MEMORANDUM

September 1, 2009

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

FROM: Monique Moyer
      Executive Director

SUBJECT: Request Approval of Port Tenant In Good Standing Policy

DIRECTOR’S RECOMMENDATION: Approve Resolution

Background
The Port of San Francisco (“Port”) is a public enterprise dedicated to recreational, maritime, transportation, public access and commercial and industrial uses on a self-supporting basis through appropriate management, use and development of the waterfront for the benefit of the people of California.

From time-to-time the Port receives requests from its current tenants for additional benefits from the Port in the form of extended leases, more leasehold space or other amendment to their leases. Port staff recommends that requests for lease amendment or extensions should be considered only for tenants that are in good standing.

To ensure clarity, equity and consistency in considering such requests, the Port staff recommends adoption of a policy delineating what it means to be a Tenant In Good Standing and what types of tenant requests will be considered.

Recommendation
Port staff recognizes the benefit of clarity and equity when enforcing its leases. Port staff acknowledges that further definition would assist in this process and recommends approval of the attached Tenant In Good Standing policy.

Prepared by: Susan Reynolds
Deputy Director for Real Estate

THIS PRINT COVERS CALENDAR ITEM NO. 10B
PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 09-49

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco (“City”); and

WHEREAS, under Charter Section B3.581 (g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, from time-to-time the Port receives requests from its current tenants for additional benefits from the Port in the form of extended leases, more leasehold space or other amendment to their leases; and

WHEREAS, Port staff recommends that requests for lease amendment or extensions should only be considered for tenants that are in good standing; and

WHEREAS, to ensure clarity, equity and consistency in considering such requests, the Port staff recommends adoption of a policy that explains what it means to be a Tenant In Good Standing and what types of tenant requests will be considered; and

WHEREAS, Port staff has attached to its memorandum, dated September 1, 2009, to the Port Commission on this item a proposed policy for the aforementioned purposes, on file with the Secretary of the Port Commission, the “Port of San Francisco Tenant In Good Standing Policy”; now therefore, be it

RESOLVED, that the Port Commission hereby approves the Tenant In Good Standing policy, as set forth in the memorandum to the Port Commission for this item and authorize the Executive Director or her designee to instruct Port staff to utilize this policy.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 8, 2009.

Amy Quesada
Secretary
Port of San Francisco
Tenant In Good Standing Policy

Background
The Port of San Francisco ("Port") is a public enterprise dedicated to recreational, maritime, transportation, public access and commercial and industrial uses on a self-supporting basis through appropriate management, use and development of the waterfront for the benefit of the people of California.

From time-to-time, the Port receives requests from its current tenants to receive additional benefit from the Port in the form of extended leases, more leasehold space and other amendment to their leases. As a result, the Port requires that the tenant qualify for that additional benefit by complying with the terms of existing leases and demonstrating that proposed new amendments benefit the Port and the people of California.

This Policy further identifies those lease terms that are considered when determining if a tenant is a Tenant In Good Standing:

Definition
A Tenant In Good Standing is one that, in the professional judgment of Port staff, is and has been in compliance with all the terms and conditions of the lease throughout the term of the lease, including:

1. Current and in compliance with all financial obligations of the lease, and all amounts due and payable have been paid on time as due;
2. Calculation of percentage rents due is correct with no unapproved off-sets;
3. All tenant records are kept in accordance with the lease and available to Port staff or its auditors for review;
4. Use of the premises is in accordance with the terms of the lease without encroachment, trespass, unauthorized sublet or transfer;
5. Current and in compliance with all the insurance obligations of the lease;
6. Current and in compliance with all regulatory obligations including California Environmental Quality Act (CEQA) and San Francisco Bay Conservation and Development Commission (BCDC) and environmental operations plans provided by the lease;
7. Has maintained the leasehold in good condition in accordance with the tenant's obligations under the lease;
8. Has obtained all required permits;
9. Has met and is in compliance with all other lease covenants and obligations; and
10. There is no litigation or any other dispute adverse to the Port.

A tenant that has been non-compliant with any of these conditions noted above may re-establish their status as a Tenant In Good Standing if:
1. Tenant has responded to any non-compliance issues and taken corrective measures in a timely manner;
2. The non-compliance, in the Port’s sole judgment, is not representative of a pattern; and
3. If tenant has been in litigation or other dispute against the Port, matters have been resolved to the sole satisfaction of the Port.

Opportunities:
If a request does not trigger change of use or need for competitive bidding, Tenants In Good Standing may receive the Port’s consideration for the following requests:

1. Amendments;
2. Additional term;
3. Change in leasehold size;
4. Assignments/sublets; and/or
5. Request additional agreements on Port property.

The factors enumerated above are meant to be guidelines to assist Port staff in making a professional determination regarding the status of Port tenants. The Port shall use these factors to determine whether it is in the best interest of the Port to grant or to recommend to the San Francisco Port Commission that it grant a tenant’s request. Port staff recognizes that there may be tenant requests that do not fit into the categories enumerated above and reserves the right, at the Port’s sole discretion, to make determinations and recommendations on such submittals that are in the best interest of the Port.

This Policy formalizes Port practices pertaining to all outstanding leases and licenses.