Controller (SF Admin. Code §10.41-1) must concur in all write-offs. Staff does not have a specific proposal currently but are reviewing potential policies for Port Commission consideration.

##### ***Status of Percentage Rent Tenants Participating in Rent Forgiveness Program***

Port staff are reviewing accounts receivable and monthly sales reports provided by percentage rent tenants to keep watch of the overall portfolio. While the number of office, shed, and land tenants behind on rent is alarming, these spaces may be re-leased when they become vacant as quickly as the market demands.

The failure of restaurant, parking, excursions, attractions, and other percentage rent tenants meanwhile: (1) would leave vacant space requiring a potentially lengthy<sup>8</sup> and uncertain competitive bid solicitation process and tenant negotiations and (2) represent a significant portion (15%) of the Port's ongoing revenue in FY 2019/20, when ongoing revenue was \$120 million.

---

<sup>7</sup> A "write-off" is a sum of money owed that the creditor has determined it cannot collect. Due to the inability to collect, the creditor "writes off" the amount owed in its accounting ledger.

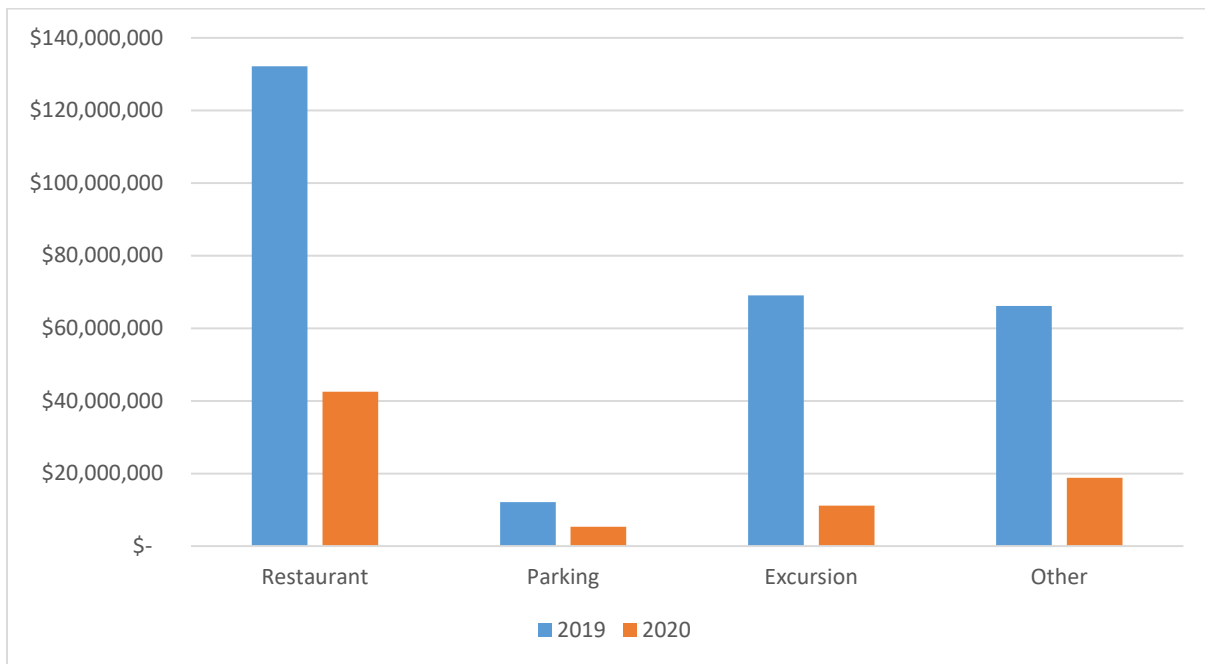
<sup>8</sup> For reference, the Port conducted RFPs processes for restaurants at Piers 38 and 33 nearly 4 years ago and have been unable to find tenants. As another example, the Port Commission heard an informational presentation on the Kneass and Building 49 sites in Crane Cove Park in October 2020; Port staff anticipate that a successful solicitation will have a tenant in place in Building 49 at the end of 2021 and Kneass in 2022.

