




MEMORANDUM

May 22, 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: Katharine E. Petrucione, 
Acting Executive Director

SUBJECT: Request approval of a further extension through July 31, 2020 of the Extended Port Policy Regarding Enforcement of Lease Obligations during the COVID-19 Shelter in Place Orders for rent deferral and other tenant relief provided under Port Commission Resolution 20-18 (Resolution No. 20-27)

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

The economic impacts of the COVID-19 pandemic are unprecedented and uncertain. To date the Port has taken several actions to provide relief to tenants, including adoption of the Extended Port Policy Regarding Enforcement of Lease Obligations during the COVID-19 Shelter in Place Orders for rent deferral and other tenant relief provided under Port Commission Resolution 20-18 (the "Extended Rent Deferral Policy"), but it is clear that the ongoing economic dislocation caused by the public health response to the pandemic will require Port staff and the Port Commission to develop a multi-phase, multi-layered relief strategy for the Port's tenants. It is also clear that the strategy the Port develops must balance its own financial obligations and reliance on rental revenues with tenant relief.

THIS PRINT COVERS CALENDAR ITEM NO. 8C

Taking these factors into consideration, at the May 12 Commission Meeting Port staff proposed that the Port Commission approve a further extension of the current Extended Rent Deferral Policy to continue to offer immediate relief and to allow staff more time to observe the conditions after the orders are further relaxed before proposing further action.

Additionally, at the May 12 Commission meeting, Port Staff described shifting from the broad-based program to an opt-in extended rent deferral program (the “Opt-In Rent Deferral Program”). The Port Commission provided feedback on these items, and in response Port Staff are conducting further research and analysis to determine how best to structure and operationalize the Opt-In Rent Deferral Program to replace the current broad-based deferral policy. Port staff intends to return to the Commission on June 9 to seek authorization of the Opt-In Rent Deferral Program.

This memorandum also provides an update on Port staff’s collaboration with other City landlord agencies to develop proposed legislative delegations from the Board of Supervisors intended to facilitate targeted lease amendments to implement rent forgiveness as may be approved in the future by the Port Commission.

Today staff seeks the following from the Port Commission:

- Approve the extension to the current broad-based rent deferral through July 31, 2020.
- Provide feedback on the Opt-In Rent Deferral Program for a subsequent action item.

Background

This item has been prompted by the rapid progression of the COVID-19 pandemic. In combating the immediate economic impacts to tenants, the Port has taken two key actions. On March 27, 2020 Executive Director Forbes directed Port staff to allow eligible affected tenants to defer rent owed for March and April 2020 without penalty or risk of eviction (the “Executive Directive”). All Port tenants were advised of the relief offered by the Executive Directive. Similar rent deferment policies were offered by the Airport, MTA, RPD and General Fund departments.

On April 28, 2020, the Port Commission adopted Resolution No. 20-18 which ratified and extended the Executive Directive on the same material terms, adding deferral of rent due for May 2020 and providing in more detail:

- Port staff to 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 May 31, 2020; and
- Port staff to follow the policies and timeframes set forth in the Mayor’s March 17, 2020, Eviction Moratorium Order which grants certain protections to

small and medium-sized businesses with respect to the initiation of enforcement or eviction process due to the failure to pay rent because of COVID-19 impacts; and

- 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 May 31, 2020 due to the impact of COVID-19; and
- New tenants executing leases for new space on or after April 1, 2020 are not eligible for relief.

Subsequently, on April 29, 2020, the San Francisco Health Officer extended the local shelter in place order through May 31, 2020. Governor Gavin Newsom's March 19, 2020 Order that established shelter-in-place guidelines for the state of California currently has no set expiration date. The Governor released a four stage Resilience Roadmap, and on May 12 issued guidance regarding Stage 2, which allows for certain workplaces to reopen safely with modifications. These early Stage 2 workplaces included retail (curbside and delivery only), related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, child care, and essential businesses. Additionally, Mayor Breed issued a new directive regarding required best practices for retail businesses with curbside pickup.

