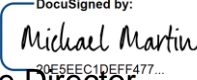




MEMORANDUM

May 8, 2020

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

FROM: Michael Martin 
Acting Executive Director

SUBJECT: Informational Presentation on Proposed Extended Tenant Rent Deferral Program

DIRECTOR'S RECOMMENDATION: Informational Only

Executive Summary

The impacts of COVID-19 are unprecedented, but as presented at the April 28 Port Commission Meeting, they are in short, dire. While the Port has taken actions to provide relief to tenants, it is clear that the ongoing economic dislocation caused by the public health response to the pandemic will require Port staff and the Port Commission to look at a multi-phase, multi-layered relief strategy for our tenants.

During the April 28 Commission Meeting, the Port Commission approved an extension of the initial staff-issued rent deferral policy through the end of May. Since that meeting the City's shelter-in-place order was extended through the end of May; accordingly Port staff intends to return to the Port Commission on May 26, 2020 to seek a further extension of the current deferral policy through July 31, 2020 to allow more time to observe the conditions after the orders are further relaxed before proposing further action. As part of the April 28 item Port staff also received Commission feedback on staff's initial analysis of potential further tenant relief.

THIS PRINT COVERS CALENDAR ITEM NO. 11A

Port staff have incorporated suggestions made by the Port Commission along with further market research and analysis to continue the discussion of how to structure an extended rent deferral program to replace the current broad-based deferral policy. An important consideration for any such next step is implementation across the Port's 500-tenant portfolio; a successful program will demand fairness across similarly situated tenants and efficient administration in the face of the impacts of the crisis on the Port's own budget.

This memo also describes Port staff's collaboration with other City landlord agencies to develop proposed legislative delegations from the Board of Supervisors intended to facilitate targeted lease amendments to implement rent forgiveness as may be approved in the future by the Port Commission.

Background

This item has been prompted by the rapid progression of the COVID-19 pandemic. In combating the immediate economic impacts to tenants, the Port has taken two key actions. On March 27, 2020 Executive Director Forbes directed Port staff to allow eligible affected tenants to defer rent owed for March and April 2020 without penalty or risk of eviction (the "Executive Directive"). All Port tenants were advised of the relief offered by the Executive Directive. Similar rent deferment policies were offered by the Airport, MTA, RPD and General Fund departments.

On April 28, 2020, the Port Commission adopted Resolution No. 20-18 which ratified and extended the Executive Directive on the same material terms, adding deferral of rent due for May 2020 and providing in more detail:

- Port staff to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of Port property during the period of March 1 through May 31, 2020; and
- Port staff to follow the policies and timeframes set forth in the Mayor's March 17, 2020, Eviction Moratorium Order which grants certain protections to small and medium-sized businesses with respect to the initiation of enforcement or eviction process due to the failure to pay rent because of COVID-19 impacts; and
- The Port will not issue any Three Day Notice to Pay or Quit for nonpayment of any portion of rent due during the period of March 1 through May 31, 2020 due to the impact of COVID-19; and
- New tenants executing leases for new space on or after April 1, 2020 are not eligible for relief.

Subsequently, on April 29, 2020, the San Francisco Health Officer extended the local shelter in place order through May 31, 2020. Governor Gavin Newsom's March 19, 2020 Order that establishing shelter-in-place guidelines for the state of California currently has no set expiration date.

As discussed at the April 28 Port Commission meeting, the Port budget's reliance on rental revenues creates a strategic challenge as relief programs are considered. While rent deferral simply changes the timing of otherwise due rent payments, rent forgiveness would reduce the payments due. A smart program must strike a balance between providing true rent forgiveness for those tenants who need it while at the same time incentivizing full payment from those who can pay, even if it is on a deferred basis. The Port benefits from every tenant who can weather this storm and regain its ability to pay rent on a current basis, rather than creating vacancies that need to be filled during the current economic downturn. Therefore, Port staff notes that a timely and strategic concession on rent that allows a tenant to survive and pay future rents is often on balance more beneficial than adhering closely to rent requirements and putting that business into default and on the road to eviction. This is even more true in the current situation when the ability to regain possession through legal action is limited through the orders noted above and access to the courts, at least in the near term.