Port staff do not have a recommendation related to these tenants as of yet but want to update the Commission on sales data by calendar year and by tenants who have applied for forgiveness versus those who have not.

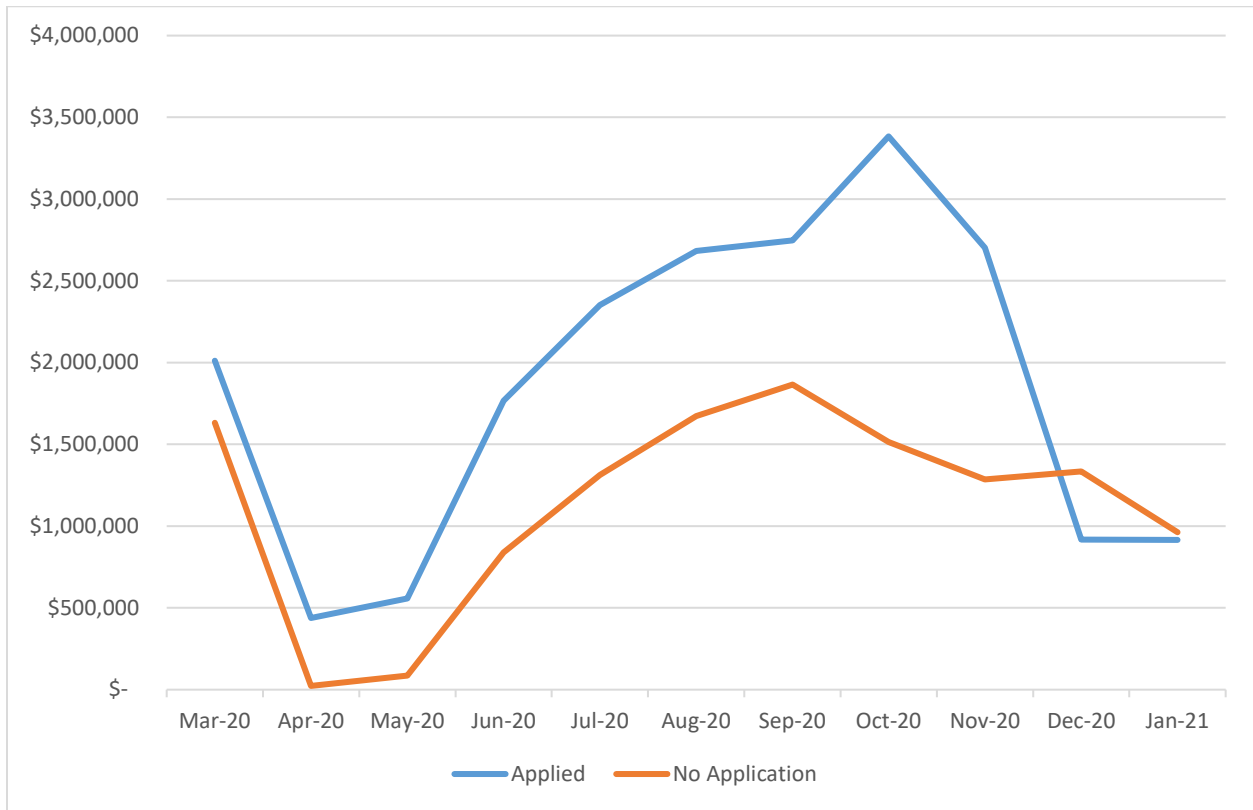
Tenant Sales Data:

- Reported sales from the Port's percentage rent tenants, who are required to report their sales to the Port, dropped by 72% between CY2019 and CY2020, from \$280 million to \$78 million.
- Excursions experienced the most drastic drop in reported revenue between 2019 to 2020, from \$69 million to \$11 million representing an 84% reduction (see **Figure 1** below).
- Restaurants experienced the highest amount of revenue lost totaling \$90 million, representing a 68% drop from 2019 to 2020.
- Generally tenants who have applied for rent forgiveness generated more sales than tenants who have not applied to the program, See **Figure 2** below.
- While about 60% of percentage rent establishments were operating in September 2021, that proportion dropped to 50% in January 2021 (see Exhibit 2 for further data).

