



## MEMORANDUM

November 6, 2020

**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:** Informational Presentation on Status of Current Tenant Relief and Proposed Additional Economic Stabilization Measures

Request Approval to Waive Fees for Use of Port Property for Restaurants and Retail Businesses on Private Property Adjoining Port Property in Connection with the Port's Shared Spaces Program for Outdoor Dining and Retail Activities

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 20-50

In response to the economic impacts of COVID-19, the Port has deployed several relief measures to support our tenants along the waterfront. The following Programs have been implemented since shelter in place orders were mandated in San Francisco on March 16, 2020:

- Broad Based Rent Deferral Program
- Opt-In Rent Deferral Program
- Shared Spaces Program
- Sector-Based Rent Forgiveness Program

This staff report provides an update on the programs and their current estimated impact on Port revenues, and outlines proposed additional relief and economic stabilization measures.

Furthermore, Port Staff is seeking approval of a waiver of certain fees for the use of Port property adjacent to privately owned property that is used for restaurant and retail activity related to the Shared Spaces Program.

## **Program Updates**

### **Broad Based & Opt-in Programs**

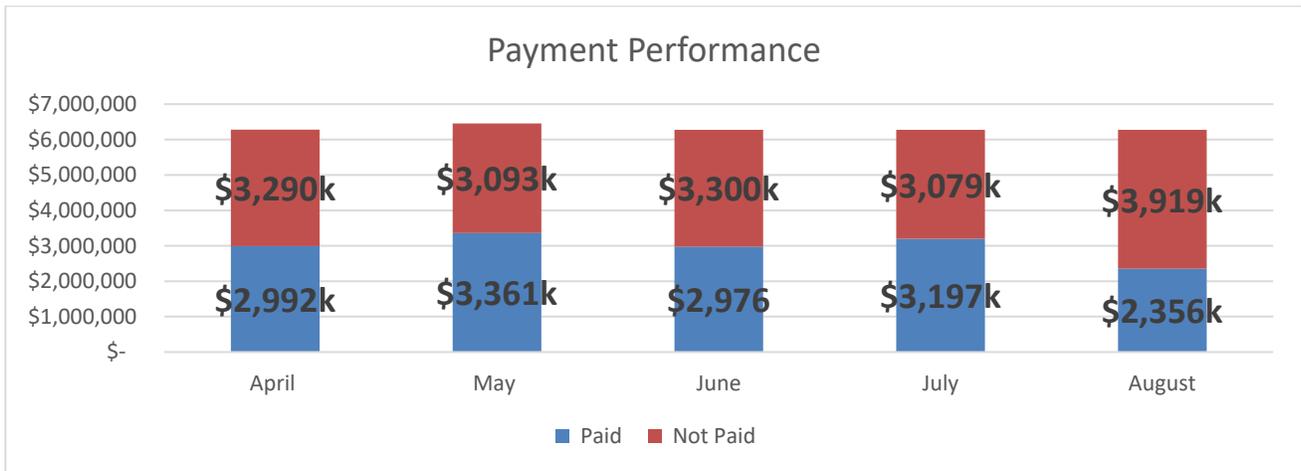
On March 27, 2020, the Port issued an Executive Directive Regarding Enforcement of Lease Obligations From March 1, 2020 through April 30, 2020, which deferred rent for most Port tenants (“Broad Based Program”). On April 23, 2020, the Port Commission adopted Resolution No 20-18, which ratified the Executive Directive and extended the applicability of the policy until May 31, 2020. On May 26, 2020, the Port Commission adopted Resolution No. 20-27 which further extended it until July 31, 2020. During the period of April through July (excludes March due to the fact that many tenants paid rent prior to the issuance of SiP orders), an average of 274 tenants took advantage of the program, representing approximately \$12.8 million in deferred rent.

On June 9, 2020, the Port Commission adopted Resolution 20-30 which approved the Port’s Opt-In Rent Deferral Program (“Opt-in Program”). Tenants who chose to participate in the Opt-In Program have rent deferral until December 31, 2020 and will not be assessed late fees or default interest for any rent payments due for the months of August 1, 2020 through December 31, 2020.

