



MEMORANDUM

August 7, 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 Presentation on Status and Findings of the Opt-In Rent Deferral Program and Proposed Rent Forgiveness Strategy.

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

At the Port Commission's July 14, 2020 meeting, Port staff provided an informational presentation on a proposed rent forgiveness strategy for Port tenants along with preliminary information on the Opt-In Rent Deferral Program. To continue the dialogue on further tenant relief in response to the COVID- 19 pandemic, this memorandum summarizes the proposed rent forgiveness strategy from that July meeting, with additional information and edits, and provides a more comprehensive update on the Port's Opt-In Rent Deferral Program (Opt-In Program). Sections which are new or substantially updated are indicated with an asterisk ("*") before the title.

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 completed an online submittal by July 15. The deferral lasts until December 31, at which time under the deferral all past rent is due. This memorandum also describes a rent forgiveness program, which builds upon, and does not replace, the deferral program.

THIS PRINT COVERS CALENDAR ITEM NO. 9E

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. The proposed rent forgiveness program is guided by the following principles:

- Protect Port's revenue streams and assets by reducing rent burdens that tenants temporarily cannot pay due to the drastic change in operating conditions.
- Support Port's maritime mission.
- Provide relief for small local businesses who are least able to weather this downturn.
- Formulate relief such that Port's & Tenant's interests are aligned and promote a shared prosperity partnership.
- Recognize this is a step based on best but limited and evolving information; new information may result in course corrections or additional steps.

Port staff seeks Port Commissioners' input on the following rent forgiveness proposals:

- (1) **For tenants with leases which have a base or minimum rent and a percentage rent component, forgive base rent from March 1, 2020 through the earlier of (a) April 30, 2021 or (b) when a tenant's sales are sufficient to trigger base rent.** 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". Port staff have added a second trigger to end the forgiveness prior to April 30 if a tenant's sales under their lease reach the threshold where percentage rent due exceeds minimum base rent for three consecutive months. 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, subject to health orders that may impact their ability to operate.
- (2) **Forgive rent from March 1, 2020 to May 31, 2020 for select maritime tenants including commercial fishing, crabbing, fish processing and other maritime support.** 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 is coupled with rent deferral through December for those tenants in the Opt-In Program. This forgiveness program will likely affect 123 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 have 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. Any rent that is forgiven shall not be an allowable expense in the LBE Hardship Emergency Loan and Grant Program (Item 7A on the August 11 Port Commission agenda).

- (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 have developed a list of tenants fitting into each of the above three categories (see Exhibit A). Once the forgiveness program is fully developed and approved, Port staff will notify tenants in categories 1-3 of their eligibility for forgiveness.

Port staff estimate the potential rent forgiven amount to be approximately \$15.4 million, the forgiveness amount will be somewhat offset by percentage rent paid for example, by tenants who are operating take-out or outdoor dining services during SIP and those that may be fully operational once restrictions are lifted.

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 **Tables 1 and 2** for reference:

Table 1. Proposed Rent Forgiveness

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	48	\$11.8 M (offset by percentage rent throughout period)
B. Select Maritime Tenants	Port will forgive all base rents	March 1 – May 31, 2020	3	121	\$0.72 M
C. LBE Tenants	Port will forgive all base rents	March 1 – May 31, 2020	3	27	\$0.15 M
D. Criteria-based	Tenants may apply for forgiveness based upon criteria like Trust and community-serving	Application-based	TBD	TBD	TBD

Table 2. Approved Rent Deferral Program

A. Broad Based Rent Deferral	Broadly Applied Rent Deferral	March 1 – July 31, 2020	5	505	\$23M
B. Opt-In Rent Deferral	Submittal-based rent deferral	August 1 – December 31, 2020	5	73	\$11.4 M

BACKGROUND

***Port and Other Tenant Relief**

The Port has taken a number of actions to provide relief to tenants including: delaying CPI increases, opening the Port Shared Spaces program for restaurant and retail businesses, providing a Broad Based Rent Deferral between March 1 and July 31, and offering tenants the opportunity to continue rent deferral through December 31 through the Opt-In Rent Deferral program. Federal, State, and City legislation has provided support through the Paycheck Protection Program (\$10M limit), Economic Injury Disaster Loan (\$2M limit), African American Small Business Loan Revolving fund (\$50,000 limit), and deferral of several types of tax payments including sales, property, and income taxes. Three other programs (SF Help, Mini Grants, and Resiliency Fund) have all been exhausted and require replenishment to reopen. In addition, the Mayor put a commercial tenant eviction moratorium in place, which at this time expires on August 15, 2020, but may be extended.