As discussed during prior Port Commission meetings, the Port's own financial obligations to lenders and bond holders and the Port's budget's reliance on rental revenues creates a strategic challenge as relief programs are considered. While rent deferral, as under the current policy, simply changes the timing of otherwise due rent payments, rent forgiveness would reduce the payments due. A smart program must strike a balance between providing true rent forgiveness for those tenants who need it while at the same time incentivizing full payment from those who can pay, even if it is on a deferred basis. The Port benefits in the long term from every tenant who can weather this storm and regain its ability to pay rent on a current basis, rather than creating vacancies that need to be filled during the current economic downturn. Therefore, 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.

May Revenue Performance

Port staff continues to monitor revenue performance and will continue to report to the Port Commission. Below is a summary of May rent receipts through May 18, 2020. Key takeaways from May are:

- Of the 594 invoices, 298 payments were made representing a 50% payment rate (Figure A)
- Of the \$6.5 million invoiced, \$2.2 million was received representing a 34% collections rate (Figure B)
- Revenue shortfalls were spread throughout all portfolios. Fisherman's Wharf portfolio experienced the largest percentage uncollected at 97% and China Basin portfolio experienced the largest amount uncollected at \$1.4 million (Figure C)

Figure A - REVENUE BY TYPE

Revenue Type	Invoices	Payments	Payment Rate	Base Rent Invoiced	Total Rent Receipts
Cargo Facility Rent	20	17	85%	\$ 398,246	\$ 337,935
Color Curb Zone Fee	9	2	22%	\$ 20,555	\$ 62
Commercial Rent	360	208	58%	\$ 3,066,855	\$ 1,354,109
Cruise Facility Rent	1	0	0%	\$ 17,389	\$ -
Dockage	10	7	70%	\$ 12,669	\$ 7,034
Fish Processing Facility Rent	61	15	25%	\$ 215,165	\$ 36,720
Harbor Services Facility Rent	3	3	100%	\$ 179,642	\$ 140,378
Layberthing	6	1	17%	\$ 92,289	\$ 10,400
Maritime Services Facility Rent	25	11	44%	\$ 176,372	\$ 100,680
Parking Lot Rent	22	0	0%	\$ 1,407,539	\$ -
Participation Rent	64	15	23%	\$ 912,864	\$ 146,295
Permit Fees	2	1	50%	\$ 750	\$ -
Utility Fees	7	4	57%	\$ 3,209	\$ 45,290
Wharfage	4	0	0%	\$ 678	\$ -
	594	298	50%	\$ 6,504,223	\$ 2,178,903

