




MEMORANDUM

July 9, 2020

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

FROM: Elaine Forbes 
Executive Director

SUBJECT: Informational on Status and Findings of the Opt-In Rent Deferral Program and Proposed Rent Forgiveness Strategy

DIRECTOR'S RECOMMENDATION: Information Only

EXECUTIVE SUMMARY

This memorandum provides an overview of the proposed rent forgiveness strategy to continue the dialogue on further tenant relief in response to the COVID- 19 pandemic and an update on the Port's Opt-In Rent Deferral Program (Opt-In Program).

This memorandum provides background on a rent forgiveness strategy, a proposed set of implementation criteria, current estimates of the potential fiscal impact of this program to the Port, and key questions to be answered in order to develop an action item. On June 9, 2020, the Port Commission approved the Opt-In Rent Deferral Program which defers rent for eligible tenants who complete an online application by July 15. The deferral lasts until December 31, at which time under the deferral all past rent is due. This memorandum describes a rent forgiveness program, which builds upon, and does not replace, the deferral program.

The described rent forgiveness program aims to mitigate the crippling financial effects of the COVID-19 pandemic for Port tenants, in a fiscally sustainable and implementable manner for the Port. Port staff seeks Port Commissioners' input on the following rent forgiveness proposals:

THIS PRINT COVERS CALENDAR ITEM NO. 10B

- (1) **Forgive base rent from March 1, 2020 through April 30, 2021 for tenants with leases which have a base or minimum rent and a percentage rent component.** Applies to all direct restaurant, retail, excursion, and parking leases with the Port which have a base and percentage rent component. The timeframe is meant to provide relief to these seasonal and visitor-driven tenant types during the shelter in place (SiP) orders and through the coming “low season”. This program component would affect about 51 tenants. These tenants include those whose businesses were directly shut down by shelter in place and are largely reliant on tourism (restaurants, attractions, retail, and excursions). This category is proposed to receive the longest lasting base rent relief, but that relief is coupled with the requirement to continue paying percentage rent during the entire period.
- (2) **Forgive rent from March 1, 2020 to May 31, 2020 for select maritime tenants including commercial fishing and crabbing and fish processing.** These tenants are the heart of the Port’s commercial maritime businesses and have been indirectly affected by SiP orders, as their restaurant customers were shut down. Along with rent deferral to December 31 under the Opt-In Program, Port staff propose supporting them during the pandemic through rent forgiveness during the core SiP period. Forgiveness during the three month SiP coupled with rent deferral through December. This forgiveness program will likely affect 122 Port tenants.
- (3) **Forgive rent from March 1, 2020 to May 31, 2020 for Port tenants who are also registered Local Business Enterprises (LBEs).** These small, local businesses are unlikely to have financial resources to whether the economic crisis and the Port has demonstrated its commitment to retaining LBE tenants on the waterfront. While staff do not yet has specific data on how Port’s LBE tenants have been affected by the pandemic, some are suppliers to heavily impacted sectors and others are in less impacted lines of business. Along with rent deferral to December 31 under the Opt-In Program, Port staff propose supporting these LBEs through rent forgiveness during the core SiP period. This forgiveness program will likely affect about 28 Port tenants.
- (4) **Establish a criteria-based, budget-limited rent forgiveness fund for tenants not covered by (1)-(3) engaged in work that is trust-consistent or similarly public-serving in nature and who demonstrate a significant economic impact from the pandemic.** While Port staff have devised the categories in (1)-(3) to capture tenants most impacted by the pandemic, staff recognize that the Port’s tenants operate a diverse array of business types which may not fit into the categories and still may be worthy of rent relief. This final category of relief could support individual tenants who qualify for the program and successfully apply for forgiveness, subject to the Port’s ability to fund such a program.

Port staff are developing a list of tenants fitting into each of the above three categories. Once the forgiveness program is fully developed and approved, Port staff will notify tenants in categories 1-3 of their eligibility for forgiveness. Tenants seeking relief outside of these three categories have four avenues for relief: (i) remain in the Opt-In Program; (ii) apply for category 4 (if applicable to their business); (iii) seek mutual termination (if applicable); or (iv) seek renegotiation of lease which may required Port Commission and Board of Supervisors

approval.

