

The Port has been asked to waive rent for these uses so that existing resources can be focused on the delivery of the needed health services. Port staff recommends that the Port Commission issue such a waiver and that the Port accounts for these waived revenues in an effort to recover relief funds reimbursing these costs.

Strategic Objective

The proposed Resolution supports the Resilient goal of the Port's Strategic Plan by improving the Port and the City's response to natural and human-made risks. The proposed Resolution also supports the Stability goal by directing staff to take steps to seek external reimbursement sources for the amounts waived.

Background

On February 25, 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 California Government Code, Section 3.100(14) 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 due to the ongoing spread of COVID-19.

Since the Mayor's Emergency Declaration, the City's public health response has ramped up by a considerable amount in a very short time, and has impacted Port property in two primary ways.

One major initiative designed to slow the spread of COVID-19 is the intensive testing of frontline health and public safety workers whose public-serving duties require them to risk exposure. By testing these populations frequently, the City hopes to keep these essential health and safety services operating at a robust level by avoiding situations where asymptomatic carriers of the virus infect large numbers of their co-workers. This effort culminated in the establishment and operation of the Piers 30-32 CityTestSF site by the City Department of Public Health ("DPH") as of April 6, 2020. Similarly, a private medical group has engaged in discussions with the San Francisco Giants organization about using underutilized portions of the Seawall Lot ("SWL") 337 parking lot for a potential test site in the future.

A second major initiative is the establishment of appropriate isolation locations for people who cannot safely quarantine in their current living situations ("Alternative Health Sites"). Alternative Health Sites may also provide medical and other support services. As described in more detail in item 6.D of the April 28, 2020 Port Commission agenda, the City Human Services Agency ("HSA") and DPH have been working with the California Office of Emergency Services to establish an Alternative Health Site on a portion of SWL 344, in the Pier 94 Backlands area, with trailers and recreational vehicles. The Port and the Giants permitted HSA to stage recreational vehicles at SWL 337 until the Alternative Health Site is ready for such vehicles.

In support of the City's efforts and at the direction of the City's Emergency Operations Center, Port staff have worked diligently to implement these urgently needed services in a safe manner that protects the Port from further liability. In each of these cases, the

tenant is either a public agency or a private entity seeking to provide COVID-19 related health services at no charge to the public, and as such the tenants have requested that the Port waive rent for these uses. The specific uses are described in more detail below.

1. Piers 30-32. On April 6, 2020 DPH opened the CityTestSF facility which offers drive through and walk-in tests by appointment at the site and at this time, has capacity to test up to 500 individuals per day, which number may further increase over time. Testing is available for SF Police Department, Fire Department, Sheriffs' Deputies, 911 dispatchers and our health care workers who are courageously working on the front lines of the COVID-19 response on our behalf every day. As the capacity of the site has increased, testing has been further expanded to additional frontline workers including SFMTA drivers, shelter workers, non-profit workers, other workers providing essential needs, and other populations deemed appropriate by the City's Health Officer.

Under authority delegated by the Port Commission for leases that pay parameter rents, Port staff have negotiated a Memorandum of Understanding ("the Piers 30-32 MOU") with DPH for the use of Piers 30-32 as a CityTestSF site. The Piers 30-32 MOU provides appropriate agreements to address regulatory concerns and limits the Port's liability. As required under such delegated authority, the Piers 30-32 MOU includes, among other terms, parameter rent (monthly rent is \$220,000) over a term of approximately 13 months, indemnities for the Port's benefit and insurance and hazardous materials requirements in line with the terms approved by the Port Commission for routine leases. The Piers 30-32 MOU also incorporates an operations plan so that the parties have shared understanding of how the operations will be managed. The parties assume that the site will wind down before the completion of the full term; accordingly DPH can terminate the Piers 30-32 MOU anytime with 30 days' notice to the Port while the Port may terminate any time after the rescission of the Mayor's Emergency Declaration with 30 days' notice to DPH. The Piers 30-32 MOU is on file with the Commission Secretary.