To date, 81 tenants are participating in the Opt-In Program, representing nearly \$11.3 million in deferred lease revenue between August 1 through December 31. Since the submittal deadline of July 15, 2020, the Port was contacted by several tenants seeking to participate in the Opt-In Program after the deadline. The 81 tenants include 14 tenants that submitted late with an acceptable explanation for their late submission. Port Staff have kept the online form available to allow Tenants to Opt-In to the Program to maximize participation in the program. It should be noted that some of these tenants are eligible for rent forgiveness, so a portion of the \$11.3 will be forgiven.

Upon the end of the rent deferral period under the Broad Based Program on July 31, several of the tenants who did not Opt-In have not resumed normal rent payments. Chart 1 below depicts the reduction in rent collected from \$3.1 million to \$2.3m from July to August. This drop in rent may also independently reflect the depletion of PPP and other federal small business support around this time. In response to the lack of participation in the Opt-In Program and non-payment of rent, Port Staff have begun outreach to tenants.

Chart 1



### Sector-Based Rent Forgiveness Program

On August 25, 2020, the Port Commission adopted Resolution 20-41 which approved the Port's Sector Based Rent Forgiveness Program ("Sector-Based Rent Forgiveness Program"), which offers Percentage Rent Tenants, Maritime Tenants, and Local Business Enterprise Tenants rent forgiveness for a set period of time depending on sector, subject to specified conditions. The Sector-Based Rent Forgiveness Program is estimated to forgive up to \$13.45 million dollars in rent and support approximately 196 tenants.

Port Staff have begun outreach to the LBE Tenants to commence amendments on the forms approved by the Port Commission. The process will require tenants submit an online form which will require, at a minimum, the following information to be provided:

- Written Statement certified tenant, which:
  - Documents any specific criteria for participation in the program (e.g., LBE status).
  - Describes impact from COVID-19 and state and local restrictions that prevented tenant from operating in whole or part, and the corresponding need for rent relief.
  - Describes the current operating plan under COVID-19 restriction and a business plan outlining the following:
    - Revenue projections for the next nine (9) months in light of current economic conditions and existing state and local health orders in place.
    - Anticipated additional cash flow that supports or negatively impacts 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 on funds specifically dedicated for rent for each applicable lease that qualifies under the current rent tenant relief program. If no such application(s) were filed, tenant would submit a statement as to whether or not they

applied, were turned down or were not eligible.

Implementation for Maritime and Percentage Rent Tenants are being coordinated among staff, and Port Staff anticipate initiating outreach later this month.

Lease amendments to implement rent forgiveness for most of the 48 Percentage Rent Tenants would require Board of Supervisors approval under Charter Section 9.118. The Port has introduced an ordinance authorizing the lease amendments for Section 9.118 leases covered by the Sector-Based Rent Forgiveness Program without Board of Supervisors approval (the "9.118 Ordinance") to allow for streamlined rent forgiveness. The proposed 9.118 Ordinance would also waive Administrative Code and Environment Code requirements enacted after the most recent modification of each lease for all lease amendments under the Sector-Based Rent Forgiveness Program.

The Ordinance was heard at the Budget and Finance Committee ("the Committee") of the Board of Supervisors on November 4. The Committee has recommended approval to the full Board of Supervisors. The legislation could be effective in mid December pending approval.

### **Items for Commission Feedback**

Since the authorization of the Sector-Based Rent Forgiveness Program on August 25, Port staff have been contacted by a number of tenants not eligible for the Sector-Based Rent Forgiveness Program who are seeking additional relief. As discussed in the Port Commission meetings leading up to and culminating in the August 25 approval, Port staff has the critical task of determining the appropriate level of additional relief while remaining in balance the Port's own revenue needs. Accordingly, Port staff advances the proposal below for discussion at today's meeting.