**Figure 1. Sales Reported by Percentage Rent Tenants, 2019 and 2020**



**Figure 2. Percentage Rent Tenant Sales: Applications Submitted versus No Application Submitted**



**V. STAFF RECOMMENDATION**

Port staff recommend that the Port Commission approve the attach resolutions which are summarized in **Table 2** above. The resolutions:

- (A) Revise the Mutual Termination Policy to, among other things, delegate to staff the authority to enter mutual terminations with tenants for leases with rent up to \$20,000 per month (increased from the 2009 level of \$10,000 per month), and
- (B) Subject to the terms and conditions described above, keeps the fiscal year 2019/2020 parameter leasing rates and delegated authorities in place and expands staff’s delegated authority to off for new leases:
  - a. discounted rates for office, shed, and maritime office when the lease covers maritime office, shed, and apron and/or water area **or**
  - b. offer rent abatement for approved tenant improvements of up to 5 months for a lease of at least 3 years and up to 7 months for a lease of at least 5 years, and

(C) Subject to the terms and conditions described above, amend the Excess Rent provision of an existing lease to reduce the portion of net Excess Rent revenues to the Port from 100% to not less than 50%.

Prepared by: Rebecca Benassini  
Deputy Director  
Real Estate & Development

Andre Coleman  
Deputy Director, Maritime

Jay Edwards  
Senior Property Manager

Crezia Tano-Lee  
Business Strategy & Optimization

### **Exhibits**

Exhibit 1: Leasing Tactics Summary

Exhibit 2: 2019/2020 Parameter Rent for Office and Shed

Exhibit 3: Percentage Rent Tenant Data

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 21-15**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, By Resolution No. 93-127, adopted September 8, 1993, and as revised thereafter, the Port Commission has delegated certain authority to the Executive Director to approve and execute certain transactional documents such as leases and licenses that conform to all of the parameters set by the Port Commission; and

WHEREAS, by Resolution 88-16, the Port Commission delegated to Port staff authority to terminate leases in cases where any one of the following conditions are met:

- (i) In the case of long-term leases, in accordance with any termination provisions contained therein;
- (ii) In the case of month-to-month tenancies, at any time staff has determined that:
  - 1. the property is no longer suitable for the use for which it was licensed;
  - 2. the property is required for another use either by the Port or by other tenant(s);
  - 3. the tenant has violated any of the terms of its occupancy;
  - 4. termination is brought about by operation of law (e.g., by order of a bankruptcy court); and

WHEREAS, During the last economic downturn, by Resolution No. 09-04, adopted January 13, 2009, the Port Commission recognized that, in limited circumstances, early termination of a lease or license by mutual agreement may be preferable to the expenditure of Port staff and City Attorney resources to recover Port property and delinquent rent through bankruptcy proceedings; and adopted a Mutual Termination Policy to allow the Executive Director to execute mutual termination agreements with tenants with a remaining term of less than five years and monthly rent not to exceed ten thousand dollars (\$10,000.00) where all the following conditions are met:

- (i) Port staff has independently verified the tenant's financial condition;
- (ii) Port staff has inspected the subject property, made a record of the condition of the property and documented any unfulfilled tenant obligations for maintenance, repair, tenant improvements, removal of personal property and/or restoration of the premises; and

(iii) The Port Executive Director determines in her/his sole discretion that early termination of a lease or license in exchange for payment or other consideration made by the tenant is in the Port's best interests; and

WHEREAS, to retain tenants meeting the above criteria and needing to reduce their leasehold premises, Port staff recommends that this Mutual Termination Policy apply to both complete and partial terminations subject to the terms and conditions described in the Memorandum to the Port Commission dated April 9, 2021; and

WHEREAS, in order to reflect the increase in the parameter rent schedule since 2009 and inflation, Port staff recommends increasing the monthly lease payments threshold to up to \$15,000; now, therefore, be it

