



MEMORANDUM

April 23, 2020

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

FROM: Michael Martin DocuSigned by:
Acting Executive Director *Michael Martin*
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SUBJECT: Request approval of a Resolution ratifying the rent deferral and other tenant relief provided under the March 27, 2020 staff-issued Executive Directive Regarding Enforcement of Lease Obligations during the COVID-19 Shelter in Place Orders, and extending the policy's applicability through May 31, 2020. (Resolution No. 20-18)

Executive Summary

On March 27, 2020, the Port issued an Executive Directive to advise tenants of the Port's policies with respect to relief of rent obligations during the restrictive orders intended to slow the spread of the COVID-19 pandemic. As further described below, the Executive Directive's primary actions included allowing eligible affected tenants to defer March and April 2020 rent without penalty or risk of eviction.

Because Mayor London Breed has extended the shelter-in place order until at least May 3, Port staff is seeking Port Commission approval of a resolution that ratifies the relief offered under the Executive Directive and extends its applicability until May 31, 2020.

Port staff is also taking this opportunity to brief the Port Commission on staff's initial analysis of potential further tenant relief that may be needed or advisable going forward in order to receive further direction and to better target any subsequent proposal for tenant relief beyond that authorized under this item.

THIS PRINT COVERS CALENDAR ITEM NO. 6B

Background

This item has been prompted by the remarkably rapid developments in the recognition of and reaction to the Covid-19 pandemic. Some major milestones over the first several weeks of the City public health response include:

- 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 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 due to the ongoing spread of "COVID-19".
- On March 3, 2020, the Board of Supervisors passed a motion concurring in the Mayor's Emergency Declaration and in the actions taken by the Mayor to meet the emergency.
- On March 4, 2020, Governor Newsom issued the Proclamation of a State of Emergency under Section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to Covid-19.
- On March 16, 2020, the City's Health Officer issued a stay safe at home order, Health Officer Order No. C19-07 (the "March 16 Order"), requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses, through April 7, 2020. Among other things this order closed bars and restaurants except for takeout and delivery service, which caused a great deal of dislocation among the Port's retail portfolio.
- On March 19, 2020, Governor Gavin Newsom issued an Order that established shelter-in-place guidelines for the state of California along similar lines as the March 16 Order. The Governor's Order included no set expiration date.
- On March 31, 2020, the Health Officer extended the March 16 Order through May 3, 2020.

The impacts of the emergency and the public health response measures listed above on the small business community have been fairly immediate and have prompted a separate set of economic responses to the crisis. 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 "Eviction Moratorium Order"). Under normal state law, localities are prohibited from regulating commercial evictions. San Francisco was allowed to take this action following Governor Newsom's March 16, 2020 Executive

Order lifting those restrictions. The moratorium can be extended and will be automatically rescinded if the Mayor's Emergency Declaration ceases.

Following the release of the Eviction Moratorium Order, on March 27, 2020, City Administrator Naomi Kelly issued a "City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through April 30, 2020" (the "Citywide Policy"). The Citywide Policy was developed through an informal working group that included the Port and its key strategies were reflected in the Port's own policy guidance released on that same day, as further described below.

Port Policy

In response to the above actions, on March 27, 2020 Executive Director Elaine Forbes issued the attached Executive Directive providing guidance to Port tenants as to the initial Port approach to tenant relief (the "Port Policy"). The Port Policy offered tenants affected by the crisis the ability to defer their rent due for March and April without penalty until June 30, 2020. Under the Port Policy regular rent payments would resume on May 1, 2020. Further, the Port Policy affirmed that the Port would follow the provisions of the Eviction Moratorium Order for any effort to regain possession of leased property and established a forbearance period under which the Port would not issue any Three Day Notice to Pay or Quit for nonpayment of any portion of rent due during the period of March 1 through April 30, 2020 due to the impact of COVID-19.

The Port Policy applied to a broad range of Port tenants, the exceptions being City agencies, layberthing tenants, and berth holders at South Beach Harbor. Also master tenants are only eligible for relief so long as they offer equivalent or better terms to their respective subtenants. Importantly, the Port Policy made clear that it is "a temporary bridge to a more comprehensive and targeted rent relief policy once Port staff has an opportunity to study the impacts of this situation and the policy response from federal, state and City governments."