### **Civic Impact Rent Forgiveness**

During prior Port Commission discussions of the Sector-Based Rent Forgiveness Program, Port Staff introduced the concept of an application-based rent forgiveness program. Port Staff proposes to offer rent forgiveness to tenants who enrich the civic fabric and economic diversity of San Francisco. Initial discussions with the Port Commission focused on locally-based non-profits, and more recent comments have included artists who contribute to the vibrancy of the Waterfront. Defining artists for this purpose is somewhat difficult, and Port Staff is interested in receiving Port Commission feedback on this potential category of eligibility. Tenants eligible for rent forgiveness under the Sector-Based Rent Forgiveness Program would not be eligible for relief under the Civic Impact Rent Forgiveness Program.

Port Staff propose to allocate up to \$200,000 for rent forgiveness to two categories of tenants who can demonstrate financial need relating to the impacts of Covid-19.

- Locally-serving nonprofits with annual budgets of less than \$3 million; and

- Tenants who produce art as their primary use of Port space.

Port staff recommends structuring the program so that the relief would be made available to each qualifying tenant on a prorated basis according to the amount of rent that was payable during the period of March 1, 2020 – May 31, 2020. If all rent of all qualifying applicants can be addressed within the \$200,000 cap, then all such rent would be forgiven (or, if such rent had already been paid, would be offered as a rent credit). If the total rent amount is in excess of the cap, then each eligible tenant's rent would be forgiven or credited by an equal percentage up to a total of \$200,000. A tenant would be required to demonstrate that they meet the criteria above and the program would have similar requirements and benefits as under the Sector-Based Rent Forgiveness Program, as follows.

- a. Tenant Requirements:
  - i. Documents any specific criteria for participation in the program (e.g., non-profit status)
  - ii. Compliance with all responsibilities under the existing lease
  - iii. Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent
  - iv. Resolve any unsettled disputes
- b. Tenant Benefits:
  - i. Full or prorated rent forgiveness from March 1, 2020 through August 31, 2020.
  - ii. Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022.
  - iii. Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period

## **Repayment Plan**

The Opt-in Program requires participating tenants to make full payment of deferred amounts on December 31, 2020. As that payment date approaches, many program participants have voiced their concerns of their inability make the “balloon payment” that is due at the time.

Among the many factors affecting Port's decisions regarding economic relief and recovery, the laws dealing with commercial evictions continue to evolve. Under normal state law, localities are prohibited from regulating commercial evictions. Governor Newsom's March 16, 2020 Executive Order, and the extension of the order in September, which extends the end date until March 30, 2021, temporarily lifts those restrictions. On March 17, 2020, Mayor Breed issued a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the “Mayor's Moratorium Order”). The Mayor's Moratorium Order has been repeatedly extended and, on September 29, 2020, was revised and extended until March 31, 2021. Under the Mayor's Moratorium Order, if a commercial tenant that meets the criteria misses a rent payment that was due before the expiration date of the Order, and the payment was missed because of defined financial impacts resulting from the COVID-19

crisis<sup>1</sup>, and the parties cannot agree to a repayment plan, then landlord’s ability to recover possession of the unit through an unlawful detainer action is limited. As discussed at prior meetings, Port staff intends to base its strategic tenant relief decisions on the policies and requirements of the Mayor’s Moratorium Order.

On September 15, 2020, an ordinance was introduced at the City Board of Supervisors proposing to amend the Administrative Code to temporarily restrict landlords from evicting commercial tenants for non-payment of rent that was not paid due to the COVID-19 pandemic (the “Commercial Eviction Ordinance”). The proposed Commercial Eviction Ordinance was initially tabled in light of the September 29, 2020 amendment and extension of the Mayor’s Moratorium Order. On November 2, 2020, amendments to the proposed Commercial Eviction Ordinance were introduced during the Land Use and Transportation Committee meeting. As under the Mayor’s Moratorium, the proposed Commercial Eviction Ordinance applies to businesses registered to do business in San Francisco with 2019 gross receipts equal or below \$25 million. The proposed Commercial Eviction Ordinance provides substantially more tenant protections the Mayor’s Moratorium Order, as summarized below.