RESOLVED, that the Port Commission hereby delegates authority to the Port Executive Director to partially or completely terminate by mutual agreement leases and licenses with a remaining term of less than five years and monthly rent not to exceed fifteen thousand (\$15,000.00) subject to the terms and conditions described in the Memorandum to the Port Commission dated April 9, 2021, where all the following conditions are met:

- (i) Port staff has independently verified the tenant's financial condition;
- (ii) Port staff has inspected the subject property, made a record of the condition of the property and documented any unfulfilled tenant obligations for maintenance, repair, tenant improvements, removal of personal property and/or restoration of the premises;
- (iii) Port staff has determined it is more economically viable to allow tenant to terminate and vacate the premises rather than pursue an unlawful detainer action;
- (iv) Tenant has provided documentation showing it is financially unable to continue to meet its lease obligation and continued occupancy will lead to an accrual of uncollectible rents; and
- (v) The Port Executive Director determines in her/his sole discretion that early termination of a lease in exchange for payment or other consideration made by the tenant is in the Port's best interests.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 13, 2021.***

---

Secretary

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 21-16**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, By Resolution No. 93-127, adopted September 8, 1993, and as amended thereafter, the Port Commission authorized the Executive Director to approve and execute certain transactional documents such as leases and licenses that conform to all of the parameters set forth in by the Port Commission (the “delegated authority”); and
- WHEREAS, Port staff has delegated authority to enter into leases, licenses, and Memorandums of Understanding with rents that conform to the applicable Monthly Rental Rate Schedule, Parking Stall Rate Schedule, and Special Event and Filming Rate Schedule as most recently established by the Port Commission effective August 1, 2019 by Resolution No. 19-24 for the fiscal year 2019/2020, collectively with the delegated authorities, the “parameter rent schedule”; and
- WHEREAS, On February 26, 2020, Mayor London Breed issued the Proclamation by the Mayor Declaring the Existence of a Local Emergency (the "Mayor's Emergency Declaration") under Sections 8550 et seq. of the Government Code, Section 3.100(13) of the San Francisco Charter, and Chapter 7 of the San Francisco Administrative Code, establishing the existence of an emergency within the City and County of San Francisco (the “City”) due to the ongoing spread of COVID-19; and
- WHEREAS, On March 16, 2020, the City Health Officer issued an Order (the “March 16 Order”) directing all residents to remain at their place of residence, except to conduct Essential Activities, Essential Businesses, and Essential Government Functions (as defined in the March 16 Order); and
- WHEREAS, Since that time, the Mayor and the Health Officer have regularly updated these orders in order to protect public health and re-open the economy; and
- WHEREAS, In response to these emergency measures and the severe impacts on Port’s tenants, the Port has provided several relief measures including a Broad-Based Rent Deferral Program (Resolution 20-18), an Opt-In Extended Deferral Program (Resolution 20-30), a Rent Forgiveness Program (Resolutions 20-41 and 20-55), a Rent Repayment Program (Resolution 20-56) and the Port Shared Spaces Program (See Resolution 20-50); and



- WHEREAS, In early 2021, Port staff engaged the assistance of a team of real estate economists and commercial brokers to review market conditions and advise the Port on possible portfolio management strategies including changes to the parameter rent schedule; and
- WHEREAS, Based on its review of the third party analysis and the existing delegated authorities, Port staff has determined and recommends that additional delegated authorities with respect to: (1) rental rate discounts; (2) rent abatement for tenant improvements to Port property; (3) rental rate discounts for the office components of maritime leases that include office, shed, and apron uses and/or submerged lands; and (4) deviations from the standard form lease to allow a split of excess rents from a sublease for new and existing tenants, each as further described in the Memorandum to the Port Commission dated April 9, 2021, will make the Port more competitive in attracting and retaining tenants in the current distressed leasing environment, and
- WHEREAS, Port staff has determined that the FY2019/2020 parameter rent schedule, including the expanded delegated authorities recommended by Port staff, continues to represent the fair market value rent as defined in Section 23.2 of the San Francisco Administrative Code (“Market Rent”) shall mean the most probable rent that real property should bring in a competitive and open market reflecting all conditions and restrictions of the property agreement); and now therefore be it
- RESOLVED, That the Port Commission approves the programs allowing for: (1) rental rate discounts; (2) rent abatement for tenant improvements to Port property; (3) rental rate discounts for the office components of maritime leases that include office, shed, and apron uses and/or submerged lands; and (4) deviations from the standard form lease to allow a split of excess rents from a sublease for new and existing tenants, subject to the terms and conditions described in the Memorandum to the Port Commission dated April 9, 2021, and delegates to Port staff the authority to enter into leases, licenses and MOUs and amendments thereto; and that such terms are equivalent to “Market Rent” as defined in Section 23.2 of the San Francisco Administrative Code; and be it further
- RESOLVED, That Port staff shall provide the Port Commission, within thirty days following each calendar month, a summary of leases, licenses, and Memoranda of Understanding entered into; subleases or assignments consented to during that month; a summary of lease terminations; and a summary of maritime cargo throughput.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 13, 2021.***