It is clear that with the continuation of the shelter in place orders tenants who were challenged in paying their March, April or May rent will have equal if not more difficulty paying all such deferred rent by the Port's current deadline of June 30, 2020. Rather than allowing that date to arrive Port staff believes that a longer-term deferral program with additional submittal requirements would be a useful means to provide additional breathing room for impacted tenants while informing further Port action on rent forgiveness or other relief for targeted tenant categories.

April Revenue Performance

Port Staff continue to monitor revenue performance and will continue to report to the Port Commission. Below is a summary of April rent receipts through April 30, 2020. Key takeaways from April are:

- Of the 541 invoices, 259 payments were made representing a 48% payment rate (Figure A)
- Of the \$6.1 million invoiced, \$3.3 million was received representing a 52% collections rate (Figure B)
- Revenue shortfalls were spread throughout all portfolios, Fisherman's Wharf portfolio experienced the largest percentage uncollected at 80% and China Basin portfolio experienced the largest amount uncollected at \$1.2 million (Figure C)

Figure A - REVENUE BY TYPE

Revenue Type	Invoices	Payments	Payment Rate	Base Rent Invoiced	Total Rent Receipts
Cargo Facility Rent	14	10	71%	\$ 390,401	\$ 377,477
Color Curb Zone Fee	9	3	33%	\$ 20,555	\$ 26,059
Commercial Rent	322	180	56%	\$ 2,698,792	\$ 2,391,120
Cruise Facility Rent	1	1	100%	\$ 17,389	\$ 17,098
Dockage	9	4	44%	\$ 11,522	\$ 8,552
Fish Processing Facility Rent	59	20	34%	\$ 205,285	\$ 53,801
Harbor Services Facility Rent	3	2	67%	\$ 179,642	\$ 111,683
Layberthing	6	2	33%	\$ 110,133	\$ 13,301
Maritime Services Facility Rent	23	14	61%	\$ 176,170	\$ 93,012
Parking Lot Rent	21	5	24%	\$ 1,406,562	\$ 99,082
Participation Rent	62	13	21%	\$ 881,007	\$ 62,372
Permit Fees	2			\$ 750	
Utility Fees	7	4	57%	\$ 3,209	\$ 35,490
Wharfage	3	1	33%	\$ 452	\$ 226
	541	259	48%	\$ 6,101,869	\$ 3,289,273