Need for Rent Forgiveness and Other Initiatives

Despite the different types of support provided through the programs listed above, the Port understands that many Port tenants are having and will continue to have difficulty paying

rent. Like many commercial landlords throughout the country, the Port recognizes that keeping tenants in place rather than pursuing broad evictions makes financial sense during this downturn. This allows the Port to maintain business ties with known partners rather than to attempt to bring in new tenants in such constrained economic conditions and allows tenants to avoid the disruption and cost of a relocation in the midst of the pandemic. Port staff have concluded that rent forgiveness is needed for some tenant sectors to keep those tenants and leases in place.

Port staff 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 and financial interests.

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.

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 concurrent with Port Commission action, Port staff recommends exploring Port-specific delegation legislation or an omnibus Board approval of all amendments to Port leases that are subject to Charter Section 9.118, subject to the constraints summarized later in this memo. The delegation would be structured around the key points set forth under "Rent Forgiveness Strategies" below.

***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 was set to close on July 15th. Port staff conducted the following forms of outreach to inform tenants of the Opt-In Program and the due date:

- (1) Email blasts
- (2) Notice on monthly mailed invoices to tenants
- (3) USPS mail
- (4) Text Message blast via Port Emergency Communication System
- (5) Reminder letter dated July 21, 2020 to all tenants

By the July 15 deadline 66 tenants out of approximately 505¹ eligible tenants submitted Opt-In Deferral registrations. Given this relatively low response rate despite multiple efforts to engage tenants and the substantial benefits of participating, Port Staff decided to continue to accept submittals after the deadline, however the submittal process was modified to add questions regarding reasons for the missed deadline. As of July 30, the Port has received Opt-In submittals from 73 tenants representing approximately \$2.3 million of monthly deferrable rent, which equates to about \$11.4 million through the program's expiration date of December 31, 2020.

For tenants who do not opt-in and who did not pay outstanding deferred rent by July 31, 2020, staff will initiate a "pay or quit" process subject to the provisions currently set by the San Francisco Commercial Eviction Moratorium ("The Moratorium"), which is set to expire on August 15, 2020. The Moratorium delays when a landlord can evict and applies to commercial tenants, subtenants, and month-to-month or holdover tenants who:

- (1) Are registered to do business in San Francisco
- (2) Have gross receipts at or below \$25 million for the 2019 tax year
- (3) Missed a rent payment from March 17 to August 15, 2020

This Moratorium does not require a landlord to waive rent and tenants remain obligated to pay past due rent. The Moratorium also dictates that a landlord cannot evict a tenant before giving a tenant a written notice and 30 days to catch up on payments. If a tenant cannot pay, the tenant must provide documentation that the pandemic has had a financial impact on the business. The Moratorium also requires that landlords provide options on a payment plan. If after one month a tenant is still unable to pay, the tenant must provide additional proof that the pandemic continues to impact the business. At 6 months past the date of the initial communication was sent from the landlord to the tenant regarding payment of rent, if a tenant is unable to pay all outstanding rent, a tenant can be evicted for non-payment. Based upon the terms of this Moratorium and the Opt-In Deferral program that tenants may access, Port staff intend to initiate a "pay or quit" process with tenants who neither Opt-In to the program nor make rental payments. This initiation of the "pay or quit" process encourages tenants to communicate with the Port and to better understand the impacts of the pandemic on their business while preserving Port's rights to enforce the lease and ultimately regain possession where other options are not viable. It should also be noted evictions will likely be materially delayed to the limited capacity of the court to hear these cases and there might be a long queue to get to the court.