Figure B - PAYMENTS CREDITED

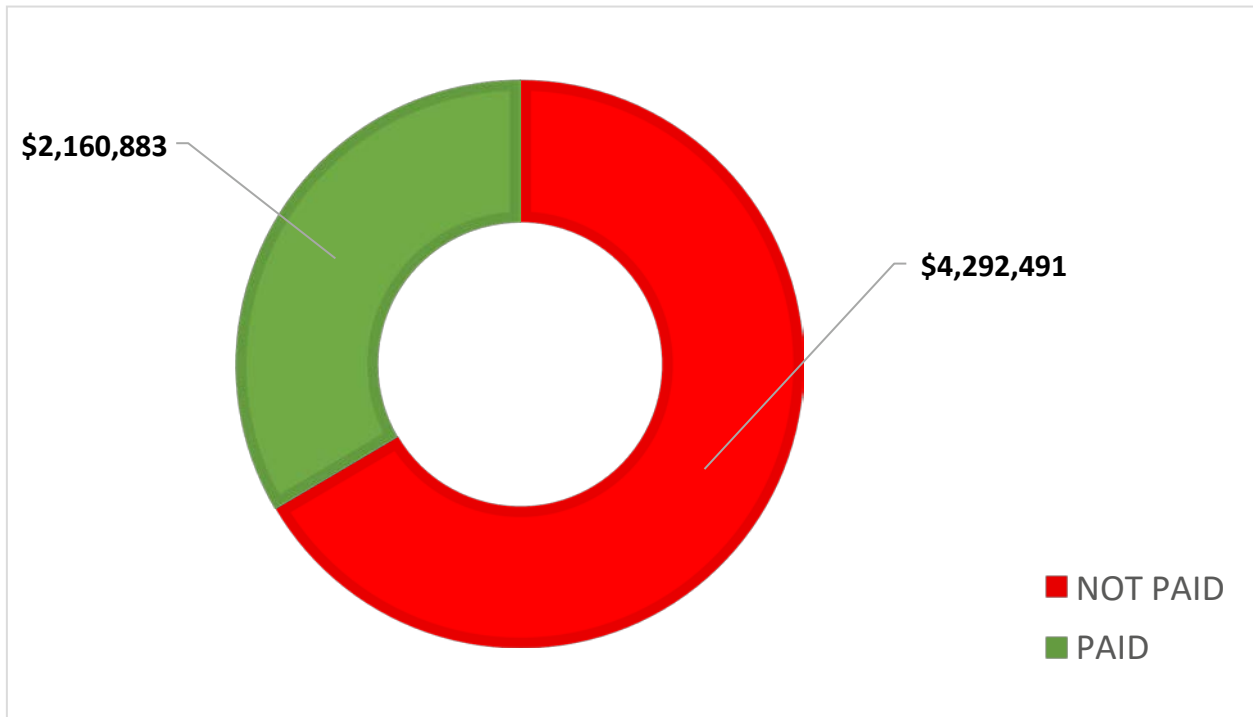
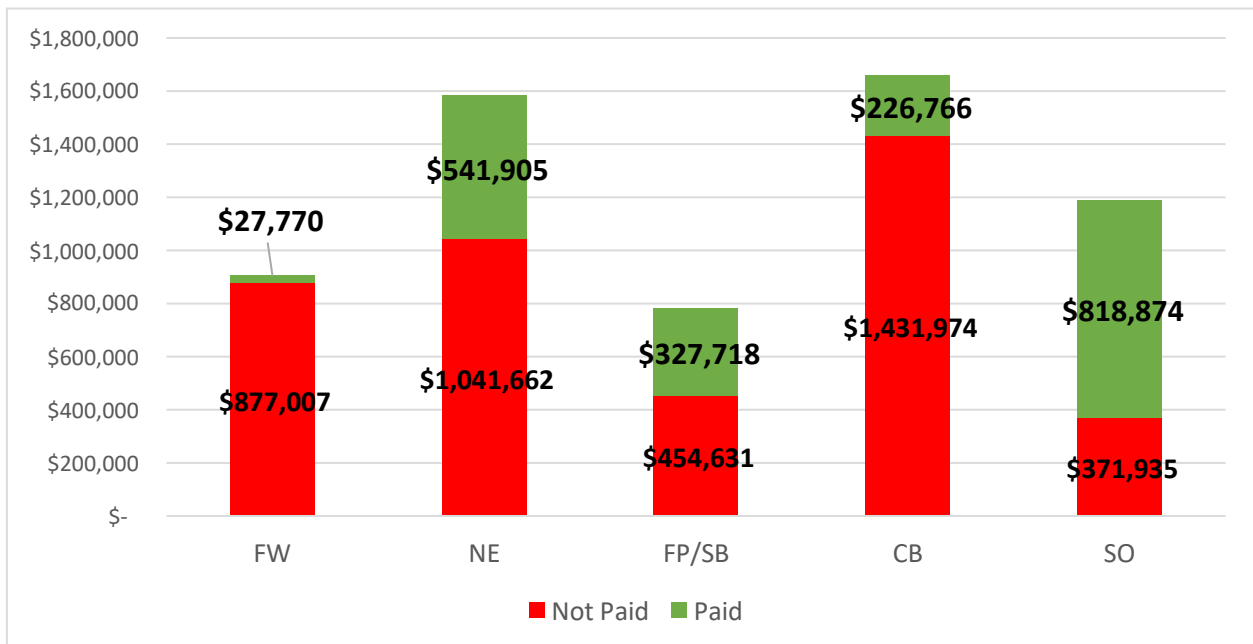