- Prohibits the eviction of tenants due to missed rent payments from March 16, 2020 – March 31, 2021 (or as further extended by the Governor) plus up to a two-year period depending on tier as shown below
- Excludes for-profit tenants occupying space zoned/approved for Office Use
- Excludes tenants of the City
- Prohibits assessment of interest and other charges until the end of the relief period as shown in Table 1
- Allows for mutually agreeable repayment plans to replace the deadlines defined in Table 1
- If a tenant in Tier 1 terminates its lease before March 31, 2021 (or as further extended by the Governor), the tenant would still be responsible for any outstanding balance, however financial penalties based on the termination would not apply.

**Table 1**

<b>Tier</b>	<b>Definition</b>	<b>Rent Due Date</b>
Tier 1	Covered Commercial Tenant that employs <b>fewer than 10</b> FTE employees	<b>24 months</b> after March 31, 2021 (or as further extended by the Governor)
Tier 2	Covered Commercial Tenant that employs <b>10 and 24</b> FTE employees	<b>18 months</b> after March 31, 2021 (or as further extended by the Governor)
Tier 3	Covered Commercial Tenant that employs <b>25 -and 49</b> FTE employees	<b>12 months</b> after March 31, 2021 (or as further extended by the Governor)
Tier 4	Covered Commercial Tenant that employs <b>50 or more</b> FTE employees	March 31, 2021 (or as further extended by the Governor)

<sup>1</sup> But, per the Mayor’s Moratorium Order, the tenant can prove this in court rather than providing documentation to the landlord at the time a notice of default is given. A court may in its discretion waive this requirement in circumstances where the documentation is unavailable.

The proposed Commercial Eviction Ordinance will return to Land Use and Transportation Subcommittee next week, and if forwarded to the Board of Supervisors may be effective as early as December. Port Staff will continue to closely monitor this legislation and will return to the Port Commission to discuss its effects on the Port's portfolio if it is finally approved.

As part of the rent relief implementation strategies and in light of the Mayor's Moratorium Order and the proposed Commercial Eviction Ordinance, Port staff has been working to develop standardized repayment options that could be offered to tenants in a variety of scenarios. Port staff has crafted these options based on an assessment that the Port's financial interest lies in encouraging rent payments wherever possible and allowing for reasonable repayment terms if they are accompanied by incentives for the applicable tenant to operate and pay current rent on the way back to a more sustainable financial situation. This will allow the both the tenant and the Port to regain our footing in what has proven to be a lengthy and inconsistent economic recovery.

Port Staff further notes that other City landlord agencies have pursued a similar strategic path. On June 1, 2020, the City Administrator issued a Memo regarding enforcement of certain tenant lease obligations through December 31, 2020. The memo applies to General Fund City landlord agencies. The memo allows tenants of such agencies to defer rent until December 31, 2020, resume normal payments on January 1, 2021 and make payment of any rent arrearages in full, without interest or penalties, no later than June 30, 2021. Any amounts not paid in full as of June 30, 2021 would then be subject to interest and penalties from and after that date.

In order to maintain fairness and for consistency, Port Staff are seeking the Port Commission's feedback on a proposed repayment program with standardized terms which provides three options to address the outstanding balances of rent due between March 1, 2020 to December 31, 2020 ("Outstanding Balance").

- A. Repayment of 95% Outstanding Balance on December 31, 2020 with no fees and forgiveness of the remaining balance
- B. Repayment of the Outstanding Balance in 6 equal installments from January 2021 – June 30, 2021 with 0% fee applied.
- C. Repayment of the Outstanding Balance in 12 equal installments from July 1, 2021 – June 30, 2022 with a one-time 3% fee applied to the total balance being repaid

Given the diversity of the Port's Portfolio, this proposal provides multiple pathways that tenants can select to pursue repayment. Another important consideration driving this proposal, and in particular the one-time fee, is that it can be efficiently implemented among the other demands on Port Staff in managing the portfolio in this challenging time (i.e. lease terminations, collections efforts, filling vacant space where possible, etc.). Options A and B provide an incentive for tenants to pay the balance, leaving option C for tenants who may have experienced more severe economic impacts due to COVID-19 restrictions. In Option

C, we applied a one-time fee of 3% of the total balance. This fee, while more favorable than the usual rates of interest in Port agreements, still exceeds 5-year average of the City's Investment Pool which is 1.5%.