The following series of tables, figures, and data points are highlights from the Opt-In Submittals that members of the Port Commission requested be collected and summarized. On average Tenants estimated that March 2021 is when they would be able to resume normal rent payments.

¹ Note that while about 505 tenants are eligible for Opt-In, about 200 of those are continuing to pay rent and thus may not require deferral.

Table 3. Opt-In Rent Deferral Participants Attributes

Category	# of Tenants	%	# of Tenants	%	\$ Rent Deferred/month	%
Maritime	157	31%	6	8%	\$ 194,760	9%
Office	92	18%	21	29%	\$ 188,717	8%
Other	203	40%	17	23%	\$ 338,211	15%
Parking	5	1%	4	5%	\$ 1,187,901	52%
Restaurant	27	5%	15	21%	\$ 263,436	12%
Retail	21	4%	10	14%	\$ 97,496	4%
TOTAL	505	100%	73	100%	\$ 2,270,522	100%

Total Gross Receipts	# of Tenants	%
< \$1M	27	37%
\$1M - \$4,999M	22	30%
\$5M - \$9,999M	10	14%
\$10M - \$14,999M	5	7%
> \$15M	5	7%
Not Reported	4	5%
Total	73	100%

Type of Support	# of Tenants	%
Federal	56	77%
State	1	1%
Local	3	4%
None	13	18%
TOTAL	73	100%

March – July Revenue Performance

Below is a summary of rent receipts through July 15, 2020. Key takeaways from this period are:

- Of the \$30.5 million invoiced, \$16.7 million was received representing a 56% 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

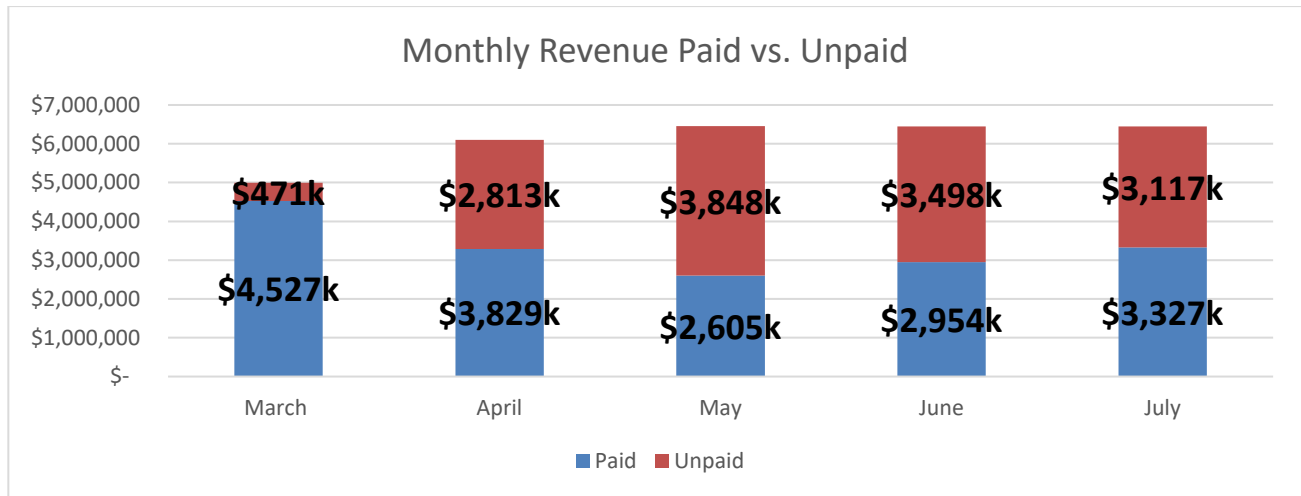
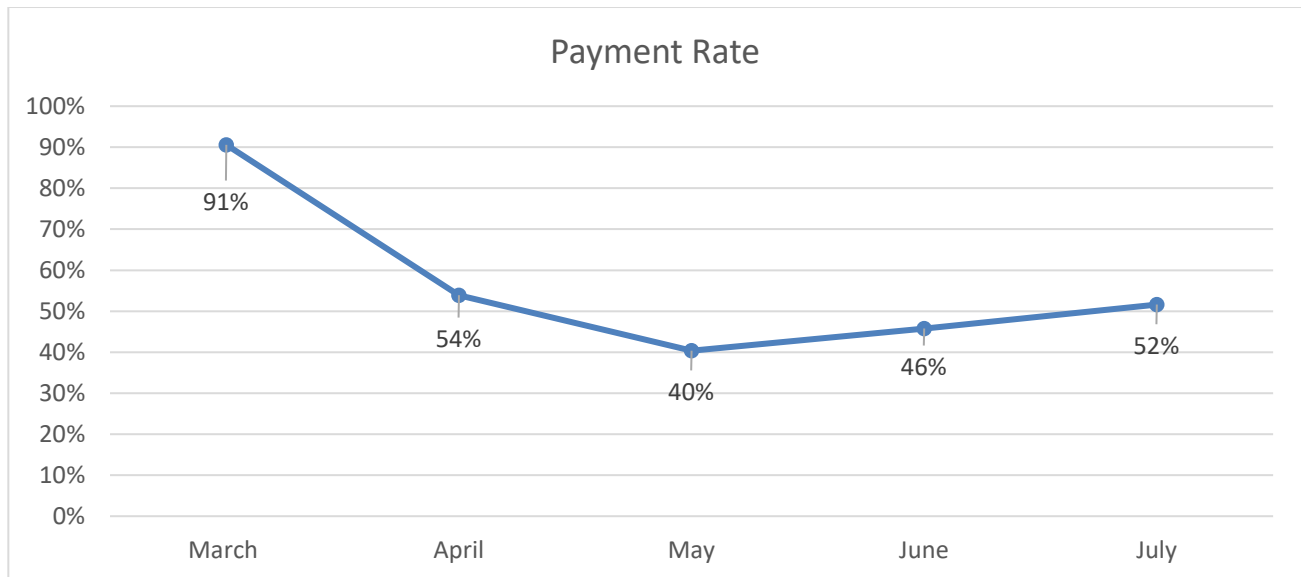