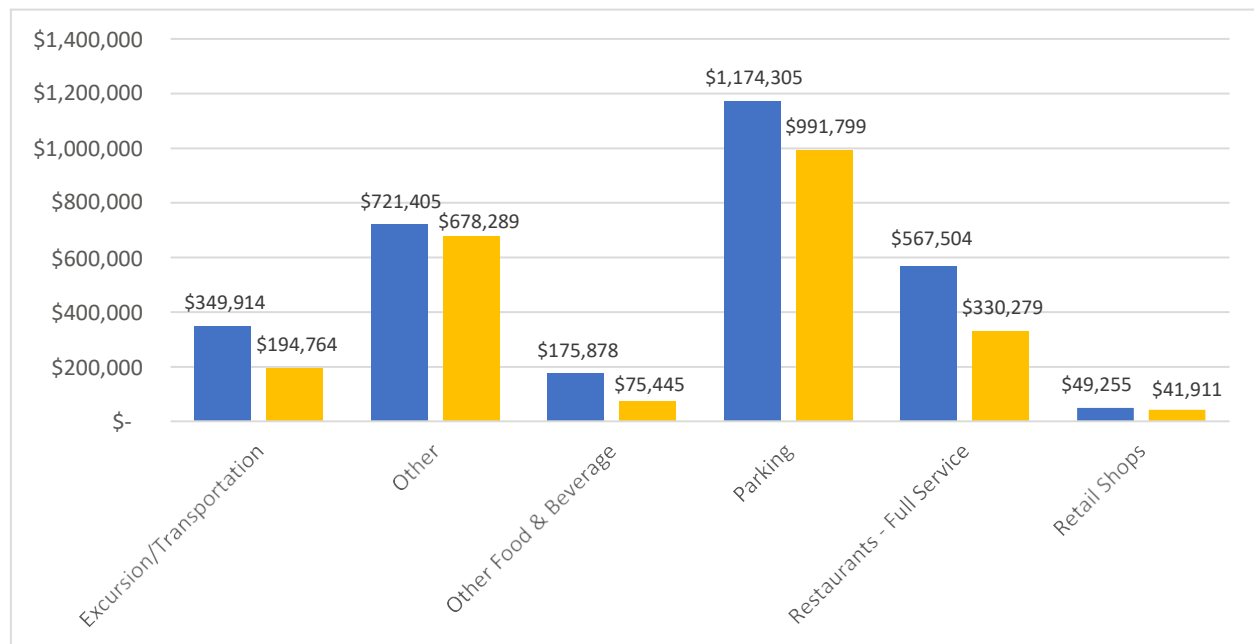
Figure C - REVENUE CREDITED BY PORTFOLIO



Participation Rent Revenue Performance

Port staff continues to monitor participation rent revenue performance and will continue to report to the Port Commission. Below is a comparison of March 2019 vs March 2020 participation rent across sectors. April participation rent revenue is being processed, and staff will have an update at a subsequent Port Commission meeting.

Figure D – Participation Rent Revenue March 2019 vs March 2020



FOR ACTION – EXTENSION TO JULY 31, 2020 FOR CURRENT BROAD-BASED EXTENDED RENT DEFERRAL POLICY

Staff proposes to extend the current broad-based Extended Rent Deferral Policy for several reasons. It is clear that with the continuation of the shelter in place orders tenants who were challenged in paying their March, April or May rent will have equal if not more difficulty paying all such deferred rent by the Port's current deadline of June 30, 2020. Rather than allowing that date to arrive Port staff believes that extending the current policy for another two months will provide additional breathing room for impacted tenants while informing further Port action on rent deferral, forgiveness or other relief for targeted tenant categories. Under the extension, tenants would be able to defer rent payments for March, April, May, June and July without financial or other penalty; provided that normal and timely payment of rent recommences on August 1, 2020 and payment of any rent arrearage is made by July 31, 2020.

Prior to the expiration of the current broad-based Extended Rent Deferral Policy, Port staff intends to return to the Commission for action on the Opt-In Rent Deferral Program.

FOR DISCUSSION – FURTHER TENANT RELIEF STRATEGIES

Opt-In Deferral Program

Port staff would also like to update the Port Commission on certain key strategies for further tenant relief after July 31, 2020 that are currently under consideration. Port staff expects that further deferrals beyond that date may be advisable and are evaluating how to structure and administer such a program.

Port staff seeks Port Commission feedback on the following Opt-In Rent Deferral Program to replace, and provide relief beyond, the expiration of the current broad-based deferral policy. As described below, an opt-in program would include the following key terms.