Port staff estimate the potential rent forgiven amount to be approximately \$15.3 million which is comparable to the \$61.9M operating revenue reduction revenue included in the Port Commission approved budget (FY 2020-21). This number is less than the reduced budget projection because it is only one part of the revenue reduction. It is the amount of rent Port staff proposes to forgive; in addition, the unprecedented economic conditions will reduce the Port's revenue without any explicit changes to lease terms because the Port's revenues rise and fall with our tenants' economic activity.

The estimated cost is subject to ongoing refinement as: (a) sales reporting resumes for many tenants who were shuttered during the SiP, (b) changing public health conditions and orders affect business opportunities, and (c) some Port tenants seek mutual lease termination or leave at the end of their lease term. The estimate assumes that restaurants, retail, excursions, and parking operations ramp up from 25% of last year's sales between March and December to 50% of last year's sales between January and April 2021.

Today staff seeks comments from the Port Commission on any element of the proposal and specifically feedback on:

1. Confirming the categories of tenant rent forgiveness are aligned with Port's operating mission and values.
2. Criteria Port staff should consider in a criteria-based, budget-limited fourth category of rent forgiveness, if the Port Commission agrees with the concept.
3. Any element of the suite of programs under discussion including the forgiveness sectors, rent types included in forgiveness length of forgiveness, among other elements, summarized in **Table 1** for reference:

Table 1. Proposed Rent Forgiveness and Approved Rent Deferral Program

Category	Proposal	Relief Period	Months in Effect	Est. # Tenants Affected	Est. Rent Forgiven or Deferred
A. Percentage Rent Tenants	Forgive Base Rent. All Percentage Rents in effect and due.	March 1, 2020 – April 30, 2021	14	51	\$14.50 M (offset by percentage rent throughout period)
B. Select Maritime Tenants	Port will forgive all base rents	March 1 – May 31, 2020	3	122	\$0.70 M
D. LBE Tenants	Port will forgive all base rents	March 1 – May 31, 2020	3	28	\$0.16 M
E. Criteria-based	Tenants may apply for forgiveness based upon criteria like Trust and community-serving..	Application-based	TBD	TBD	TBD

F. Opt-In Rent Deferral	Application-based rent deferral	August 1 – December 31, 2020	5	Most tenants	\$8 M to \$36.60 M
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BACKGROUND

Update on Opt-In Program

The Port has taken a number of actions to provide relief to tenants, including delaying CPI increases and observing the commercial tenant eviction moratorium, during the Covid-19 crisis and associated public health shelter-in-place orders. As part of the emergency orders, the Mayor has put a commercial tenant eviction moratorium into place, which at this time is set to expire on July 16, 2020, but may be extended. Port Commissioner and public comment during the last few months as well as data collected informally and through the Opt-in Program recognizes that, in many cases, further relief is likely needed in the form of rent forgiveness in order to keep businesses viable.

The data collected through the Opt-In Program illuminates the challenges Port’s tenants face. One point which continues to resonate throughout tenant feedback is the lack of certainty on what the future holds. In the section below, Port staff presents a status update on the Opt-In Program submittals, key findings gleaned from initial review, and how that data helped to craft a rent forgiveness program.

Need for Rent Forgiveness and Other Rent Forgiveness Initiatives

Commercial landlords throughout the country are opting to try to keep tenants in place rather than pursuing broad evictions because it makes financial sense to maintain business ties with known partners rather than to attempt to bring in new tenants in such constrained economic conditions. Port staff have concluded that rent forgiveness is needed for some tenant sectors to keep those tenants and leases in place. Port staff also note the Port Commission’s concern about the impacts of any such program on the Port’s budget and the Port’s own financial obligations to lenders and bond holders. The rent forgiveness proposal aims to balance the need for relief for some tenant sectors with the Port’s need for a balanced budget.

Rent forgiveness will require lease amendments to alter the tenant’s contractual agreement to pay rent under the applicable lease. To ensure fairness and for efficiency, staff proposes to establish a Covid-19 Rent Forgiveness Program which, if adopted by the Port Commission, delegates authority to the Executive Director to enter into standardized and targeted lease amendments for specific categories of tenants under defined circumstances. The delegation would be structured around the key points set forth under “Rent Forgiveness Strategies” below.