Figure 2. Payment Rates



RENT FORGIVENESS STRATEGIES

At the Port Commission’s April 28 and July 14 meetings, Port staff introduced and discussed the concept of a sector-based rent forgiveness strategy. Staff proposes centering the program around four categories of tenants:

- 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 4**) 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 4. 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 or when tenant triggers percentage rent for 3 consecutive months	Maximum of 14	48	\$11.8 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	121	\$0.72 M
C. LBE Tenants	Port will forgive all base rents	March 1, 2020	May 31, 2020	3	27	\$0.15 M
D. 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

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 the earlier of April 30, 2021 or when tenant triggers percentage rent for 3 consecutive months. 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
- Tenants shall provide information on PPP, EIDL, or other government funded financial aide received, and any amounts of those funds stated to be used for payment of rent shall be netted out of forgiveness amount in order to ensure that a tenant does not receive a windfall of resources

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. As a further reduction of barriers to restaurants’ ability to operate profitably in the current environment, staff also propose a rent credit for startup costs of fixtures and equipment required for operating a dining or retail establishment under health orders. Eligible costs would be better defined as part of the action item approving a rent forgiveness program. For example, staff anticipates that costs for “shared spaces” for outdoor dining (including new tables and chairs and appropriate barriers to enforce social distancing) would be eligible, but ongoing operating costs (i.e. ongoing costs of personal protective equipment or related supplies) would not be.

Eligible tenants for this forgiveness include restaurants, retail, parking operators, tenants with maritime excursion operations, and other maritime attractions (e.g. Jeremiah O’Brien). The Port has approximately 48 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 of Supervisor 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.

Eligible tenants for this forgiveness include fishing, crabbing, fish processing, and maritime support 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 121 Maritime Tenants that could obtain relief under this program, and amendment of these agreements are not generally 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 existing lease
- Must have maintained LBE status during the forgiveness period
- Tenants shall be required to submit an application similar to the Opt-In 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.

- Tenants shall provide information on PPP, EIDL, or other government funded financial aid received, and any amounts of those funds stated to be used for payment of rent shall be netted out of forgiveness amount in order to ensure that a tenant does not receive a windfall of resources

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 27 LBE tenants that would be covered under this program, and amendments to these agreements would not be subject to Board of Supervisor approval.