Figure B - PAYMENTS CREDITED TO APRIL

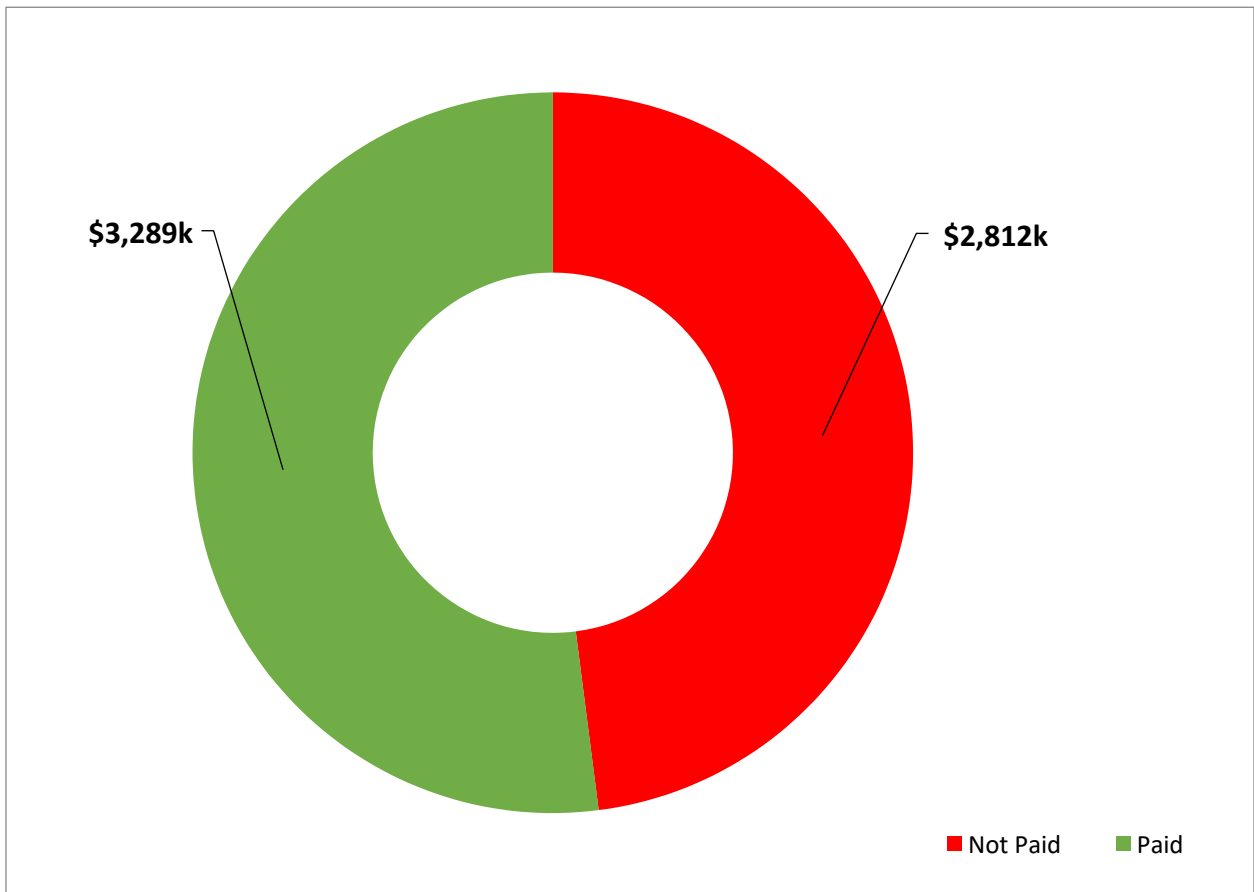
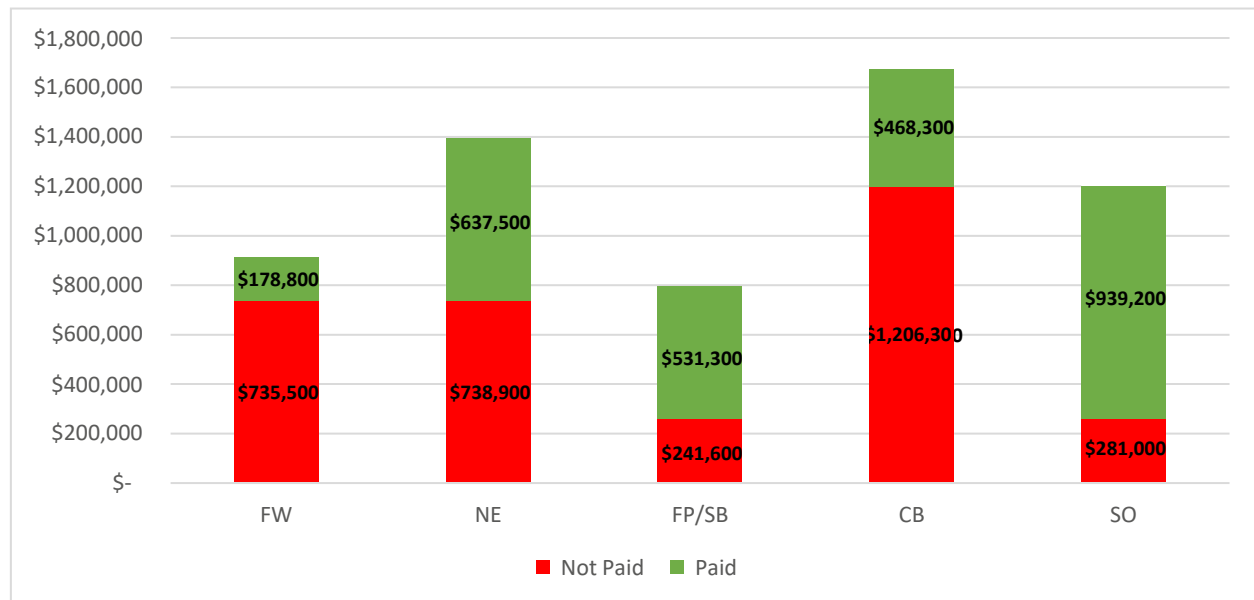


Figure C - REVENUE CREDITED BY PORTFOLIO



Rent Deferral Program

As detailed above, Port staff will return to the Port Commission on May 26 to seek an extension of the current rent deferral policy through July, to allow for the anticipated relaxing of the shelter-in-place regulations by that time. Port staff expect that further deferrals beyond that date may be advisable and are developing ideas of how such a program can be structured and administered to help tenants survive while providing space for staff to structure further rent forgiveness proposals where needed. Port staff’s current thinking is summarized below.