In some cases, such an amendment will require Board of Supervisors approval under Charter Section 9.118 for leases that meet a revenue or duration threshold, in addition to approval or delegated authority from the Port Commission. Staff is also working with other City landlord departments, the City Administrator, and the Mayor to support development of an ordinance for introduction to the Board of Supervisors delegating authority so that staff can complete lease amendments as expeditiously as possible and provide certainty to the

tenants seeking to regain their financial footing. If this Citywide approach does not move forward by the end of July, Port staff recommends exploring Port-specific delegation legislation or an omnibus Board approval of all amendments, subject to the constraints summarized later in this memo.

As previously shared with the Port Commission, Senate Bill 939 was introduced earlier this year. It proposed to give commercial tenants the right not to pay rent without fear of eviction for a full year after the current COVID-19 emergency ends. The Senate Appropriations Committee did not advance the legislation; it was put on suspense and will not be moving forward this legislative session.

Opt-In Program Update & Key Findings

As approved by the Commission on June 9th (Resolution 20-30) the Port launched the Opt-In Program on June 15th and the submittal period is set to close on July 15th. Below is a summary of key findings from submittals as of July 7th. To date the Port has received Opt-In submittals for 37 agreements, representing approximately \$2 million of deferrable rent through the program’s expiration date of December 31, 2020. The data in Table 2 is an overview of financial exposure from rent deferred from March 1, 2020 – December 31, 2020 under the Port’s broad-based rent deferral program.

Table 2. Deferred Rent by Fiscal Year

	FY 2019-20	FY 2020-21 (through 12/31/20)	Total
Total Rent Due	\$18,810,000	\$27,820,000	\$46,630,000
Payments Made	\$10,000,000	TBD	\$10,000,000
Total Potential Rents Deferred	\$8,810,000	\$27,820,000	\$36,640,000
Likely Payments through December 31, 2020	\$2,160,000	\$13,080,000	\$15,240,000
Likely Exposure to Payments Deferred	\$6,650,000	\$14,750,000	\$21,400,000

March – June Revenue Performance

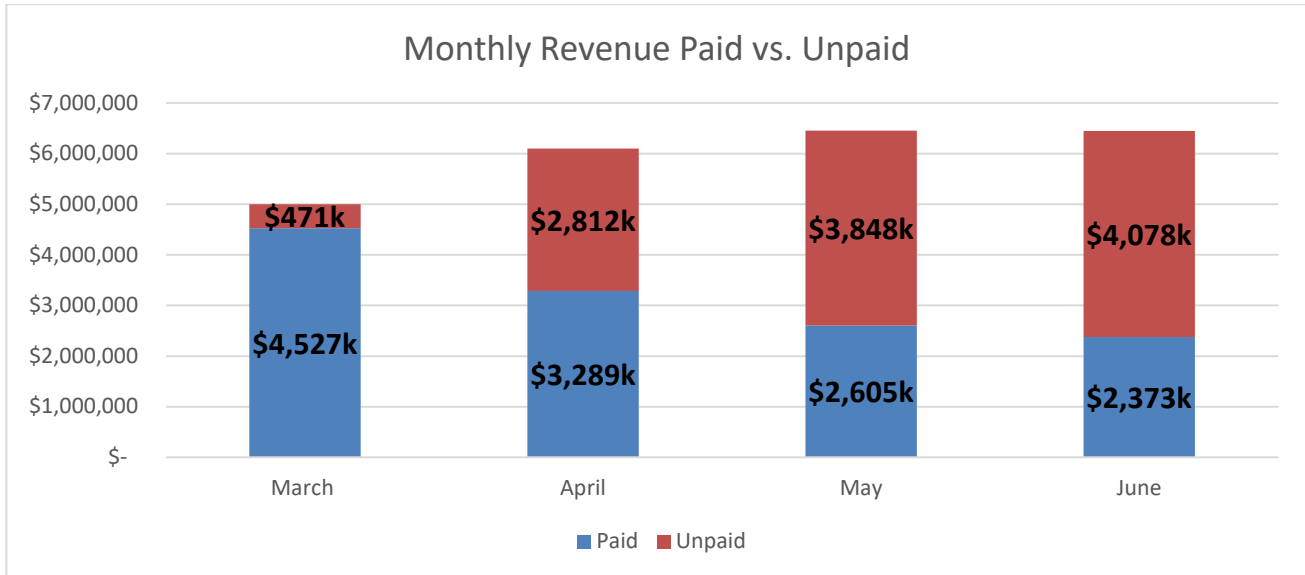
Below is a summary of rent receipts through June 30, 2020. Key takeaways from this period are:

- Of the \$24 million invoiced, \$12.7 million was received representing a 53% collections rate
- During the month of March, the collections rate was approximately 97%, this is

due largely to our invoice and payment cycle, many tenants had made payments prior to the Covid-19 economic effects.