***PROGRAM VALUES AND BUSINESS CASE**

Sector A – Percentage Rent Tenants

Tenants in this category attract the most visitors and are heavily dependent on in-person transactions, and undoubtedly are the most impacted by COVID-19. These businesses are core to the Port's mission in bringing people to the waterfront and generating revenues to manage the waterfront; they are critical partners in ensuring the Port remains a vibrant waterfront for the public. These tenants were directly impacted by health crisis because they were ordered to stop their business. More broadly, the Mayor has recognized the need for public policy strategies to help these types of businesses get back on their feet to reduce the economic dislocation of the pandemic.

This proposal promotes a "shared prosperity" model, which in current economic conditions is in the Port's business interest. Tenants in this sector have made a compelling case that they cannot pay base rent until their revenues stabilize significantly above the 0% to 25% rate they are currently achieving. Without the forgiveness of base rent and implementing percentage rent payments, tenants have made it clear they cannot keep restaurants open and would have to either shutdown operations for a prolonged period of time or terminate leases. In both cases, the lack of operations would increase demands on Port security and maintenance, which are already strained.

With respect to retail vacancies in particular, any effort to fill vacancies would be subject to the City's competitive bidding policies and the Port's Retail Leasing Policy which generally require retail opportunities be competitively bid. Without indoor dining and with the winter season soon approaching, leasing of empty restaurant spaces will undoubtedly be challenging. Lengthy bidding processes, paired with constrained staffing bandwidth will likely create extended periods of vacancies.

Therefore, staff recommends deployment of this strategy for the lesser of: 14 months or the point at which sales trigger payment above minimum base rent three months in a row which aims to keeping businesses operating to the greatest extent possible.

Sector B & C – Maritime and LBE Tenants

Tenants in these categories are generally in industries either indirectly affected by SIP or generally affected by the health crisis. The Port's mission and values drive Staff's proposal to provide an appropriate level of forgiveness to support these businesses while keeping tenants' and Port's interests as aligned as possible. Supporting LBEs and preserving the maritime industry are clearly articulated goals of the Port Commission and providing tenants 3 months of rent forgiveness will provide financial relief to these sectors during the months of the most strenuous SiP period.

For LBE tenants, the July 9th Staff Report on Programs to Support Local Business Enterprises (Item 8A), Staff stated that "Historically, LBEs have experienced higher costs and competitive disadvantages compared to large businesses or businesses located outside of San Francisco" and that "businesses owned by people of color have received significantly less support from the federal stimulus programs." The 3 months of forgiveness paired with the LBE Hardship Emergency Loan and Grant Program will help to provide much needed financial relief to LBEs. Any rent that is forgiven shall not be an allowable expense in the LBE Hardship Emergency Loan and Grant Program.

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.

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 and July 14 meetings, 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 5 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 \$15.4 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 \$6.6 million 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 5. 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:

- A standardized 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
- Delegation of authority to Port Staff to enter into mutual early terminations within certain parameters such as total monthly rent, term remaining on lease, condition of space allows for releasing, etc.

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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For: Rebecca Benassini
Acting Deputy Director
Real Estate and Development

Exhibit A: List of Tenants by Sectors A, B, and C

Exhibit A Tenants Eligible for Forgiveness

Percentage Rent Tenants Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

Below list include tenants who may be eligible to apply for rent forgiveness, should the Port Commission direct staff to move forward with the rent forgiveness program described in this staff report, under "Sector A Percentage Rent Tenants". Rent forgiveness would be documented through a form lease amendment to be executed by Port and tenant.