---

Secretary

**Exhibit 1. Summary of Modifications to 2019/2020 Parameter Leasing Delegated Authority**

Type of space	Range of Min Parameter Rent Mos. per sq. ft. FY 2019/2020	Current PC approved Delegation	Recommended Interim Lease Tactics Delegated Authority
Class B Office Class C Office	\$3.25 – 4.25 \$1.00 – 3.25	<p>Rent Abatement for Site Preparation: <i>1 mos. rent abated per lease year up to 3 mos.</i></p> <p>Rent Credits of <i>up to \$5 per ft. for paint and carpet</i></p>	<p>For new leases and renewal leases with existing tenants and a minimum 3-year term, Port staff may offer either option:</p> <p><u>Option A:</u> Yr. 1 - 70% of minimum parameter rent Yr. 2 - 80% of minimum parameter rent Yr. 3 - minimum parameter rent No rent abatement or credits</p> <p><u>Option B:</u> Tenant constructs tenant improvements of a cost equal to or greater than rent abatement: Yrs. 1 - 3: minimum parameter rent with up to 5 mos. rent abatement Yrs. 1 - 5: minimum parameter rent with up to 7 mos. rent abatement</p> <p>Tenant may combine rent abatement for site preparation of up to 3 months and the remainder for tenant improvements. Rent credits for paint and carpet are superseded by rent abatement however would be eligible under tenant improvements.</p> <p>Tenant improvements eligible for rent abatement must be on the leased premises or must serve the leased premises in the case of utilities; must improve the real property; and have an expected life exceeding the lease term. Examples of improvements eligible for rent abatement include interior improvements, utility upgrades, lighting, HVAC, and code upgrades. Rent abatement may be taken upfront or amortized equally over the term of the lease.</p> <p>Port must approve the proposed improvements, estimated cost and life expectancy of the improvements. All improvements are subject to permitting and all other customary lease requirements. Work that does not qualify as a tenant improvement and would be required to be competitively bid under City laws and procedures are not eligible for abatement.</p> <p>Tenant must construct the improvements no later than the end of the 1<sup>st</sup> lease year unless Tenant requests and Port grants an extension not to exceed 6 months. Should tenant fail to construct the improvements, Port will have all the remedies available under the lease, including repayment of abated rent. Tenant must provide a verified summary of costs of tenant improvements upon completion of the improvements.</p>