- During the months of April – June, revenue shortfalls were spread throughout all portfolios, Fisherman’s Wharf portfolio experienced the largest average percentage uncollected at 81%
- For the same period of time, China Basin portfolio experienced the largest average amount uncollected at \$1.3 million

Figure 1. Monthly Revenue Paid vs Unpaid



RENT FORGIVENESS STRATEGIES

At the Port Commission’s April 28 meeting Port staff introduced the concept of a sector-based rent forgiveness strategy. Staff now proposes centering the program around four categories:

- A. Percentage rent tenants with base or minimum rent obligations (i.e. restaurants, retail, off-street parking maritime, excursions, and maritime attractions);
- B. Certain categories of maritime tenants;
- C. Local Business Enterprise tenants; and
- D. Criteria-based and budget-limited additional rent forgiveness.

With the intent of providing urgent assistance while balancing the financial impacts to the Port’s Budget, Port staff propose that these categories are the most impacted by the Covid-19 crisis and are aligned with the Port’s mission of managing the waterfront as a thriving, working waterfront and destination. Staff considered the Port’s financial sustainability and commitment to maritime, recreational and economic opportunities to serve the public, while applying an equity lens that is critical in achieving the Port’s vision of delivering vibrant and diverse waterfront experiences that enrich the City, region, and State.

The section below provides an overview of this strategy (see Table 3) a proposed set of implementation criteria, current estimates of the potential fiscal impact of this program to the Port, and key questions to be answered to continue to develop the strategy.

Table 3. Strategy Overview

Sector	Proposal	Relief Period		Months	Est. # Tenants Affected	Est. Rent Forgiven or Deferred
A. Percentage Rent Tenants	Port will forgive all base rents, and require payment of percentage rent as defined in the current lease agreement	March 1, 2020	April 30, 2021	14	51	\$14.50 M (offset by percentage rent paid throughout period)
B. Select Maritime Tenants	Port will forgive all base rents	March 1, 2020	May 31, 2020	3	122	\$0.70 M
D. LBE Tenants	Port will forgive all base rents	March 1, 2020	May 31, 2020	3	28	\$0.16 M
E. Criteria-based	Tenants not covered by (1)-(3) may apply for forgiveness based upon their work that is Trust-consistent or similarly public-serving in nature and who demonstrate a significant economic impact from the pandemic.	Application-based	Application-based	TBD	TBD	TBD
F. Opt-In Rent Deferral	Application-based rent deferral	August 1, 2020	December 31, 2020	5	Most tenants	\$8 M to \$36.60 M

Sector A – Forgiveness for “Percentage Rent” Tenants

Staff proposes that for most leases which require the payment of percentage rent subject to a minimum or base rent, the Port will forgive all base rents from March 1, 2020 through April 30, 2021. Despite variations in the terms of each lease, the percentage rent provisions are fairly uniform within categories. For example, dine in restaurants typically have a 6%-7% percentage share, where take out restaurant have a 10%-11% percentage share, and

parking is typically 66%. By removing base rent, and relying on percentage share rates in lease agreements, the Port and the tenant reaffirm the partnership to weather impacts of COVID-19, and move toward a shared prosperity model.

Conditions of participation include:

- Reporting sales on a monthly basis or as required by the existing lease
- Paying percentage rent on a monthly basis throughout the time period of base rent forgiveness s required by the existing lease
- Satisfying all responsibilities under the lease
- Tenants must state and maintain agreed upon hours of operation
- Tenants shall be required to submit an application similar to the Opt-In Program

Some percentage rent tenants did pay base rent between March and June, even though they had the option to defer. For those tenants, Port staff propose allowing rent credits in order to achieve a retroactive fairness as compared to tenants that opted to defer such payments.