April Revenue Performance

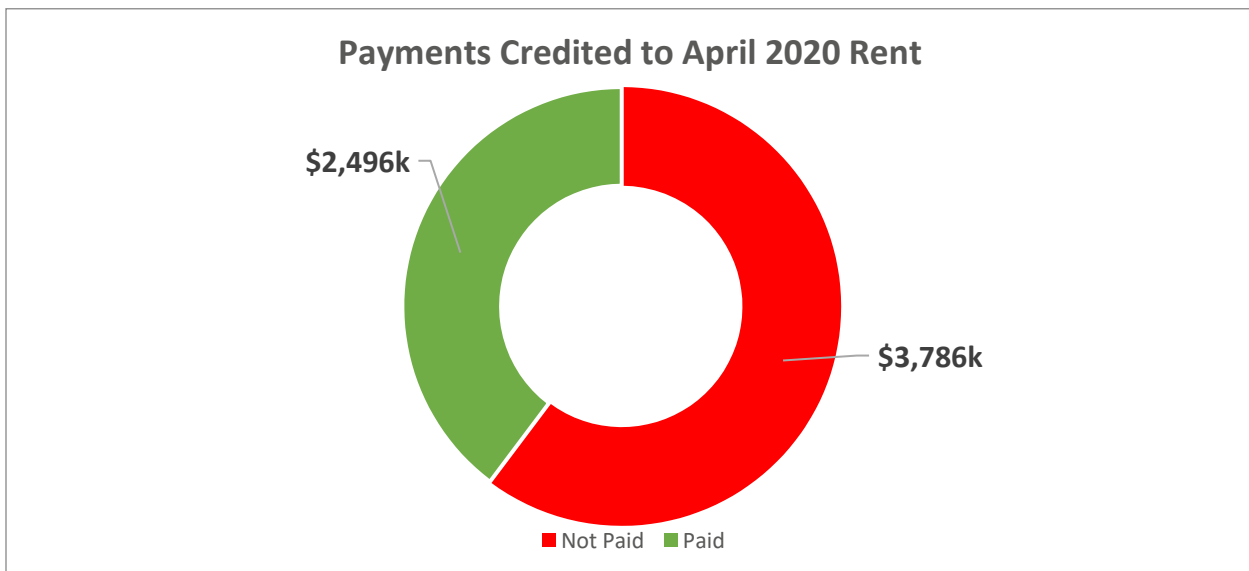
At its core, the Port Policy is simply an initial measure shifting the timing of otherwise due rent payments. All other lease provisions remain in effect. The impact of the Port Policy will be primarily felt in the Port's cash flow and timing of receipts, depending on how many tenants take advantage of this relief. Based on tenant communications to date, the Port's cash flow is going to be impacted regardless, especially with regard to percentage rents and parking revenues.

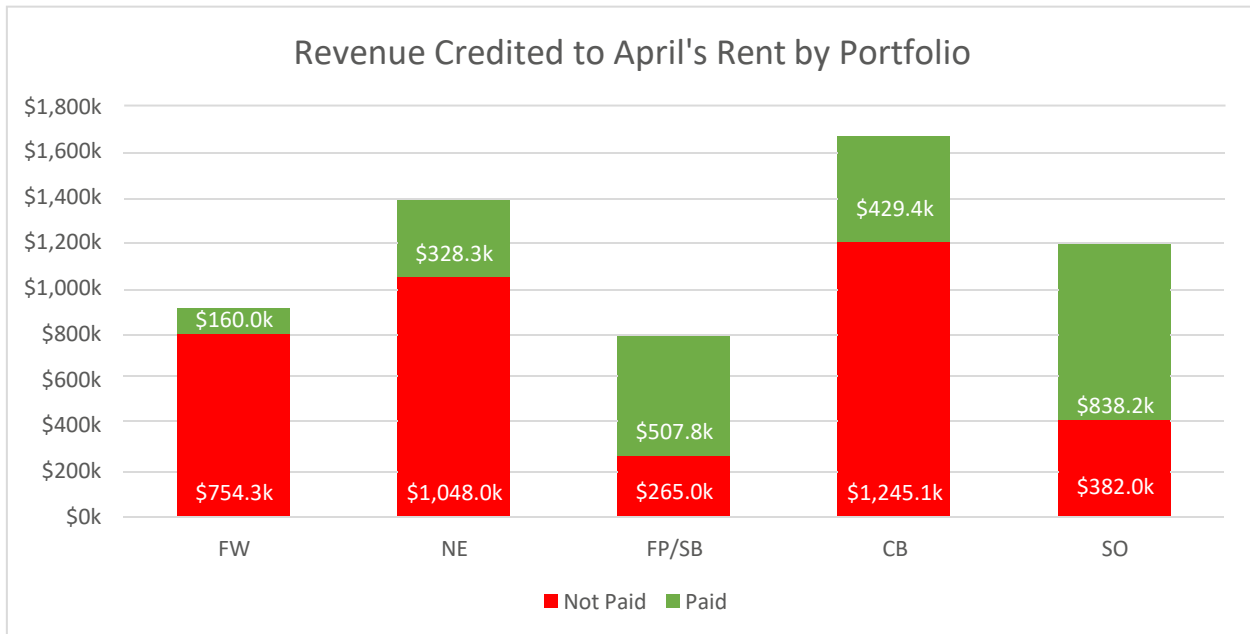
Port staff has prepared the brief following summary data on April rent receipts through April 15, 2020. To begin, the table on the following page shows is a rent roll breakdown of tenant payments sent into the Port categorized by revenue type in April 2020:

Revenue Type	Invoices	Payments	Payment Rate	Base Rent Invoiced	Total Rent Receipts
Cargo Facility Rent	12	7	58%	\$ 386,567.66	\$ 304,988.92
Color Curb Zone Fee	9	3	33%	\$ 20,554.93	\$ 26,058.84
Commercial Rent	318	149	47%	\$ 2,697,635.84	\$ 2,116,563.40
Cruise Facility Rent	1	1	100%	\$ 17,389.00	\$ 17,098.00
Dockage	9	1	11%	\$ 11,522.36	\$ 4,288.00
Fish Processing Facility Rent	59	18	31%	\$ 205,284.96	\$ 36,099.42
Harbor Services Facility Rent	3	1	33%	\$ 179,642.17	\$ 21,682.78
Layberthing	6	1	17%	\$ 110,132.50	\$ 10,400.00
Maritime Services Facility Rent	23	11	48%	\$ 176,169.66	\$ 85,681.68
Parking Lot Rent	20	2	10%	\$ 1,401,383.50	\$ 35,025.14
Participation Rent	61	8	13%	\$ 881,006.98	\$ 50,055.09
Permit Fees	2			\$ 750.00	
Utility fees	7	4	57%	\$ 3,209.19	\$ 35,490.18
Wharfage	3			\$ 452.00	
	520	201	39%	\$ 6,091,700.75	\$ 2,743,431.45

Normally the Port receives timely rent payments from large majority of our tenants, generally greater than 95% each month. However, as shown above, of the 520 tenants invoiced by the Port in April only 201 made payments, for an overall payment rate of 39%. The Port received \$2.7 million for the month of April 2020 from those paying tenants, with the majority of the payments the Port received falling under the Commercial rent category which is comprised of “fixed” rent leases including parameter leases of shed and office space. As previously noted, the receipts for Port Participation rents, rents based on a percentage of gross sales, and off-street Parking lots rents were exceptionally low at 13% and 10% of such tenants, respectively.

Revenues throughout the Port’s portfolios were down in April 2020; as shown in the graph below the Port received nearly \$2.5 million in revenue through April 15 which represents 40% of rent billed. Revenue shortfalls have been spread across all portfolios with the most severe impacts in Fisherman’s Wharf.





When rents and parking revenues are combined the Port's portfolio is down by nearly 60% in April; the Port budget planned for \$1 million in parking and \$6.4 million in commercial rent revenues (for a total budgeted amount for April 2020 of \$7.4 million) but as of April 15th Port parking and rent receipts are at \$2.8M.