Sector A. Percentage Rent Tenants

Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

	Name on Agreement	Business Name	Portfolio
1	340 Jefferson, LLC	Pompeii's Grotto	FW
2	369-399 Embarcadero, LLC	Epic Steak and Water Bar Restaurants	FP/SB
3	Abraham Pedicabs, LLC	Cabrio Taxi Pedicabs	
4	Alcatraz Cruises, LLC	Alcatraz Cruises	NE
5	Alioto Fish Company, Ltd.	Alioto's Restaurant	FW
6	Andre-Boudin Bakeries, Inc.	Chowder Hut Restaurant	FW
7	Bay Natives	Bay Natives Nursery	SO
8	Bike Hut Foundation	The Bike Hut	FP/SB
9	Blue & Gold Fleet, LP	Blue & Gold Fleet	FW
10	Boudin Properties, Inc.	Boudin's Flagship Restaurant	FW
11	Bundox Restaurant, Inc.	The Waterfront Restaurant	NE
12	Castagnola's Restaurant	Castagnola's Restaurant	FW
13	Choi, Ted	City Kayak	FP/SB
14	Chu, Frances Y. and Hwang, Jyi Jeng	The Crab Station	FW
15	D & G Company	Lou's Blues Bar	FW
16	East Street Ventures, LLC	Atwater Tavern	CB
17	Ferryboat Santa Rosa Partners, Ltd.	Ferry Boat Santa Rosa	NE
18	Frank's Fisherman's Supply	Frank's Fisherman's Supply	FW
19	Frankie's Java House, LLC	Frankie's Java House	FP/SB
20	Golden Bear Restaurant Co III, LLC	Mission Rock Resort	CB
21	Golden Gate National Parks Conservancy	Golden Gate National Parks Conservancy	NE
22	Golden Gate Scenic Steamship Corp.	Red and White Fleet	FW
23	Guardino's Souvenir & Gift Shop, Inc.	Guardino's	FW
24	Henriquez, Reinaldo	Reinaldo Henriquez Pedicab	

	Name on Agreement	Business Name	Portfolio
25	Herringbone Tavern, Inc.	Grotto #9 & Tarantino's	FW
26	Hoppe, Arthur N.	The Bay Company & The Wharf Store	FW
27	Hornblower Yachts, Inc.	Hornblower	NE
28	Imperial Parking (U.S.), Inc.	Impark	
29	JPPF 1300 Battery, L.P.	Fog City	NE
30	Mama Franceschi, L.P.	Capurro's	FW
31	National Liberty Ship	S/S Jeremiah O'Brien	FW
32	Pier 23 Cafe	Pier 23 Café	NE
33	Pisoni, Tiffany Marie	Red's Java House	FP/SB
34	Pollack Group, Ltd.	Nick's Lighthouse	FW
35	Portco, Inc	Cioppino's & Safe Harbor	FW
36	Queen's Louisiana Po-Boy Cafe, LLC	Queen's Po Boy Café	NE
37	Sabella & La Torre	Sabella & La Torre Restaurant	FW
38	Saggers, Keith R	SF Student Jobs Coalition Pedicab	
39	San Francisco Maritime National Park Assoc.	USS Pampanito	FW
40	San Francisco Museum and Historical Society	Musee Mechanique	FW
41	San Francisco Pedicab, LLC	Golden Gate Pedicab	
42	Scoma's Restaurant, Inc.	Scoma's	FW
43	SFS39, Inc.	The Franciscan	FW
44	Sitting By, Inc.	Hidive	FP/SB
45	South Beach Yacht Club	South Beach Yacht Club	FP/SB
46	SP Plus-Hyde Parking Joint Venture	SP+/Hyde	
47	St. Francis Marine Center, Inc.	The Ramp Restaurant	CB
48	Spinnaker	Spinnaker	FP/SB

Sector B. Maritime Tenants*Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval*

1	2 By C, LLC
2	A. La Rocca Seafood, Inc.
3	ABS Seafood Inc.
4	Alber Seafoods, Inc.
5	Alioto Fish Company, Ltd.
6	Alioto, Sal
7	Aloha Seafood, Inc.
8	Andreassen, Hans
9	Anfinson, Eric
10	Anna Marie Inc
11	Anselmo, Bennie
12	Atkinson, John Jr
13	Barnett, John
14	Bates, Sarah
15	Bertucci, Robert
16	Bishop, Gary
17	Bohannon, Robert A
18	Brooks, Elliott
19	Bugeja, Peter
20	Burchell, Robert
21	Caito Fisheries Inc.
22	California Shellfish Co.
23	Calvert, Tim
24	Calvi, Chris
25	Cannia, Anthony
26	Chen, Da Huan
27	Collier, Brian
28	Collins, Lawrence J.
29	Costarella Seafood, Inc.
30	Costello, Mike
31	Crab Boat Owners Association
32	Cresalia, Andrew
33	Cross, Sean
34	Dalley, Sonia
35	Deaton, Mrs Tiffany
36	Dillard, James
37	Duba, Chris