			Tenant fixtures, specialized equipment or improvements that only benefit the tenant would not be eligible.
<b>Type of space</b>	<b>Range of Min Parameter Rent Mos. per sq. ft. FY 2019/2020</b>	<b>Current PC approved Delegation</b>	<b>Recommended Interim Lease Tactics Delegated Authority</b>
Shed Space	\$0.70 - 3.25	Rent Abatement for Site Preparation: 1 mos. rent abated per lease year up to 3 mos.	<p>For new leases and renewal leases with existing tenants and a minimum 3-year term. Port may offer either option which may be combined with the existing delegated authority:</p> <p><u>Option A:</u>  Yr. 1 - 80% of minimum parameter rent  Yr. 2 - 90% of minimum parameter rent  Yr. 3 - minimum parameter rent  No rent abatement or credits</p> <p><u>Option B:</u>  Tenant constructs tenant improvements of a cost equal to or greater than rent abatement:  Yrs. 1 - 3: minimum parameter rent with up to 5 mos. rent abatement  Yrs. 1 - 5: minimum parameter rent with up to 6 mos. rent abatement</p> <p>Tenant may combine rent abatement for site preparation of up to 3 months and the remainder for tenant improvements.</p> <p>Tenant improvements eligible for rent abatement must be on the leased premises or must serve the leased premises in the case of utilities; must improve the real property; and have an expected life exceeding the lease term. Examples of improvements eligible for rent abatement include Port standard fencing, utility upgrades, lighting, paving, and code upgrades. Rent abatement may be taken upfront or over the term of the lease.</p> <p>Port must approve the proposed improvements, estimated cost and life expectancy of the improvements. All improvements are subject to permitting and all other customary lease requirements. Work that does not qualify as a tenant improvement and would be required to be competitively bid under City laws and procedures are not eligible for abatement.</p> <p>Tenant must construct the improvements no later than the end of the 1<sup>st</sup> lease year unless Tenant requests and Port grants an extension not to exceed 6 months. Should tenant fail to construct the improvements, Port will have all the remedies available under the lease, including repayment of abated rent.</p> <p>Tenant fixtures, specialized equipment or improvements that only benefit the tenant would not be eligible.</p>

Type of space	Range of Min Parameter Rent Mos. per sq. ft. FY 2019/2020	Current PC approved Delegation	Recommended Interim Lease Tactics Delegated Authority
Maritime Office	\$1.00 – 4.25	Must equal not less than parameter lease rate	<p>For new leases with maritime tenants leasing office, shed, and apron space access and use of submerged land for a minimum 1-year term:</p> <p>Port staff may offer the office portion of these three use types to start at no less than 75% of the applicable office rate and then to increase each year at 3% per year.</p>

## Exhibit 2. 2019/2020 Parameter Rent for Office and Shed

Parameter Rate Schedule  
Office Rents FY2020

Exhibit A-1

Full Service Office - Class B Rates			
Sub-Area	Location Type	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
NE Waterfront	Roundhouse Plaza	\$ 4.25 - \$ 4.89	\$ 4.04 - \$ 4.64

Full Service Office - Class C Rates			
Sub-Area	Location Type	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
Ferry Plaza	Ag. Building Interior	\$ 1.60 - \$ 1.84	\$ 1.52 - \$ 1.75
Ferry Plaza	Ag. Building Window	\$ 3.50 - \$ 4.03	\$ 3.33 - \$ 3.82
China Basin	401 Terry Francois	\$ 3.50 - \$ 4.03	\$ 3.33 - \$ 3.82

Office NNN - Class B Rates			
Sub-Area	Location	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
NE Waterfront	Pier 33 ½ North	\$ 3.50 - \$ 4.03	\$ 3.33 - \$ 3.82
NE Waterfront	Pier 33 Bulkhead Bldg.	\$ 3.25 - \$ 3.74	\$ 3.09 - \$ 3.55
NE Waterfront	Pier 35 Bulkhead Bldg.	\$ 3.50 - \$ 4.03	\$ 3.33 - \$ 3.82
NE Waterfront	Pier 9 Bulkhead Bldg.	\$ 4.25 - \$ 4.89	\$ 4.04 - \$ 4.64
NE Waterfront	Pier 9 Pier Office	\$ 4.25 - \$ 4.89	\$ 4.04 - \$ 4.64
South Beach	Pier 26 Annex Bldg.	\$ 3.25 - \$ 3.74	\$ 3.09 - \$ 3.55