2. SWL 337/Lot A Under Lease L-16417 (the "SWL 337 Lease") with Seawall Lot 337 Associates, LLC, an affiliate of the Mission Rock Partners joint venture between the San Francisco Giants baseball club and Tishman Speyer (the "SWL 337 Tenant"), the Port receives rent for parking and other uses on SWL 337. As HSA sought a location to stage the recreational vehicles while the SWL 344 site was prepared as described above, the SWL 337 Tenant and the Port agreed that the vehicles could be stored at SWL 337 and that charges for such use would be waived. The fees that would have otherwise been payable to Port under the SWL 337 Lease for the month of March solely for such use totaled \$7,603 (representing the Port's 66% share of the parking revenues that would have been collected for such use under the SWL 337 Lease). Port staff anticipates a similar amount being due to Port for April.

Staff Analysis

DPH commenced operation of the CityTestSF facility at Piers 30-32 as a matter of public health urgency while requesting the Port seek required approvals to waive the rent due so that their resources can be conserved to address the urgent demands of the COVID-19 crisis. In view of the ongoing crisis, Port staff recommends waiving all rent due under the Piers 30-32 MOU.

Port staff also recommends retroactively waiving rent payable under the SWL 337 Lease to Port associated solely with the recreational vehicle staging use. In light of the ongoing dialogues regarding further COVID-19 response activities taking place at SWL 337, Port staff further recommends that the Port Commission provide a prospective waiver of rents due Port for uses at SWL 337 related solely to the COVID-19 response, either in establishing an additional site for COVID-19 testing or for providing food distribution or other services in coordination with the City Emergency Operations Center. This waiver would be limited to those situations where the user is not charging fees to the public beyond its costs in setting up the facility and administering the tests or providing the services, and any such provider must submit an operations plan for Port staff review and approval. To receive the waiver, the SWL 337 Tenant must provide detailed layouts of the area of SWL 337 being used and a calculation of the waived rents according to the rent that would have been payable to Port for a special event using the square footage occupied under the terms of the SWL 337 Lease. Port staff recommends limiting this waiver to the period of the Mayor's Emergency Declaration, and only to those situations where rent is waived by the SWL 337 Tenant for the end user as well.

Port Staff Recommendation

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

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Real Estate and Development

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

RESOLUTION NO. 20-19

- 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 25, 2020, Mayor London Breed issued the Proclamation by the Mayor Declaring the Existence of a Local Emergency (as supplemented, the "Mayor's Emergency Declaration") under Sections 8550 et seq. of the California Government Code, Section 3.100(14) 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 the virus that causes Novel Coronavirus 2019 Disease ("COVID-19"); and
- WHEREAS, The Mayor's Emergency Declaration, which was concurred by the Board of Supervisors, and subsequent COVID-19-related orders have sparked a number of coordinated public health actions in an effort to slow the spread of COVID-19 and safeguard the health of City residents during this pandemic; and
- WHEREAS, These COVID-19 efforts include the development and operation of testing infrastructure within the City to help identify who has been infected by the virus; and
- WHEREAS, The City's Department of Public Health ("DPH") prioritized the opening of a COVID-19 test site at Piers 30-32 ("CityTestSF") that was initially targeted at staff of the Police and Fire Departments, Sheriffs' Deputies, 911 dispatchers and our health care workers on the front lines of the COVID-19 response on our behalf every day; as testing capacity at the site has increased, additional frontline workers such as SFMTA drivers, shelter workers, non-profit workers, other workers providing essential needs, and other populations deemed appropriate by the City's Health Officer are being tested there as well; and
- WHEREAS, In order to meet the urgent timeline needed for the CityTestSF site, Port staff negotiated a memorandum of agreement with DPH on terms described in the memorandum accompanying this Resolution (the "Piers 30-32 MOU"), which Piers 30-32 MOU is on file with the Port Commission Secretary; and