Eligible tenants for this forgiveness include restaurants, retail, parking operators, tenants with maritime excursion operations, and other maritime attractions (e.g. Jeremiah O'Brien). Tenants with force majeure clauses in their leases may benefit from the rent forgiveness program, but only to the extent that base rent is otherwise payable.¹ The Port has approximately 51 tenants who fall under this category.

Master tenants (e.g., Pier 39, Ferry Building, Exploratorium, Oracle Ballpark, Pier 1, Piers 11/2 -5, Waterfront Plaza, Pier 70 Historic Core) where rent is calculated based on the unique mix of retail and non-retail uses cannot be addressed with a one-size approach. Accordingly, master tenant agreements will not be covered in this rent forgiveness program. To the extent relief is required, it may be negotiated on as-needed basis with the tenants. Port staff will analyze what relief was provided to subtenants, as part of the negotiations. Amendments to these leases will be subject to Port Commission and potentially Board approval.

Sector B – Select Maritime Tenant Rent Forgiveness

Within the maritime portfolio, rent from commercial fishing and crabbing and fish processing tenants is proposed for forgiveness, for the three-month period most impacted by the shelter-in-place orders, from March 1, 2020 through May 31, 2020. These tenants are the heart of the Port's commercial maritime businesses which have been particularly hard hit in the pandemic as their commercial restaurant customers were shut down. Conditions of participation include satisfying all responsibilities under the applicable lease.

Some maritime tenants did pay base rent during this period even though they had the option to defer. Similar to the Sector A proposal, those tenants would be allowed to take a rent credit for rent paid between March and May, should the Port adopt the forgiveness strategy.

¹ In other words, there will be no extension of the base rent forgiveness timeframe and no additional base rent forgiveness for any tenant attempting to use force majeure as the basis of that tenant having been excused from payment of base rent for some portion of the period between March 1, 2020 and April 30, 2021.

Eligible tenants for this forgiveness include fishing and fish processing tenants at Fisherman's Wharf. Tenants with force majeure clauses in their leases may benefit from the rent forgiveness program, but only to the extent that base rent is otherwise payable during the applicable timeframe.²

Tenants such as the Terminal Operators (e.g. Pasha, Metro,) will require more individualized analysis. Accordingly, these agreements will not be covered in this rent forgiveness program. To the extent relief is required, it may be negotiated on as-needed basis with the tenants and amendments to these leases will be subject to Port Commission.

The Port has approximately 122 number of Maritime Tenants, and these agreements are not subject to Board of Supervisor Approval.

Sector C - Local Business Enterprise Forgiveness

All currently registered Local Business Enterprise (LBE) tenants would be offered rent forgiveness for the three-month period most impacted by the shelter-in-place orders. The Port will forgive all base rents from March 1, 2020 through May 31, 2020. The Port Commission has emphasized the need to support LBEs through many of the Port's contracting practices. These LBEs range from sole proprietor trucking companies who lease drayage stalls to small construction companies who lease office and laydown space. It is critical to sustain the Port's vibrant and diverse population of micro professional service and construction LBEs.

Conditions of participation include:

- Satisfying all responsibilities under the applicable lease
- Must have maintained LBE status during the forgiveness period

Some LBE tenants did pay base rent during this period even though they had the option to defer. For those tenants, Port staff proposes allowing rent credits to be applied for rent, should the forgiveness program be adopted.

The Port has approximately 28 LBE tenants, and these agreements are not subject to Board of Supervisor approval.

PROGRAM ADMINISTRATION

In order to implement this program fairly and efficiently, Port staff propose to use standardized form amendments per sector (or in some cases, categories within sectors where necessary). The form will include standardized language, terms, and provisions. Should tenants elect to participate in the forgiveness program, they will be required, without exception and without negotiation, to enter into the form amendment. Port staff intend to present draft form amendments to the Port Commission at a future meeting and will be requesting Port Commission delegation to execute these form amendments with tenants who elect to participate in the forgiveness program.

² In other words, there will be no extension of the base rent forgiveness timeframe and no additional base rent forgiveness for any tenant attempting to use force majeure as the basis of that tenant having been excused from payment of base rent for some portion of the period between March 1, 2020 and April 30, 2021.