Parking rents were particularly impacted, with receipts in April 2020 totaling approximately 4% of what was budgeted for the month. Collectively all Parking revenues (both off-street and Parking Lot rents) represent about 17% of overall Port operating revenues or about 22% of Real Estate operating revenues. The table is a budget snapshot of Real Estate and Development Parking Revenues:

PARKING REVENUE FY 2019-20

Parking	FY Budget	April Budget	April Actuals	Percent
Meters	\$ 5,590,000	\$ 465,833	\$ 8,905	1.91%
Stalls	\$ 598,000	\$ 49,833	\$ 35,730	71.70%
Rent	\$ 11,701,000	\$ 975,083	\$ 35,025	3.59%
Fines	\$ 3,341,000	\$ 278,417	\$ -	0.00%
Total	\$ 21,230,000	\$ 1,769,167	\$ 79,660	4.50%

This is a sector that bears close study, as public behavior evolves with the expected gradual relaxing of the public health orders summarized above over time.

Port staff will continue to monitor these trends and report to the Port Commission. As noted in the Port Policy, consistent with City budgeting practices the Port's budget does not assume recoveries for default interest or late fees as a source. For context, in the most recently completed fiscal year (FY 2018-2019) this source amounted to 0.1% of Port revenues.

Port staff will continue to monitor these trends and report to the Port Commission. As noted in the Port Policy, consistent with City budgeting practices the Port's budget does not assume recoveries for default interest or late fees as a source. For context, in the most recently completed fiscal year (FY 2018-2019) this source amounted to 0.1% of Port revenues.

Staff Analysis

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

During this time Port staff have worked with the City's Office of Economic and Workforce Development to provide information and resources to tenants regarding local, state, and federal relief programs intended to keep businesses afloat through these challenging headwinds. This work includes co-hosting a webinar for interested tenants and offering follow-up counseling services for those seeking more specialized assistance. More generally, Real Estate and Maritime Division staff have worked to stay in communication with tenants to understand their challenges and their sense of what is required to stay viable and endure not only the current conditions but what promises to be a somewhat long transition towards a "new normal." In keeping with the spirit of the Port Policy, Port staff has also been forbearing from exercising its rights to increase rents (for example, with an annual consumer price index adjustment). Instead, Port staff is sending letters to tenants advising of the Port's forbearance and reserving the right to impose the increase in the future when the economic conditions are less impacted. Lastly, Real Estate staff have also been consulting with other City agency landlords and available information from private portfolio managers to see what strategies have been implemented and what further strategies are under consideration.

All of this work is being performed in acknowledgement of the fact that any Port strategy to provide tenant relief must balance the Port's budgetary needs with the tenants' own challenges. While it is easy for an outsider to say that a forgiveness of a tenant's rent burden is needed at this time, the Port, as the trustee for public lands needs to be able to enforce payment of rent in order to fund its own operations for the benefit of the public and meet its own financial obligations to bond holders. At the same time, from the Port budget point of view, Port staff notes that a timely and strategic concession on rent that allows a tenant to survive and pay future rents is often on balance more beneficial than adhering closely to rent requirements and putting that business into default and on the road to eviction. This is even more true in the current situation when the ability to regain possession through legal action is limited through the orders noted above and access to the courts, at least in the near term.

Looking ahead, while the March 16 Order as extended is set to expire on May 3, 2020, recent comments from Governor Newsom and Mayor Breed indicate that the state and the City have not quite reached the end of this phase of sheltering in place. Accordingly, Port staff recommends that the Port Commission adopt the proposed

resolution to ratify the relief granted under the Port Policy and extend it as to rents due through May 31, 2020 (if so extended, the “Extended Port Policy”). Under the Extended Policy, normal and timely payment of rent would recommence on June 1, 2020 and payment of any rent arrearages (including for March, April, and May 2020) in full no later than June 30, 2020. Any amounts not paid in full as of June 30, 2020 would then be subject to interest and penalties from and after that date, unless the Port Commission takes further action prior to that date.

In addition to granting tenants much-needed relief and certainty, the additional month will allow Port staff to observe and analyze how the anticipated transition away from the current shelter in place orders will affect the resumption of economic activity, and based on those observations craft a further tenant relief proposal for Port Commission consideration that strikes the balance between tenant health and survival and the Port’s budgetary needs and its own obligations to beneficiaries of the trust and to bond holders. This time will also allow for Port staff to coordinate between any proposed protection or relief program offered by the City, Port, other City enterprise departments and other government agencies, and the Port’s revenue projections and budget strategies as we adjust to take account of the effects of the COVID-19 crisis.