These repayment options would be made available to all tenants, including those who did not take advantage of the Opt-In Program. In the event a tenant chose not to participate in the Opt-In Program, the Outstanding Balance would include unpaid rent, plus interest and late fees as provided by the Lease. The following criteria and requirements for participation are also proposed:

- Tenant must pay any balances that were outstanding prior to March 1, 2020 subject to any previous payment plan agreed to by the Port.
- Total monthly rent for each individual leasehold subject to repayment cannot exceed \$20,000
- Must be a small business as protected under the Mayor's Moratorium Order.

The programs outlined in this Memorandum will provide Port staff with more effective tools in the retention and recovery of tenants and the collateral benefit of retaining and hopefully expanding job opportunities offered by the businesses most impacted by this historic health and economic crisis.

Port Staff look forward to the feedback of the Commission. If so directed, Port staff will incorporate feedback on the Civic Impact Rent Forgiveness and repayment plan programs described above and return to the December 8, 2020 Port Commission meeting with a request for approval.

### **Item for Commission Approval**

#### **Shared Spaces Program**

The COVID-19 Pandemic has had impacts on many economic sectors. Restaurant and retail sectors have been the hardest hit by the initial Shelter in Place orders issued by the Health Officer. As science around COVID-19 evolves, Shelter in Place order have been lifted, and the City is working towards a safe reopening of the economy. The Health Officer continues to restrict capacity of indoor dining and retail, but has allowed for outdoor dining to occur, so long as safety protocols are met. In response, through the issuance of the Mayor's Eighteenth Supplement to the Mayoral Emergency Proclamation, the Mayor created a temporary program for retail businesses and restaurants to use public sidewalks and parking lanes fronting their premises for outdoor dining and retail display and sales ("Shared Spaces"). The Mayor's order allowed a fee waiver of all associated costs to ease the economic burden on participating businesses. The Mayor's order recognizes the Port's existing authority to create a similar program and authorizes a waiver of fees normally associated with use of such areas.

On June 15, 2020, in conjunction with the City's Shared Spaces program, the Port launched the Port's Shared Spaces Program ("Port's Shared Spaces Program") which offers

temporary licenses through December 31, 2020 for the use of Port outdoor space for business operations like outdoor dining and retail pickup. To date 17 businesses are taking advantage of the program, creating over 700 outdoor dining seats. The majority of the participants are restaurant tenants of the Port, some of which featured outdoor dining before the pandemic. Consistent with Port Commission delegations to staff, for these Port tenant outdoor dining licenses, these restaurant tenants generally pay the same percentage rent to Port for indoor or outdoor dining without an additional fee for the license. Port staff has continued this practice for new outdoor spaces pursued by Port tenants under the Port's Shared Spaces Program. These tenants are eligible for rent forgiveness under the Sector-Based Rent Forgiveness Program (Port Commission Reso. 20-41) and may receive rent credits for verified costs of furniture, canopies, and other items needed to allow for outdoor dining.

As the winter months approach, the City has extended the Shared Spaces Program through June 30, 2021 (and may include a 60-day "wind down period"). Based on the Port's experience to date and the Port's Shared Spaces program's success in facilitating continued commerce and visitorship on and near Port property, Port Staff intend to continue the alignment with the larger City Program by extending the Port's Shared Spaces Program on the same timeline. Port staff continue to be engaged with the larger City-Wide Interagency Team on changing program requirements and have been in regular communications with BCDC on relevant applications.

At this time, the following 5 of the 17 businesses participating in the Port's Shared Spaces Program operate restaurants on privately owned property abutting Port property and are utilizing Port outdoor space solely for customer seating: Ozumo, Angler/Smokehouse, Perry's, Boulevard, and the Midway. This situation also exists elsewhere along the Port's portfolio such as the southern sidewalk of Jefferson and the western sidewalk of Illinois.

For non-Port tenants seeking use of outdoor Port space, Port staff issued no-fee licenses as a temporary pilot program in order to harmonize with the City's program. However, two non-Port tenants, Perry's and Angler/Smokehouse already had licenses for sidewalk dining and white curb areas under standard parameter provisions, and license fees continued to be assessed under the pre-existing agreements.