With respect to the allowance of rent credits for tenants that paid rent, but could have differed rent, Port staff proposes the following:

- Port and tenant calculate the total amount of the excess of rent paid to the Port above what would have been due under the percentage rent provision only (the “Base Rent Excess Amount”)
- Tenant shall be authorized to take 1/12 of the Base Rent Excess Amount (with no escalation) as a rent credit in July 2021 and in each of the next 11 months (through June 2022). The credit can be taken against rent, but not against any other fee or charge under the lease. The credit is only usable to the extent rent is payable to the Port and will be extinguished if the lease is terminated.
- Port staff may extend leases that would otherwise expire so as to allow for such rent credit recapture, but the rent per square foot may not change and the expiration date may not exceed such timeframe without further Port Commission approval. Termination or earlier surrender of the lease will extinguish any remaining rent credits.

FISCAL IMPACT ANALYSIS OF RENT RELIEF MEASURES

At the June 9 meeting, Commissioners voiced a desire to understand the cost of the tenant relief policies. For the forgiveness of base rent, Port staff compared total base rents receivable by sector to the percentage rent performance of that sector, at various performance rates (25%, 35%, and 50% - See Table 4 below) for the same period in 2019 in order to provide illustrations of what this forgiveness could cost by category. Key findings of this analysis are:

- Total Base Rent forgiven is estimated to be approximately \$15.3 million.
- Total estimated percentage rent projected to be collected over the same period – which is only available to the Port, should the Port forgive base rent in order to keep tenants in place is – between \$1.2 and \$13.3 million.

A major goal of the forgiveness program is to assist heavily impacted tenants that are most aligned with Port’s operating mission and values to save their business. A tenant who benefits from rent forgiveness may provide more revenues to the Port over the course of this recession than one who was not forgiven, if the latter firm goes out of business and thus does not provide rent in future months. If a tenant does not survive then the Port must terminate the lease and re-let the premises before revenues can again begin flowing, creating a significant time lag that will only be exacerbated in a long downturn. Percentage rent tenants represent approximately 1.5 million square feet.

Table 4 – Percentage Rent: Performance Illustrations

Assume Percentage Rent Tenants Achieve 25-50% of 2019 Sales Performance During Rent Forgiveness Period

	2019 Performance	50%	35%	25%
Restaurants	\$6,612,000	\$3,306,000	\$2,314,000	\$1,653,000
Other Food & Bev	\$4,259,000	\$2,129,000	\$1,491,000	\$1,065,000

Excursion	\$6,636,000	\$3,318,000	\$2,323,000	\$1,659,000
Retail	\$751,000	\$375,000	\$263,000	\$188,000
Attraction	\$1,198,000	\$599,000	\$419,000	\$299,000
Parking	\$7,058,000	\$3,529,000	\$2,470,000	\$1,764,000
Total Potential Percentage Rent to Port	\$26,513,000	\$13,257,000	\$9,280,000	\$6,628,000

FOR DISCUSSION – FURTHER TENANT RELIEF STRATEGIES & RELATED MATTERS

In addition to seeking input and later approval of the program described above, Port staff is researching and intends to return to the Port Commission in the coming months to discuss further relief measures. These relief measures may include but are not limited to:

- More details on the criteria-based and budget-limited rent forgiveness category. This program would be based on Port values and principles that reach Port trust mission and equity goals and objectives.
- A repayment plan option for outstanding deferred rent that cannot be paid by December 31st for tenants in the Opt-In Program
- City-wide efforts and measures, including Board of Supervisors legislation
- Marketing assistance by Port
- Streamlined permitting for Shared Spaces, Outdoor Activation and similar programs

Port staff will utilize data submitted through the opt-in process and plans to provide data to support any additional relief measure proposed to the Port Commission. This data will provide updated estimated rents by sector (base rent and historic percentage rent) and will summarize payment collection performance of rents by sector during the broad-based rent deferral period that is set to expire on July 31, 2020. Port staff intends to further refine revenue projections by sector and alignment with the overall timeline of the Port’s larger Economic Recover Strategy

NEXT STEPS ON FURTHER TENANT RELIEF

In summary, Port staff want to acknowledge that economic recovery from Covid-19 remains extremely turbulent. The increased cases of infections and the moderating of reopening phases at the State and local levels, have caused further uncertainty for our tenants. The Port’s ability to be flexible and to iterate is critical in our journey through economic recovery.

Port staff intends to incorporate feedback from the meeting and return to the Port Commission to continue the policy discussion on tenant assistance, rent relief, and legislative efforts that may affect the Port’s relief strategies.

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