Port staff further recommends that new tenants who signed their initial lease for the Port space they occupy on or after April 1, 2020 be excluded from the Extended Port Policy. Because these tenants understood the conditions of the current public health response when they signed the lease, and because the Port budget requires rental revenues in order to fulfill the Port’s mission, staff believes this rule strikes an appropriate balance of fairness in conserving Port relief for tenants in place before that date. For avoidance of doubt, the Extended Port Policy would apply to lease renewals signed after April 1, 2020 and holdover tenants whose base lease term has expired after that date.

Unless mentioned above, all other provisions of the Port Policy would remain unchanged in the Extended Policy.

For Discussion: Further Tenant Relief Strategies

Port staff would also like to take this opportunity to update the Port Commission on certain key strategies for further tenant relief that are currently under consideration.

It is important at this point to note that the relief offered to date under the Port Policy and, if approved, the Extended Port Policy, has been limited to the deferral of rent with no reduction in the amount owed. Port staff expects that actual rent forgiveness (waiving some or all of the amount owed) may be advisable in certain targeted situations as described below. In these situations it will be important to establish clear categories to assist in efficient administration of the relief and to ensure that like tenants are being treated with consistency and fairness. Before staff can recommend any of these strategies it will need to perform further analysis of the Port’s budget and covenants with bondholders, and Port staff’s recommendation remains subject to that further analysis and the Port Commission’s direction. Accordingly, feedback from the Port Commission on the potential policies described below will be combined with further research and observation of tenant conditions in order to formulate a more targeted relief proposal at a future Port Commission meeting. Implementation of some of the

proposals below may require action by the Board of Supervisors.

1. Rent Deferral and Repayment Plan

After studying Port tenant operations since the March 16 Order and relief actions taken by other landlords and public agencies including San Francisco Airport, Port staff anticipates proposing a further rent deferral and repayment plan framework as the centerpiece of a further tenant relief proposal.

The key goals of this framework include the following:

- to establish a rent deferral period reflective of the relaxing of the shelter-in-place requirements and the resumption of business activities;
- to allow for a period of time where such deferred rents can be repaid without interest (subject to the payment of current rents as required under the lease), likely setting the due date at the close of the following calendar quarter in respect of the ramp-up time needed to resume rent payments;
- to establish a secondary repayment period where interest is payable on any remaining deferred rent balance, to incentivize payment before this interest rate is effective; and
- to establish a final repayment date at the end of FY 2020-2021 by which all deferred rent amounts must be repaid or else the such amounts would be considered delinquent and subject to the Port's enforcement rights.

Port staff would propose that all tenants eligible for the Extended Port Policy would be eligible for the Rent Deferral and Repayment Plan as well.

2. Base Rents for Percentage Rent Tenants

In addition to the broad offer of a Rent Deferral and Repayment Plan as described above, Port staff believes that the Port would benefit from also establishing certain categories of Port tenants for additional relief. One of these categories would be trust-consistent and trust-serving retail, maritime excursion and parking operator tenants who pay both percentage and minimum/base rents.

These leases are generally structured with minimum base rents so that the Port is protected from down months in the tenant's performance. The current crisis where business have been ordered to shutter or decrease operations by the government puts these tenants in a particularly difficult spot because the operational assumptions and market risks the parties accepted in order to set the minimum rent level may no longer apply under the current unprecedented market conditions. In these situations, both parties would benefit from not having the base rent obligation snowball to the point where it becomes insurmountable for the tenant to remain in operation.

Port staff is considering a two-pronged approach for these tenants:

- A Base Rent Forgiveness Period, where base rent is fully waived but percentage rent is payable. Any proposed forgiveness period would be specific to the type of business, would begin with any unpaid amounts due to COVID-19 as of the date of the relief measure and would expire on a date reflective of the ability of the

tenant to resume something approaching full operations. For example, at a minimum the Base Rent Forgiveness Period for restaurant base rents should likely run until such time as dine-in service is again allowed.

- A Base Rent Phase-In Period, which would follow the Base Rent Forgiveness Period and would gradually increase the base rent payment from \$0 to the amount due under the lease over a set number of months.