Those tenants have highlighted that, due to their pre-existing licenses, a disparity between the spirit of no-cost City Program versus the Port's Program exists and have asked the Port to consider the inequity that is created by this pre-Covid financial structure. Port Staff observe that, in comparison to Port tenants, paying a license fee on top of rent as required on sales under their lease would indeed unfairly burden non-Port tenants and would run contrary to the spirit of the effort to keep businesses operating safely. Therefore, Port Staff recommend the Port Commission's adoption of the attached resolution, which would confirm Port staff's ability to issue no-fee licenses for use of outdoor space to non-Port tenants who abut Port property through June 30, 2021, the current expiration date of the City's Shared Spaces Program. To address the pre-existing non-Port tenant licenses, the resolution would also authorize a temporary waiver of sidewalk and street use license fees for these pre-existing licenses retroactive to June 16, 2020 through June 30, 2021. Prior to the issuance of the waiver, these licensees must resolve any unsettled disputes and pay in full any

outstanding balances. For license fees paid for pre-existing licenses on and after the start date of the City's Shared Spaces Program through October 31, 2020, the resolution would authorize the credit of such amounts towards license fees payable if and when this fee waiver authorization expires.

Port Staff propose a termination date for this fee waiver of June 30, 2021, to align with the current expiration of the City's Shared Spaces Program. Port Staff will continue to update the Port Commission should such date be extended by the Mayor to allow for discussion and potential action on an extension of this fee waiver authorization.

**Port Staff Recommendation**

For the reasons set forth above, Port Staff recommends approval of the attached Resolution.

Prepared by: Crezia Tano-Lee  
Manager, Business Strategy  
Real Estate and Development

For: Michael Martin  
Assistant Port Director

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

**RESOLUTION NO. 20-50**

- WHEREAS, Charter Section B3.581 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, 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 for eligible Percentage Rent Tenants; Maritime Tenants; and Local Business Enterprise Tenants (Resolution 20-41); and
- WHEREAS, On June 15, 2020, the Mayor created the City Shared Spaces Program to allow outdoor dining and retail operations on sidewalks, streets and in other public places at no cost; unless the emergency ends earlier, the City's Shared Spaces Program is set to expire on June 30, 2021; and
- WHEREAS, The Port launched the Port Shared Spaces Program on June 15, 2020 and there are currently 17 participants in the program; and
- WHEREAS, To align with the City Shared Spaces program, Port staff issued temporary no-fee licenses to non-Port tenants seeking use of abutting outdoor space under Port jurisdiction; and
- WHEREAS, Some non-Port tenants have pre-existing licenses to use outdoor space that include an ongoing license fee and they are seeking a waiver of those

fees based on the fee waivers under the City's Shared Spaces Program and Port staff agrees that these fees should be waived on a temporary basis retroactive to June 16, 2020 and that license fees already paid under a pre-existing Port license since June 16, 2020 would be eligible for equivalent credit on any fees due after the termination date described below in order to align with the Port's tenant relief programs; and

WHEREAS, All no-fee licenses and/or license fee waivers would terminate as of June 30, 2021, which is the current stated expiration date of the City Shared Spaces Program; and

WHEREAS, The termination date noted above is subject to extension by the Port Commission; Port staff will monitor the situation and will advise the Port Commission if the City Shared Spaces Program expiration date is extended past June 30, 2021 or if the program is allowed to expire; and

WHEREAS, The Port's public trust mission is benefitted from the continuation of visitor-serving commercial activities both on and adjacent to Port property, as it encourages continued visitorship and enjoyment of the waterfront; and

WHEREAS, Port staff recommends the approach set forth in this Resolution to align the Port's administration of its sidewalks and streets with the City Shared Spaces Program; now therefore be it

RESOLVED, That the Port Commission hereby approves the issuance of the proposed no-fee licenses for non-Port tenants, and fee waivers and fee credits for pre-existing licenses with non-Port tenants in connection with the Port's Shared Spaces Program as described in this Resolution and the Memorandum to the Port Commission dated November 6, 2020;

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 2020.***

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Secretary