Key Terms

- Tenants who opt-in would not be assessed late fees or default interest for any rent payments due for the months of March 2020 through December 2020.
- The Port will also forbear from taking any action to evict such tenants for rental payment defaults during this period. All such amounts must be paid on or before December 31, 2020 or the date of surrender of the leasehold, whichever is earlier. If not, fees or interest would apply.
- Except as to rent as provided by the policy, tenants must continue to comply with all lease obligations during any rent deferral period.

Proposed Submittal Requirements for Extended Rent Deferral Program:

- Statement from tenant, which:
 - Describes impact from COVID-19 and need for relief.
 - Describes business plan to get back to normal operations.
 - Provides current revenue projections in light of current economic conditions and assuming the relaxation of the shelter in place orders on or before July 31, 2020.
 - Using those revenue estimates, projects anticipated cash flow that demonstrates the tenant's ability to resume current rent payments on or before December 31, 2020.
- Documentation of any and all submittals to federal, state, and local relief programs and summary of application status. If no such applications were filed, tenant would be asked to explain reasons (ineligibility, etc.).
- Submittal of a midterm report on revenues and ability to pay

Proposed Tenant Support During Submittal Process:

- Designation of Port staff available to guide tenants during the submittal process and deferral period.
- Creation of an online portal to submit supporting documents that can be accessed through a computer or mobile device, to reduce in-person contact.

Staff Analysis of Potential Opt-In Rent Deferral Program

The comprehensive and impactful public health response to the COVID-19 pandemic 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.

It is apparent that when shelter in place orders from the State and City are further relaxed, there will be a significant change in how business is conducted. Because of the inextricable connection between tenant success and the Port's budget, in order to allow for our tenants to regain their footing and adapt to the new normal, the Port must also acknowledge and adapt to the new normal.

The discussion at the April 28 and May 12 Port Commission meetings included comments about eligibility criteria and barriers for extended deferral beyond the current broad-based policy. As noted, as a general matter, public landlords have been more willing to provide broad-based deferral relief for a range of reasons, including public equity concerns and the mission to consider the broader impacts of the leasing portfolio in addition to more immediate owner/shareholder concerns. Accordingly, Port staff recommended at the May 12 Port Commission meeting that any continued deferral program remain broadly targeted and easily accessible, and that qualification-based approaches be reserved for targeted dialogues regarding forgiveness of rent beyond deferral.

Specifically, Port staff recommends a program that takes an "opt-in" information-based approach, with the requested submittal documents used by Port staff to inform rather than exclude tenants from obtaining relief. Port staff explained that while there is logic in requiring a tenant to show a business plan that returns it to current rent payments at a future date, under the current operating uncertainty many tenants may have difficulty in developing a credible projection of their operating profile over an extended period of time. Staff also noted that some tenant categories may not have the expertise to navigate a challenging application process and would be doubly penalized if rent deferral were conditioned on the successful submission of such an application.

Port staff believes that if a business is willing to operate and attempt to pay deferred rents by the program deadline, that is a benefit to the Port. Absent further action to provide forgiveness, those deferred rents would still be due to the Port at the end of the deferral period. Requiring such a tenant to pay rent when due because it cannot fulfill