This two-pronged relief approach would be conditioned on the tenant recommencing operations and paying percentage rents as of the beginning of the Base Rent Phase-In Period and continuing operations throughout; if not then all rents would be due as agreed in the lease. In this way we can incentivize our tenants to operate and put their employees back to work despite the initial challenges that we know will be faced by any business trying to emerge from this crisis.

3. Other Trust-consistent Tenants

In addition, Port staff notes that the Port has in the past extended relief to tenants that further the Port's public trust mission. One notable example was the 2016 Crab Industry Relief Program that among other things provided three months of rent forgiveness (i.e. waiving rents otherwise due) to the crab fishing industry in the face of the severely truncated crab season that year. There, as here, the goal was targeting assistance to help the industry survive so that it can endure the current challenges and regain its footing and ability to generate rent revenues for the Port in the future. Port staff will consider whether it is advisable to recommend such a program for this or other categories of Port tenant in formulating its proposal for further tenant relief.

4. Retail Lease Extensions

Port staff notes that certain retail tenants with limited term remaining on their leases are having trouble accessing certain relief programs. The Port Commission's adopted Retail Leasing Policy includes the following provision:

Port staff may negotiate with an existing retail tenant in good standing...[f]or a short term lease extension, not to exceed 3-5 years, during any period when the National Bureau of Economic Research has determined that the U.S. economy is in a recession or other data support a finding by the Port Commission that the San Francisco Bay Area is experiencing a commercial real estate downturn.

Port staff believes the current situation satisfies the test for a commercial real estate downturn, though it does not necessarily reflect the more traditional tests for a recession. With that in mind, Port staff is considering whether to request Port Commission direction regarding the conditions under which to entertain such short-term extension proposals, and welcomes feedback from the Port Commission on this point in the meantime.

5. General Conditions on Relief

Port staff sees a need to understand the conditions of each tenant as it relates to relief it has received from government or insurance sources so that the Port's concessions can

be reserved for those that most need it. Port staff is also considering how best to verify both the tenant's financial condition as well as the viability of its recovery plan before extending this relief, while still maintaining some level of administrative efficiency during this challenging time. Port staff expects to propose that the relief be conditioned on the tenant remaining in good standing through this period and taking all reasonable steps to mitigate their damages and seek additional sources of financial relief in addition to that offered by the Port.

Port Staff Recommendation

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

Prepared by: Michael Martin, Deputy Director
Real Estate and Development

ATTACHMENTS:

- Port Executive Order dated March 27, 2020

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

RESOLUTION NO. 20-18

- 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, Among other things, the March 16 Order closed City bars and restaurants except for takeout and delivery service, which caused a great deal of dislocation among the Port's retail portfolio; and
- WHEREAS, In response to the March 16 Order and other state and local emergency measures further described in the Memorandum to the Port Commission dated April 23, 2020, Port Executive Director Elaine Forbes issued an Executive Directive Regarding Enforcement of Lease Obligations on March 27, 2020 (the "Port Policy"); and
- WHEREAS, The Port Policy provides a penalty-free offer to tenants to defer rent due for use of Port property in March and April 2020, where such amounts were not fully paid due to the impacts of COVID-19, and makes commitments to forbear from initiating legal proceedings to evict tenants who have been unable to pay rent due to the impacts of COVID-19 during that same time period, subject to continuing to comply with all lease provisions, to resuming regular rent payments on May 1, 2020 and paying all deferred amounts by June 30, 2020; and
- WHEREAS, All Port tenants were eligible for relief under the Port Policy, except for City agency tenants, layberthing tenants, berth holders at South Beach

Harbor and any master tenant that did not offer equivalent or better relief to its subtenants; and

WHEREAS, On April 1, 2020, the Health Officer extended the March 16 Order through at least May 3, 2020; and

WHEREAS, Due to the extension of the March 16 Order, the Port Commission sees the need to extend the Port Policy on all of the same terms through May, such that payment of March, April and May 2020 rent may be deferred without financial or other penalty; provided that normal and timely payment of rent recommences on June 1, 2020 and payment of any rent arrearage is made by June 30, 2020 (as further described in the Memorandum to the Port Commission dated April 23, 2020, the "Extended Port Policy"); and

WHEREAS, the Extended Port Policy does not apply to new leases for new tenants signed on or after April 1, 2020; and be it further

WHEREAS, During the additional 30 days of the Extended Port Policy, more information can be gathered and analyzed to determine next steps; now therefore be it

RESOLVED, that the Port Commission ratifies and affirms the terms of the Port Policy; and be it further

RESOLVED, that the Port Commission adopts the Extended Port Policy; and be it further

RESOLVED, that the Port Commission directs staff to promptly advise affected tenants of the Extended Port Policy and post notice on the Port website.