Office NNN - Class C Rates			
Sub-Area	Location	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
Fishermen's Wharf	490 Jefferson St.	\$ 3.50 - \$ 4.03	\$ 3.33 - \$ 3.82
NE Waterfront	Pier 29 ½	\$ 2.25 - \$ 2.59	\$ 2.14 - \$ 2.46
NE Waterfront	Pier 29 Annex Bldg.	\$ 3.15 - \$ 3.62	\$ 2.99 - \$ 3.44
NE Waterfront	Pier 35 Interior Office	\$ 2.50 - \$ 2.88	\$ 2.38 - \$ 2.73
NE Waterfront	Pier 23 Bulkhead Bldg.	\$ 2.00 - \$ 2.30	\$ 1.90 - \$ 2.19
South Beach	Pier 28 Bulkhead Bldg.	\$ 2.75 - \$ 3.16	\$ 2.61 - \$ 3.00
South Beach	Pier 38 Bulkhead Bldg.	\$ 2.50 - \$ 2.88	\$ 2.38 - \$ 2.73
South Beach	Pier 26 Bulkhead Bldg.	\$ 2.75 - \$ 3.16	\$ 2.61 - \$ 3.00
China Basin	Pier 54 Office	\$ 1.60 - \$ 1.84	\$ 1.52 - \$ 1.75
China Basin	Pier 70, Building 11	\$ 1.10 - \$ 1.27	\$ 1.05 - \$ 1.20
China Basin	Pier 50 Bulkhead Bldg.	\$ 3.40 - \$ 3.91	\$ 3.23 - \$ 3.71
Southern Waterfront	501 Cesar Chavez	\$ 1.30 - \$ 1.50	\$ 1.24 - \$ 1.42
Southern Waterfront	601 Cesar Chavez	\$ 1.80 - \$ 2.07	\$ 1.71 - \$ 1.97
Southern Waterfront	671 Illinois St.	\$ 1.00 - \$ 1.15	\$ 0.95 - \$ 1.09
Southern Waterfront	696 Amador	\$ 1.35 - \$ 1.55	\$ 1.28 - \$ 1.47
Southern Waterfront	Pier 96 Admin. Bldg.	\$ 1.50 - \$ 1.73	\$ 1.43 - \$ 1.64
Southern Waterfront	Pier 96 Gate House Bldg.	\$ 1.15 - \$ 1.32	\$ 1.09 - \$ 1.26

Office Storage Rates			
Sub-Area	Location Type	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
Portwide	Office Storage	\$ 1.70 - \$ 1.96	\$ 1.62 - \$ 1.86

Parameter Rate Schedule  
Pier, Shed, Land Rates FY2020

Exhibit A-1

Pier, Shed, & Land Rates			
Sub-Area	Location	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
Fisherman's Wharf	Pier 47	\$ 1.60 - \$ 1.76	\$ 1.44 - \$ 1.58
Fisherman's Wharf	Pier 45	\$ 1.60 - \$ 1.76	\$ 1.44 - \$ 1.58
Northeast Waterfront	Pier 35	\$ 1.60 - \$ 1.76	\$ 1.44 - \$ 1.58
Northeast Waterfront	Pier 33	\$ 1.60 - \$ 1.76	\$ 1.44 - \$ 1.58
Northeast Waterfront	Pier 31	\$ 1.65 - \$ 1.82	\$ 1.49 - \$ 1.63
Northeast Waterfront	Pier 29	\$ 1.65 - \$ 1.82	\$ 1.49 - \$ 1.63
Northeast Waterfront	Pier 23	\$ 1.65 - \$ 1.82	\$ 1.49 - \$ 1.63
Northeast Waterfront	Pier 19	\$ 1.65 - \$ 1.82	\$ 1.49 - \$ 1.63
Northeast Waterfront	Pier 9	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
South Beach	Pier 24 Annex	\$ 3.40 - \$ 3.74	\$ 3.06 - \$ 3.37
South Beach	Pier 26	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
South Beach	Pier 28	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
South Beach	Pier 38	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
South Beach	Pier 40	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
China Basin	Piers 48	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
China Basin	Pier 50	\$ 1.75 - \$ 1.93	\$ 1.58 - \$ 1.73
China Basin	Pier 54 Shed	\$ 0.70 - \$ 0.77	\$ 0.63 - \$ 0.69
China Basin	Seawall Lot 343	\$ 1.25 - \$ 1.38	\$ 1.13 - \$ 1.24
China Basin	Seawall Lot 345	\$ 1.25 - \$ 1.38	\$ 1.13 - \$ 1.24
Southern Waterfront	Seawall Lot 349	\$ 1.10 - \$ 1.21	\$ 0.99 - \$ 1.09
Southern Waterfront	Pier 80	\$ 1.25 - \$ 1.38	\$ 1.13 - \$ 1.24
Southern Waterfront	Seawall Lot 354	\$ 1.25 - \$ 1.38	\$ 1.13 - \$ 1.24
Southern Waterfront	Pier 90	\$ 1.10 - \$ 1.21	\$ 0.99 - \$ 1.09
Southern Waterfront	Pier 92	\$ 1.10 - \$ 1.21	\$ 0.99 - \$ 1.09
Southern Waterfront	Seawall Lot 352	\$ 1.10 - \$ 1.21	\$ 0.99 - \$ 1.09
Southern Waterfront	Seawall Lot 344	\$ 1.10 - \$ 1.21	\$ 0.99 - \$ 1.09
Southern Waterfront	Pier 96 - M&R Building	\$ 1.25 - \$ 1.38	\$ 1.13 - \$ 1.24
Southern Waterfront	Facility 6019	\$ 0.75 - \$ 0.83	\$ 0.68 - \$ 0.74