After researching Port tenant operations since the initial shelter in place orders and relief actions taken by other public and private landlords, Port staff is seeking feedback on the following Rent Deferral Program for Port tenants, to provide relief beyond the expiration of the current broad-based deferral policy. As further described below, Port staff propose an opt-in program with the following key terms and conditioned upon the submittal of key documents.

Key Terms:

- Tenants who opt-in for the extended Rent Deferral Program would not be assessed late fees or default interest for any rent payments due for the months of March 2020 through December 2020.
- The Port will also forbear from taking any action to evict such tenants for rental payment defaults during this period. All such amounts must be paid on or before December 31, 2020 or the date of surrender of the leasehold, whichever is earlier. If not, fees or interest would apply.
- Except as to rent as provided by the policy, tenants must continue to comply with all lease obligations during any rent deferral period.

Submittal Requirements for Rent Deferral Program:

- Statement from tenant, which:
 - Describes impact from COVID-19 and need for relief
 - Describes business plan to get back to normal operations
 - Provides current revenue projections in light of current economic conditions and assuming the relaxation of the shelter in place orders on or before July 31, 2020
 - Using those revenue estimates, projects anticipated cash flow that demonstrates the tenant's ability to resume current rent payments on or before December 31, 2020.
- Documentation of any and all submittals to federal, state and local relief programs and summary of application status. If no such applications were filed, tenant would be asked to explain reasons (ineligibility, etc.).

Staff Analysis of Rent Deferral Program

The comprehensive and impactful public health response to the COVID-19 pandemic has had immediate and far-reaching effects on the City's economy and the Port's portfolio. Businesses both on and off Port property are in a precarious position in maintaining their operations and avoiding default on their various legal agreements and/or insolvency.

It is apparent that when shelter in place orders from the State and City are further relaxed, there will be a significant change in how business is conducted. Because of the inextricable connection between tenant success and the Port's budget, in order to allow for our tenants to regain their footing and adapt to the new normal, the Port must also acknowledge and adapt to the new normal.

The discussion at the April 28 Port Commission meeting included the idea of limiting eligibility for extended deferral beyond the current policy, based on criteria reflective of a business that is likely to recover (viable business plan, application to relief programs etc.). In considering that feedback Port staff has reached out to both public and private landlords to understand their strategies. As a general matter, public landlords have been more willing to provide broad-based deferral relief for a range of reasons, including public equity concerns and the mission to look at the broader impacts of the leasing portfolio in addition to more immediate owner/shareholder concerns. Accordingly Port staff recommends that any deferral program remain broadly targeted, and that qualification-based approaches be reserved for targeted dialogues regarding forgiveness of rent beyond deferral.

Specifically, Port staff recommends a program that takes an "opt-in" information-based application approach, with the requested submittal documents used by Port staff to inform further tenant relief strategies. For example, while there is logic in requiring a tenant to show a business plan that returns it to current rent payments at a future date, under the current operating uncertainty many tenants may have difficulty in developing a credible projection of their operating profile over an extended period of time. Further, some tenant categories may not have the expertise to navigate the challenging approval processes for

relief programs and would be doubly penalized if rent deferral were conditioned on the successful submission of such an application.

On the other hand, Port staff believes that if a business is willing to operate and attempt to pay deferred rents by the program deadline, that is a benefit to the Port. Absent further action to provide forgiveness, those deferred rents would still be due to the Port at the end of the deferral period. Requiring such a tenant to pay rent when due because it cannot fulfill some condition to the program would leave the tenant faced with an increasing payment obligation without the means to pay it, and the Port with limited recourse due to the Mayor- and court-issued moratoriums on eviction proceedings.

In addition to the opt-in framework, Port staff have been thinking about the policy response to those tenants who do not opt in to a deferral program and instead wish to wind down their business or restructure in a manner that no longer utilizes Port property. In the last recession, the Port Commission adopted Resolution 09-04 (see Attachment A). That resolution authorizes the Executive Director to terminate leases and licenses with a term of less than five years remaining and with a monthly rent of less than \$10,000, where the Executive Director finds the lease or license is no longer in the Port's best interest and where Port staff negotiate a return of the premises to the Port on terms and conditions that benefit the Port. For those tenants who opt out of the deferral program because they do not see a future for their business at the Port, such a mutual termination could provide significant benefits to the Port in terms of certainty, control and limiting costly legal action later.