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



Secretary

MEMORANDUM

March 27, 2020

TO: Port Staff

FROM: Elaine Forbes
Executive Director

SUBJECT: Executive Directive Regarding Enforcement of Lease Obligations From March 1, 2020 through April 30, 2020 ("Directive").

Background

The actions described below are prompted by the remarkably rapid developments in the recognition of and reaction to the Covid-19 pandemic. Some major milestones over the past month include:

- 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 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 due to the ongoing spread of "Covid-19".
- On March 3, 2020, the Board of Supervisors passed a motion concurring in the Mayor's Emergency Declaration and in the actions taken by the Mayor to meet the emergency.
- On March 4, 2020, Governor Newsom issued the Proclamation of a State of Emergency ("Governor's Proclamation") under Section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to Covid-19.
- On March 16, 2020, Mayor Breed issued a further 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 Order). Among other things this order closed bars and restaurants except for takeout and delivery service, which caused a great deal of dislocation among the Port's retail portfolio.

The impacts of the emergency on the small business community have been fairly immediate. In response to those impacts, 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 “Eviction Moratorium Order”). Under normal state law, localities are prohibited from regulating commercial evictions. San Francisco was allowed to take this action following Governor Newsom’s March 16, 2020 Executive Order lifting those restrictions. The moratorium can be extended and will be automatically rescinded if the Mayor’s Emergency Declaration ceases. On March 27, 2020, City Administrator Naomi Kelly issued a “City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through April 30, 2020” (the “Citywide Policy”). This Directive implements the recommendations in the Citywide Policy and extends additional relief as described below.

These orders mandating that citizens shelter in place and observe social distancing precautions have required many businesses to temporarily close or severely curtail their operations with the effect of greatly reducing economic activity on Port property, both directly and indirectly. Businesses both on and off Port property are in a precarious position in maintaining their operations and avoiding defaulting on their various legal agreements and/or insolvency. Port staff have been contacted by numerous tenants describing the negative impacts and seeking assurances and relief from the Port in its capacity as a landlord. Of course, the ability to grant such assurances and relief must be balanced with the Port’s own financial health and obligations and its role as a trustee of public lands.

I have consulted with the City Attorney’s Office and the City’s Risk Manager in formulating this Directive. This Directive supports the Port’s Strategic Plan goal of stability by taking steps to retain the Port’s diversified tenant base during this unprecedented economic slowdown.

Under Charter Section B3.581(h) and Port’s Operating Grants of Authority (Port Commission Resolutions 80-99 and 80-112), the Port’s Executive Director is responsible for the management of all the affairs and activities placed under the jurisdiction of the Port Commission including general management, administration and enforcement of leases. In issuing this Directive, I also rely on Port Commission Resolution 10-01, which delegates authority to the Executive Director to settle unlitigated claims of up to \$25,000 provided that the City Attorney approves such settlements.

Directive

The Port is in a position to assist tenants with immediate temporary relief to allow them to keep their businesses operational and their workforce in place for when these extraordinary orders are lifted. This Directive is intended to alleviate some financial pressure on tenants as we collectively face an uncertain period in fighting the Covid-19 virus outbreak over the coming weeks and months. Current projections of the course of the Covid-19 outbreak and the measures taken to protect public health indicate this situation will extend beyond the period covered by this Directive. Port staff will monitor Mayoral Orders and Health Department Orders and other developments and will supplement this Directive as needed, and in consultation with the Port Commission when it resumes regular meetings. In short, this is a temporary bridge to a more comprehensive and targeted rent relief policy once Port staff has an opportunity to study the impacts of this situation and the policy response from federal, state and City governments.