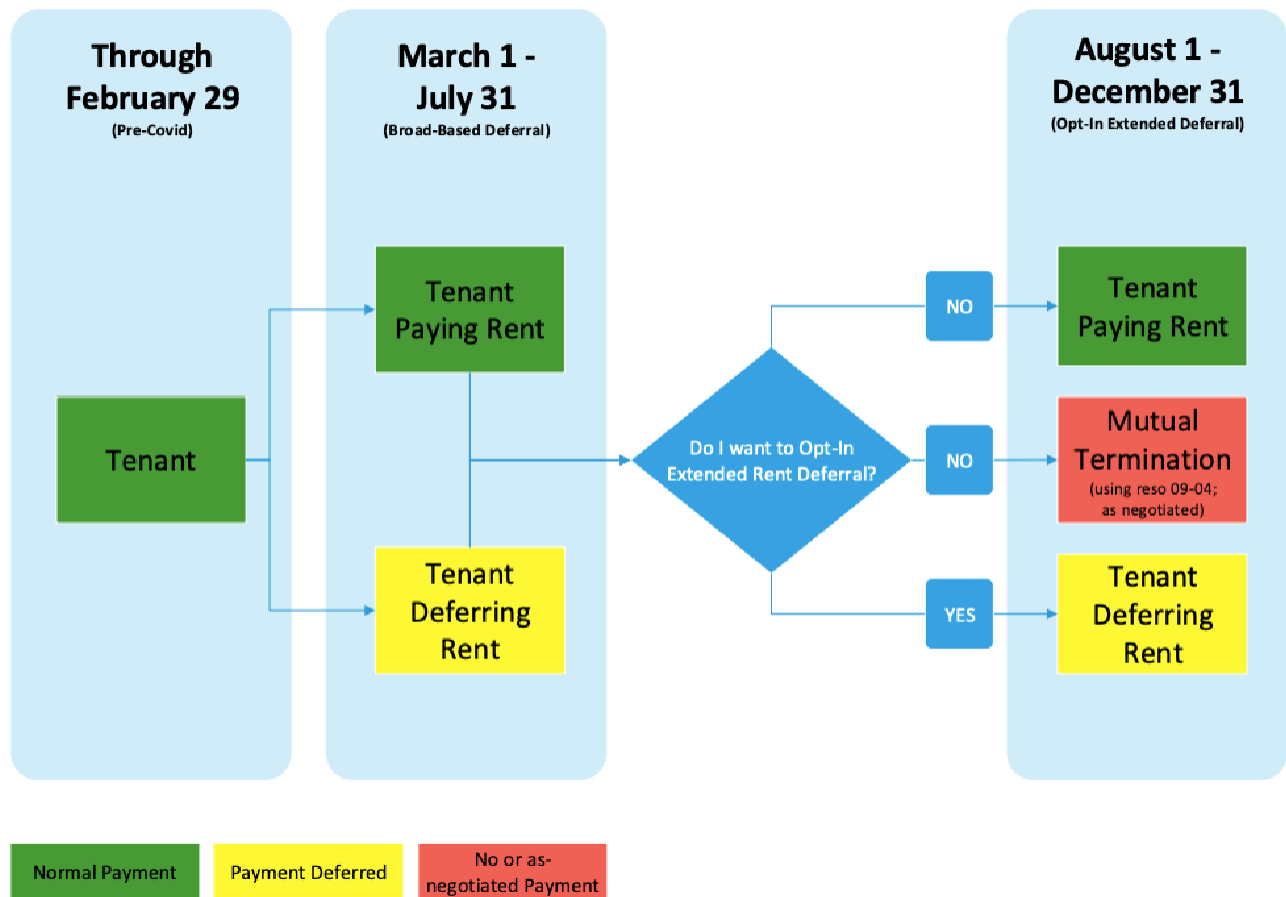
some condition to the program would leave the tenant faced with an increasing payment obligation without the means to pay it, and the Port with limited recourse due to the Mayor- and court-issued moratoriums and delays on eviction proceedings.

Port staff acknowledges that there may be disadvantages and financial risks associated with an opt-in rather than a criteria-based application approach. While public health guidance is working toward a reopening of the economy, the when and how are uncertain. Staff realizes that even with the desire and ability to reopen, there is no guarantee that a tenant will be able to generate enough revenue to pay the outstanding rent balance by a certain deadline. Despite these potential drawbacks, Port staff recommend the opt-in program approach, subject to Port Commission approval. Port staff will provide ongoing monitoring and assistance to tenants, as feasible, to reduce the financial risks to Port.

In addition to the opt-in framework, Port staff has been thinking about the policy response to those tenants who do not opt-in to the extended rent deferral program and instead wish to wind down their business or restructure in a manner that no longer utilizes Port property. As discussed at the May 12 Port Commission meeting, under Port Commission Resolution 09-04, Port staff may currently enter into mutual early termination agreements for leases with a term of less than five years remaining and with a monthly rent of less than \$10,000, where the Executive Director finds the lease is no longer in the Port's best interest and where Port staff negotiate a return of the premises to the Port on terms and conditions that benefit the Port. For those tenants who opt out of the deferral program because they do not see a future for their business at the Port, such a mutual termination could provide significant benefits to the Port in terms of certainty, control and limiting costly legal action later. Depending on the level of tenant interest in "opting-out," Port staff may also propose revising the limits in the current delegation and/or addressing other policy concerns such as conditions on the rights of such tenants to seek new leases with Port in the future.