- WHEREAS, In order to keep funding available for further relief efforts, the City has requested that the Port waive rent payment obligations under the Piers 30-32 MOU; and
- WHEREAS, As part of the City's response, DPH and the City's Human Services Agency ("HSA") have also determined a need for a safe site to isolate, quarantine and provide medical and other support services for persons potentially-exposed to COVID-19 with living situations that are not conducive to quarantine ("Alternative Health Site") and have proposed to use a portion of Seawall Lot ("SWL") 344 as an Alternative Health Site; and
- WHEREAS, HSA requested Seawall Lot 337 Associates, LLC (the "SWL 337 Tenant"), the Port's tenant at SWL 337 under Lease L-16417 (the "SWL 337 Lease") permit the staging of recreational vehicles proposed to be used at the Alternative Health Site at SWL 344 at no rent, in order to conserve its resources for COVID-19 response activities; and
- WHEREAS, After consultation, the Port and the SWL 337 Tenant agreed to waive their respective rent requirements for the area where the recreational vehicles are staged at SWL 337, subject to Port Commission approval; and
- WHEREAS, The SWL 337 Tenant is currently engaged in discussions to provide space at SWL 337 for additional COVID-19-related uses, potentially including the establishment of a COVID-19 testing site to be run by a private health network or a food bank distribution site; and
- WHEREAS, Port staff and the SWL 337 Tenant wish to establish appropriate criteria for further waivers of rent due Port for uses at SWL 337 directly related to the effort to combat COVID-19; and
- WHEREAS, Under various state and federal relief programs, the Port may be eligible for disaster relief funds in reimbursement of the rent that is waived for these urgent public health-related activities; and
- WHEREAS, Port staff will be tracking the waived rent in each case noted above for purposes of filing a subsequent claim for reimbursement from available relief sources; now, therefore be it
- RESOLVED, That the Port Commission hereby approves the Executive Director entering into a Piers 30-32 MOU that waives all rent payable to Port under such agreement so long as all other terms of such agreement are substantially as described in the memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves of the Executive Director waiving a portion of the rent due and payable by the SWL 337 Tenant to Port under the SWL 337 Lease (including any prior rent due Port) associated solely with the use of SWL 337 for recreational vehicle staging for Alternative Health Sites provided the SWL 337 Tenant also waives any rent otherwise payable for such use until conclusion of such use or termination of the Mayor's Emergency Declaration, whichever is earlier; and be it further

RESOLVED, That the Port Commission hereby approves of the Executive Director waiving rent due and payable by the SWL 337 Tenant to Port under the SWL 337 Lease for uses at SWL 337 directly related to testing for COVID-19 or providing food distribution or other services in coordination with the City Emergency Operations Center, with such waiver to expire upon termination of such uses or the Mayor's Emergency Delegation, whichever is earlier, subject to the SWL 337 Tenant waiving any rent otherwise payable by such user to the SWL 337 Tenant, such user not charging testing fees beyond its costs in setting up the facility and administering the tests or services, notice to the Port Commission, agreement as to an operations plan, and the provision by the SWL 337 Tenant of detailed information as to the space used and the rent otherwise due to Port under the SWL 337 Lease for the referenced use; and be it further

RESOLVED, That the Port Commission directs staff to track and account for all waived rent directly related to testing for, treating or otherwise addressing the impacts of, or assisting in the response to, the COVID-19 pandemic, including the waived rent due Port under the Piers 30-32 MOU and the SWL 337 Lease; and be it further

RESOLVED, That the Port Commission directs staff to apply for and diligently work to obtain disaster relief funds from various state and federal relief programs the Port may be eligible for, in reimbursement of the rent that is waived for these urgent public health-related activities, including the waived rent due Port under the Piers 30-32 MOU and the SWL 337 Lease; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments, modifications or ancillary agreements to the Piers 30-32 MOU that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 28, 2020.

Secretary