As with the Citywide Policy and the Eviction Moratorium Order, the Port is taking this action in acknowledgement that its ability to generate revenues to fulfill its public stewardship mission is directly related to the health of its tenant businesses and their ability to pay rent. In most scenarios where a tenant is in danger of default and seeking a workout plan, Port staff must weigh the foregone revenues against the potential costs, lost revenues and disruption resulting from a tenant default and/or bankruptcy. In our experience, in many instances, providing a benefit in terms of temporarily deferring rent payments during a tenant's cash crunch (subject to repayment later) results in better long term and more stable revenues to the Port than strict adherence to the lease terms which would dictate an eviction action and the need re-lease the property.

With that experience as our guide, the Port must now confront this unprecedented economic challenge using our best professional judgment.

1. Actions:

Under this Directive, Port staff will waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of Port property during the period of March 1 through April 30, 2020. Port staff will also follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect. Further, between now and April 30, 2020 the Port will not issue any Three Day Notice to Pay or Quit for nonpayment of any portion of rent due during the period of March 1 through April 30, 2020 due to the impact of COVID-19.

These actions are intended to give tenants confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to remain solvent. All tenant rent is still due and payable in accordance with the applicable lease, license or other agreement; as such the Port will be issuing invoices in its normal course of business.

2. Lease Obligations and Payment Provisions:

The relief offered by this Directive is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations and percentage rent reporting obligations), the tenant's resumption of normal timely rent payments on May 1, 2020 and payment of any rent arrearages (including for March and April 2020) in full no later than June 30, 2020 (subject to any extension of these deadlines and/or additional relief as noted above). Any amounts not paid in full as of June 30, 2020 would then be subject to interest and penalties from and after that date (subject to any further relief action taken by the Port before that date).

If a tenant is unable to fulfill non-monetary lease obligations due to impacts from the current emergency situation, Port staff will address those issues on a case-by-case basis. The forbearance program outlined in this Directive does not change the terms or conditions of any lease or other Port agreement.

This Directive will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

3. Reporting:

Port staff will monitor rent collections and tenant operational conditions during this time and will track and report on the amounts deferred under this Directive and the parties that received relief. This information will be provided to the Port Commission as soon as possible, but no later than the next Port Commission meeting. Currently any concessions, amendments or other deferrals with a value of \$25,000 or more require Port Commission approval. Though this outcome is not expected due to the scope and timing of the relief, Port staff will monitor and advise management of any case where the amounts deferred approach \$25,000.

4. Other Sources of Relief:

Staff is directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

5. Eligibility:

This Directive applies to all leases, licenses and other agreements to use Port lands. This Directive also applies to our Maritime agreements with excursion operators and other similar maritime tenants. This Directive does not apply to MOUs with City departments, lay berthing agreements, and berthing agreements for small vessels at South Beach Harbor. In any scenario where a Port tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the Port's tenant has offered equivalent relief to the subtenant(s).

Analysis

The Port has engaged in similar rent relief efforts due to economic conditions in the past, notably including the 2016 Crab Industry Relief Program that among other things provided three months of rent forgiveness to the crab fishing industry in the face of the severely truncated crab season that year. There, as here, the goal was targeting assistance to help the industry survive so that it can endure the current challenges and regain its footing and ability to generate rent revenues for the Port in the future.

The impact of the specific actions proposed here will be primarily felt in the Port's cash flow and timing of receipts, depending on how many tenants take advantage of this relief. Based on tenant communications to date, the Port's cash flow is going to be impacted regardless, especially with regard to percentage rents and parking revenues. Port staff will continue to monitor these trends and report to the Port Commission. It is notable that the Port's budget does not assume recoveries for default interest or late fees as a source. In the most recently completed fiscal year (FY 2018-2019) this source amounted to 0.1% of Port revenues.

It is important to note that this Directive is simply an initial measure shifting the timing of otherwise due rent payments. In the current regulatory environment the Port fully expects that further deferrals and/or installment payment plans (with interest) will be worthy of consideration. This is especially the case with regard to certain Port tenant classes that support the Port's trust mission. In developing these strategies it will be

important to understand those tenants' plans as well as the overall economic and regulatory environment so that Port staff can strike the appropriate balance to safeguard the Port's revenue needs as described above.

As further actions become warranted, Port staff will communicate as much as possible with affected tenants and the Port Commission so that appropriate financial decisions can be made. As always, the goal is to take the steps that provide the best opportunity to regain the Port's economic footing at such time when the disease no longer necessitates these impactful defensive measures.