Open Land & Pier Rates			
Sub-Area	Location Type	Monthly Rental Rate Range PSF	Monthly Net Eff. Rental Range PSF
Open Land	Improved Land & Sidewalk	\$ 0.85 - \$ 0.94	\$ 0.77 - \$ 0.84
Open Land	Paved Land	\$ 0.45 - \$ 0.50	\$ 0.41 - \$ 0.45
Open Land	Unpaved Land	\$ 0.35 - \$ 0.39	\$ 0.32 - \$ 0.35
Open Land	Subterranean Land	\$ 0.19 - \$ 0.21	\$ 0.17 - \$ 0.19
Open Land	Submerged Land	\$ 0.19 - \$ 0.21	\$ 0.17 - \$ 0.19
Open Pier	Open Pier Space	\$ 0.40 - \$ 0.44	\$ 0.36 - \$ 0.40
Open Pier	Apron Space	\$ 0.40 - \$ 0.44	\$ 0.36 - \$ 0.40

See full schedule – including parking rates, special events, and other rates at link below.  
<https://sfport.com/sites/default/files/Documents/Item%2010A%20Attachments%20Parameter%20Rates%20Exhibits%20A%20to%20G.pdf>

### Exhibit 3. Additional Sales Data

#### Percentage Rent Tenants Reported Sales

	2019	2020	\$ Change	% Change
Restaurant	\$ 132,180,888	\$ 42,520,875	\$(89,660,013)	-68%
Parking	\$ 12,132,819	\$ 5,346,518	\$ (6,786,301)	-56%
Excursion	\$ 69,022,359	\$ 11,157,031	\$(57,865,328)	-84%
Other	\$ 66,115,332	\$ 18,791,496	\$(47,323,836)	-72%
	<b>\$ 279,451,398</b>	<b>\$ 77,815,920</b>		

#### Percentage Rent Tenants Reporting more than \$0 in Sales by Selected Months.

	Number of Establishments					
	Sep-20			Jan-21		
	Sales +\$0	All	% making sales	Sales +\$0	All	% making sales
<b>Fisherman's Wharf</b>						
Restaurants + Cafes	9	16	56%	7	16	44%
Excursions	3	6	50%	2	6	33%
Retail + Other	6	9	67%	4	9	44%
<b>Central + Southern</b>						
Restaurants + Cafes	4	8	50%	4	8	50%
Parking Lots	5	9	56%	5	9	56%
Other	4	6	67%	4	6	67%
<b>Northern</b>						
Restaurants	2	4	50%	1	4	25%
Parking Lots	6	6	100%	6	6	100%
Excursions	2	2	100%	1	2	50%
Other	1	2	50%	0	2	0%
<b>Total</b>	42	68	62%	34	68	50%