Potential Board of Supervisors Legislation

Port staff continue to evaluate further relief strategies as outlined in more detail at the April 28 Port Commission meeting. Real Estate staff's engagement with other City agency landlords and private portfolio managers has included a review of the strategies being implemented and what further strategies are under consideration. As a general matter, a lease amendment would be required in order to provide deeper/broader relief, such as rent forgiveness or a restructured payment schedule. This presents a challenge to the implementation of an efficient program, as modifications of Port leases with anticipated revenues of \$1 million or more or a term of 10 years or more must be approved by the Board of Supervisors under Charter Section 9.118. This does not represent all of the Port's portfolio; many leases do not meet these requirements and maritime leases are exempt from the Charter requirement. However this provision does cover many of the Port's major attractions and retail establishments.

With some limitations, the Board of Supervisors may delegate authority to departments in certain specific circumstances to enter into lease amendments that would otherwise require approval under the Charter. Delays for legislative approvals use up both City staff time that could be used to address other tenants as well as tenant resources that would be best preserved for business operations. In order to enable departments like the Port to amend existing leases to extend relief to qualifying tenants as efficiently as

possible, Port staff is working closely with the City Administrator and the City landlord agencies to develop legislation that, if submitted and approved, would delegate authority to City departments to amend existing agreements without seeking approval by the Board of Supervisors for the amendment under Section 9.118. Such a delegation would greatly improve the ability of the Port Commission and staff to manage relief strategy across the portfolio.

Next Steps

Port staff intend to incorporate feedback at the May 12 hearing and return to the Port Commission's May 26 meeting to (a) seek authorization for an extension of the current broad-based rent deferral policy through July 31 as described above; and (b) continue the policy discussion as to extended deferral program requirements, potential rent forgiveness strategies, and further legislation that may be proposed to the Board of Supervisors along the lines described above.

Prepared by: Crezia Tano-Lee

Manager, Business Strategy & Optimization

ATTACHMENT A:

Staff Report on Port Commission Resolution 09-04

ATTACHMENT A

MEMORANDUM

January 8, 2009

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Rodney A. Fong, Vice President
Hon. Michael Hardeman
Hon. Ann Lazarus
Hon. Stephanie Shakofsky

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of an Amendment to the Port's Lease Termination Policy

DIRECTOR'S RECOMMENDATION: Approve Resolution

INTRODUCTION

The current economic climate has prompted Port staff to review the Port policies regarding termination of leases and licenses and rent collection. This staff report describes these policies and recommends an amendment to the Port policy regarding termination of leases and licenses.

LEASE TERMINATION POLICY

On January 27, 1988, the Port Commission authorized staff to terminate Port leases under conditions enumerated in Port Commission Resolution No. 88-16 (see Appendix A). Port staff may terminate leases and licenses under the following conditions:

1. **Long-Term Leases.** Port staff may terminate a long-term lease in accordance with any termination provisions contained in the lease, including non-payment of rent or other default not cured within the period provided.
2. **Month-to-Month Agreements.** Port staff may terminate a month-to-month agreement (lease or license) where staff determines that the property is no longer suitable for the subject use, the property is required by the Port or another tenant for another use, the occupant has violated any agreement terms, or termination is brought about by a bankruptcy court, unlawful detainer action or other operation of law.

THIS PRINT COVERS CALENDAR ITEM NO. 11B

REAL ESTATE COLLECTION POLICY

The Real Estate Collection Policy (Appendix B) contains a description of the following major policies and procedures, which may vary with respect to individual leases:

- Rent is typically due on or before the first day of the month and is delinquent on the second day after rent becomes due.
- As a courtesy to tenants, the Port may provide written notice regarding past due charges (but has no obligation to do so). If the tenant has not paid rent within five days of when rent is due, the Port will send a Delinquent Notice on or about the tenth day after rent is due.
- The Port typically assesses Late Charges calculated at an annual rate of 10% on delinquent amounts. Unless an agreement specifies otherwise, Late Charges are imposed after the fifth day rent is due, and are calculated from the date rent first became due.
- The City Attorney's Office may serve a Three-Day Notice to Pay Rent or Quit on the tenant in possession of a leased premises shortly after the delivery of the Delinquent Notice if not all delinquent amounts are paid. If the tenant does not pay in full within the Three-Day Notice period, the City Attorney's Office may serve the tenant with a Complaint for Unlawful Detainer¹.
- The extension or expansion of a tenant's lease will not be approved if the tenant is in default or is a Habitual Late Payer. A Habitual Late Payer is a tenant who has twice received two or more written notices of monetary default, or has received three or more written notices of default (whether monetary or non-monetary) within a twelve month period.