Figure E below depicts Port staff's current thinking on the Opt-In Rent Deferral Program process flow.

FIGURE E – Opt-In Rent Deferral Program Process



As the economic crisis continues, Port staff is concerned that the proposed measures while significant, may not go far enough. In response, Port staff is evaluating whether to include an option for tenants to enter into a repayment plan to pay any outstanding balances after January 1, 2021, this repayment may be subject to interest rates, time limitations, and other requirements. Port Commission feedback on this repayment option and or other tenant relief is highly desired.

Potential Board of Supervisors Legislation For Lease Amendments

Port staff continues to evaluate further relief strategies including those mentioned above and engaging with other City agency landlords and private portfolio managers to understand their current and proposed strategies. While rent deferral is not generally considered to be a lease amendment (as under the current Extended Rent Deferral Policy), a lease amendment would be required in order to provide deeper/broader relief, such as rent forgiveness or a substantially restructured payment schedule that includes a lease extension (these kinds of relief were outlined in some detail at the April 28, 2020 Commission meeting). This presents a challenge to the implementation of an efficient

program, as modifications of Port leases with anticipated revenues of \$1 million or more or a term of 10 years or more must be approved by the Board of Supervisors under Charter Section 9.118. This does not represent all of the Port's portfolio; many leases do not meet these requirements and maritime leases are exempt from the Charter requirement. However, this provision does cover many of the Port's major attractions and retail establishments.

With some limitations, the Board of Supervisors may delegate authority to departments in certain specific circumstances to enter into lease amendments that would otherwise require approval under the Charter. Delays for legislative approvals use up both City staff time that could be used to address other tenants as well as tenant resources that would be best preserved for business operations. In order to enable departments like the Port to amend existing leases to extend relief to qualifying tenants as efficiently as possible, Port staff is working closely with the City Administrator and the City landlord agencies to develop legislation that, if submitted and approved, would delegate authority to City departments to amend existing agreements without seeking approval by the Board of Supervisors for the amendment under Section 9.118. Such a delegation would greatly improve the ability of the Port Commission and staff to manage relief strategy across the portfolio.

Next Steps

Port staff intends to incorporate feedback at the meeting and return to the Port Commission's June 9 meeting to (a) seek authorization for an Opt-In Rent Deferral Program as described above; and (b) continue the policy discussion on tenant assistance and rent relief, potential rent forgiveness strategies, and further legislation that may be proposed to the Board of Supervisors along the lines described above.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution.

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

For: Rebecca Benassini
Acting Deputy Director
Real Estate and Development

ATTACHMENTS:

- RESOLUTION 20-27
- Port Executive Order dated March 27, 2020

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

RESOLUTION NO. 20-27

- 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 "Executive Directive"); and
- WHEREAS, On April 28, 2020, by Resolution 20-18, the Port Commission ratified, affirmed, and extended terms of the Executive Directive through May 31, 2020 (Extended Rent Deferral Policy"); and
- WHEREAS, The Extended Rent Deferral Policy provides a penalty-free offer to tenants to defer rent due for use of Port property in March, April, and May 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, and resuming regular rent payments on June 1, 2020 and paying all deferred amounts by June 30, 2020; and

- WHEREAS, All Port tenants can get relief under the Extended Rent Deferral 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 May 4, 2020, the Health Officer issued a new Order requiring that most people continue Shelter in Place through May 31, 2020; and
- WHEREAS, Due to the extension of the Shelter in Place Order, and the uncertainty of when the Shelter in Place Order will be lifted or relaxed, the Port Commission sees the need to further extend the Extended Rent Deferral Policy on all of the same terms through July 31, 2020, such that payment of March, April, May, June, and July 2020 rent may be deferred without financial or other penalty; provided that normal and timely payment of rent recommences on August 1, 2020 and payment of any rent arrearage is made by July 31, 2020 (as further described in the Memorandum to the Port Commission dated May 22, 2020); and
- WHEREAS, During the extension period, Port staff can gather and analyze more information to determine next steps; now therefore be it
- RESOLVED, That the Port Commission extends the end date of the Extended Rent Deferral Policy to July 31, 2020; and be it further
- RESOLVED, That the Port Commission directs staff to promptly advise affected tenants of the extension and post notice on the Port website.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 26, 2020.

Secretary