38	East-West Seafood, Inc.
39	F. Alioto Fish Co.
40	Fitzpatrick, Richard
41	Fontes, Mike
42	Fox, Christopher
43	Franklin, Don
44	G.P. Resources
45	Gabriel Higi
46	Gritzfeld, Jym
47	Haja Services
48	Hanson, Craig
49	Hickey, Darryl
50	Hill, Steven
51	Hodges, Sean
52	Hunt, Dan & Linda
53	Icy Strait Seafoods, Inc.
54	Indie, David
55	Iversen, Chris
56	J&P Bait, LLC
57	Jennison, Ellsworth
58	Juanes, Matt
59	Kemp, David
60	Kesler, William
61	King, David
62	Krieger, Nicholas
63	Kurtz-Harvie, Michael
64	Kwasniza, Igor
65	Lafata, Phil
66	Lazzari, Daniel
67	Le, Johnny
68	Lee, Frank
69	Little, Brand
70	LoGrande, Beneditto
71	Louie, Chuck
72	Lucas, Maxwell
73	Luyen, John
74	Ly, Tho A.
75	M.F.M. Seafood, Inc.
76	Magner, Mark
77	Maharry, Robert

78	McCarthy, Tracy
79	McManigal, Bret
80	McWilliams, Brian Thomas
81	Medinas, Zachary
82	Mellor, John
83	Michael Kurtz-Harvie
84	Mitchell, Michael
85	Monterey Fish Company, Inc.
86	Nautilus Excursions LLC.
87	Nguyen, Nhung
88	Osprey Seafood of California, Inc.
89	P & T Flannery Seafoods, Inc.
90	Papetti, Savior
91	Peery, Mike
92	Peninsula Seafood of San Bruno, Inc.
93	Pezzolo Seafood, Inc
94	Phillips, James
95	Phillips, Michael
96	Powell, Michael B.
97	Reloba, Nick
98	Rescino, Frank
99	Reynolds, Robert
100	Rose Marie Inc.
101	Sadati, Jesse
102	Salvato, Jason
103	San Francisco Community Fishing Association
104	Schwarz, Mark
105	Scoma's Restaurant, Inc.
106	Seafood Producers Cooperative
107	SF Boat Support, LLC
108	Sien, Vincent
109	Sin, A Kiu
110	Smith, James
111	Sullens, Isaac
112	Talmadge, Steve
113	Tanji, Gregg
114	Tarantino, John
115	Tarantino, John Paul Jr.
116	Walsh, Tomas
117	Ward, William

118	Wehr, Shane
119	West Bay Seafood Company, Inc.
120	Yuen, Truong Chun
121	Zizzo, Tom

Sector C. LBE Tenants

Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

1	A. Ruiz Construction
2	Acme Trucking
3	ADRIENNE WONG ASSOCIATES INC
4	Albion Partners
5	ALEX BUILDER INC.
6	AMC Consulting Engineers, Inc
7	AYER MEDIA, INC. DBA WEBB DESIGN
8	Baird Trucking, Inc.
9	Bay Line Cutting & Coring Inc
10	CELTIC SCAFFOLDING INC.
11	Crystal & Robin Trucking
12	Dirt Shop
13	E Butler Trucking Inc.
14	Erlinole Trucking
15	Flynn Transport
16	Henry Trucking
17	Hoseley Corporation
18	Ibarra Trucking
19	Jomar Trucking
20	MCD TRUCKING LLC
21	MICHAEL O'SHAUGHNESSY CONSTRUCTION, INC.
22	Pacific Bay Builders
23	RELIANCE ENGINEERING INC
24	Robert W. Poyas, Inc.
25	Rogers Trucks, Inc.
26	UNION SERVICE CO
27	Woodford Studio