DISCUSSION

Unfortunately, the current economic climate may result in business failures among Port tenants. The Port is interested in the success of its tenants: while reserving its rights as a landlord under Port leases and the law, the Port often works with tenants in distress to amicably resolve disputes and/or lease defaults.

Past experience indicates that the Port is better served by enforcing its property rights in a timely manner rather than getting involved in protracted bankruptcy disputes. To that end, Port staff attends a monthly Accounts Receivable meeting consisting of representatives of the Real Estate and Finance and Administration Divisions and the City Attorney's Office to ensure that prompt action is taken to collect past due rent.

¹ For tenants not in possession of leased premises, the Port will send a Notice of Belief of Abandonment, typically followed by a Small Claims Court action or a Complaint for Breach of Contract.

Based on consultation with commercial real estate industry representatives such as the San Francisco Chapter of the Building Owners and Managers Association, Port staff believes that there are limited circumstances where early termination of a lease or license in exchange for payment or other consideration made by the tenant may be preferable to a bankruptcy proceeding, particularly for short-term tenancies paying a modest monthly rent. Such early termination should be preceded by inspection of the leased premises, independent verification of a tenant's financial condition, and a determination that early termination is in the Port's best interests.

RECOMMENDATION

Port staff recommends amending Port Commission Resolution 88-16 to provide the Port Executive Director with the authority to terminate leases and licenses to use Port property with a term of less than five years and with a monthly rent not to exceed ten thousand dollars (\$10,000.00), where the Executive Director finds the lease or license is no longer in the Port's best interest and where Port staff negotiate a return of the premises to the Port on terms and conditions that benefit the Port.

Prepared by: Brad Benson, Special Projects Manager

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

RESOLUTION NO. 09-04

WHEREAS, Charter Section 4.114 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

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

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

WHEREAS, 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; now, therefore, be it

RESOLVED, that the Port Commission hereby delegates its authority to the Port Executive Director to terminate by mutual agreement leases and licenses with a remaining term of less than five years and monthly rent not to exceed ten thousand (\$10,000.00) where all the following conditions are met:

- (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 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.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2009.

Secretary

APPENDIX A

Delegation to Staff of Lease/License Termination Authority
Port Commission Resolution 88-16

APPENDIX B

PORT OF SAN FRANCISCO REAL ESTATE COLLECTION POLICY

The policies described herein may not apply to all agreements. The terms of agreements should be reviewed for applicability.

I. POLICY STATEMENTS

- A. Rent is due on or before the first (1st) day of the month, in some instances another date may be specified in specific leases, and is delinquent on the second (2nd) day after rent becomes due.
- B. Late charges will be imposed on delinquent amounts as of the sixth (6th) day following the due date. In some instances, another date may be specified in specific leases.
- C. The Port as a courtesy to tenants may provide written notice regarding past due charges but has no obligation to do so. The Port may not provide notices to tenants for future rent/charges due.
- D. The extension of a tenant's lease or the leasing of additional Port space will not be approved by the Port should tenant be in default or be a Habitual Late Payer as defined in Section V.C. herein.
- E. All tenants are encouraged to contact their respective Property Manager when payment will not be made when due.

II. DELINQUENCIES

DELINQUENT NOTICE

If the tenant has not paid rent within five (5) days of when rent is due, the Port will send a Delinquent Notice on or about the tenth (10th) day after rent is due.

A. TENANT IN POSSESSION OF LEASED PREMISES

1. THREE-DAY NOTICE

The City Attorney's Office may serve a Three-Day Notice to Pay Rent or Quit on the tenant shortly after the delivery of the Delinquent Notice if not all delinquent amounts are paid.

2. COMPLAINT FOR UNLAWFUL DETAINER

If the tenant does not pay in full within the Three-Day Notice period, the City Attorney's Office may serve tenant with a Complaint for Unlawful Detainer.

B. TENANT NOT IN POSSESSION OF LEASED PREMISES

1. NOTICE OF BELIEF OF ABANDONMENT

If the tenant has not expressly given notice that tenant has vacated the leased premises, the Property Manager will send a Notice of Belief of Abandonment to the tenant. If the tenant fails to respond, Port may dispose of the tenant's property in accordance with the California Civil Code.

2. SMALL CLAIMS COURT

If the total balance due on the vacated tenant's account(s) is less than the current statutory amount to file such action, the City Attorney's Office will file and serve a Small Claims Court action against the tenant.

3. COMPLAINT FOR BREACH OF CONTRACT

When the tenant is not in possession of leased premises and the total balance due exceeds the statutory amount for Small Claims Court, the City Attorney's Office will file a Complaint for Breach of Contract.

4. JUDGMENT AGAINST TENANT

If the Port obtains a money judgment in its favor, the City Attorney's Office will enforce the judgment to obtain any assets that the tenant may have.

III. SECURITY DEPOSITS

A. TYPES OF DEPOSITS

All new agreements require that security deposits be in the form of cashier's checks, money orders, or checks subject to verification of sufficient funds, or other forms acceptable to the Port. Third-party checks are not acceptable. Possession of leased premises will not be conveyed until a fully cleared deposit is on file. The Port may require, on a case-by-case basis, additional deposits to be made by the tenant to secure obligations other than the payment of rent.

B. INTEREST INCOME

The Port has no obligation to place any deposit in an interest bearing account, and the Port will not remit to the tenant interest earned on any deposit.

C. AMOUNT OF DEPOSIT

All new agreements will require the security deposit to be an amount at the Port's discretion of not less than two (2) months' rent. Security deposits in an amount greater than two (2) months' rent will be set in accordance with credit

history and/or as determined by the Deputy Director of Real Estate or his/her designee.

D. RETURN OF SECURITY DEPOSITS

At the expiration or earlier termination of a lease and the vacation of the leased premises by tenant, the Port will return the unused balance of the security deposit subject to deductions for repairs, outstanding rent, outstanding bills, other costs arising from tenant's use of the leased premises that landlords are permitted to deduct under the lease and California law.

IV. LATE CHARGES

- A. Late Charges are used to compensate the Port for the loss of use of the delinquent amounts and to reimburse the Port for the administrative costs it incurs to collect these delinquent amounts. Late Charges are calculated at an annual rate of 10% on delinquent amounts or a minimum charge of \$35.00, whichever is greater, unless otherwise specified in the lease.
- B. Late Charges will be imposed after the fifth (5th) day rent is due, unless otherwise specified in the lease.
- C. Late Charges will be calculated from the date on which rent first became due.

V. MISCELLANEOUS

A. PERCENTAGE RENT

In leases where percentage rent is applicable, a charge is assessed when the tenant fails to submit his/her percentage rent report and any percentage rent payment as provided in the lease. The charge will be calculated based on the greater of 1% of the Minimum Base Rent or 1% of the Percentage Rent (using an average of the prior six months), and shall not be less than \$100.00 unless otherwise specified in the lease.

B. NSF CHECKS

A charge of \$50.00, which may be increased from time to time, is assessed on checks returned to the Port due to non-sufficient funds pursuant to the San Francisco Administrative Code. Payment for the NSF check and the charge must be made by cash, money order or cashier's check. Payment by NSF check is considered non-payment of rent and therefore subject to Late Charges.

C. HABITUAL LATE PAYER

1. A tenant will be notified in writing by the Port that the Port considers him/her a habitual late payer for either of the following reasons:
 - a. The tenant has twice received two (2) or more written notices of monetary default (i.e. failure to pay rent), or
 - b. The tenant has received three (3) or more written notices of default (whether monetary or non-monetary) within a twelve (12) month period.
2. A penalty charge of \$50.00 will be assessed upon notification of Habitual Late Payer status.
3. If the tenant is a habitual late payer, the Port may require that the tenant enter into direct electronic payment arrangements and may require payments to be made on a quarterly basis.

D. PAYMENT APPLICATION

1. All payments will be applied against the oldest outstanding invoice first unless otherwise indicated by tenant.
2. The date payment is received by the Port is the date used to determine if a payment is late.